



House of Commons

European Scrutiny Committee

Twenty-ninth Report of Session 2014–15

**Documents considered by the Committee on 14 January 2015,
including the following recommendations for debate:**

The EU and the post-2015 development agenda

EU Development Assistance: EuropeAid's evaluation and
results-oriented monitoring systems



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Report, together with formal minutes

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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 or JOIN are Commission reference numbers.

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

Abbreviations used in the headnotes and footnotes

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

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 published in the House of Commons Vote Bundle each Monday, and is also available on the parliamentary website. Documents awaiting consideration by the Committee are listed in "Remaining Business": www.parliament.uk/escom. The website also contains the Committee's Reports.

*Explanatory Memoranda (EMs) can be downloaded from the Cabinet Office website:
<http://europeanmemoranda.cabinetoffice.gov.uk/>.

Letters sent by Ministers to the Committee relating to European 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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Meeting Summary

Evidence sessions

On 12 January, we took evidence from the Home and Justice Secretaries on a range of issues, including the Government's handling of the scrutiny process in relation to the UK's decision to opt into 35 criminal justice and policing measures following the decision to opt out *en masse* of a number of pre-Lisbon measures in this area. We also questioned the Secretaries of State on matters such as the Government's delays in scheduling debates we have recommended (in particular, one on the free movement of EU citizens, which we recommended almost a year ago), and the Government's Response to our Report on the EU Charter of Fundamental Rights, including the Charter's applicability to the Temporary Exclusion Orders proposed by the Government in the Counter-Terrorism and Security Bill. On 14 January, we are holding two further oral evidence sessions as part of the follow-up work to our Report on Reforming the Scrutiny System in the House of Commons:

- A session with the Minister for Europe and Ivan Rogers, Head of the UK Representation to the EU, on the Government's Response to our Report. We will ask the Minister about our long list of outstanding debate recommendations, and why these are yet to be organised. A further session with the Foreign Secretary will follow on 20 January; and
- A session with Rona Fairhead CBE, Chairman of the BBC Trust, and Richard Ayre, Chairman of the BBC Editorial Standards Committee, covering areas arising from our inquiry into the scrutiny system which concern BBC obligations under the Charter, and related issues.

We also considered the following documents:

The EU and the post-2015 development agenda

The Joint Communication "A decent life for all: from vision to collection action" sets out the Commission's and European External Action Service's thinking on the post-2015 development agenda — a new set of Sustainable Development Goals to shape global development priorities up until 2030, which are due to be adopted at this September's UN General Assembly. The EU will negotiate on behalf of Member States. The Minister says that this approach acknowledges EU competence in development issues, and that the tried-and-tested "team EU approach" — a burden-sharing agreement enabling individual Member States, including the UK, to lead negotiations on certain issues or goal areas — is more likely to secure UK objectives than action alone. The Council Conclusions, agreed on 17 December 2014, which, in the Minister's words, "update and set the broad parameters of the EU's negotiating position", have strong references to the UK goals on poverty eradication, gender, environmental sustainability, climate change and governance. We recommend that it is now time for this Communication, which we have held under scrutiny since July last year, to be debated in European Committee B.

EU Development Assistance: EuropeAid's evaluation and results-orientated monitoring systems

EuropeAid is responsible for formulating EU development policy and defining sectoral policies in the field of external aid; drawing up the multiannual programming of external aid instruments together with the European External Action Service; fostering coordination between the EU and the Member States on development cooperation; and externally representing the EU in this field. The European Court of Auditors' Special Report that we consider this week looks in detail at EuropeAid's Evaluation and Results-Orientated Monitoring systems. These systems are vital for ensuring that the EU taxpayer's resources are being used effectively in this area. The Court found that these are not sufficiently reliable, and makes a number of recommendations, which the Commission mostly accepts. But it seems plain to us that the Commission will only make the necessary improvements in the right time frame if it is pressed by the Council. We therefore recommend this Special Report for debate in European Committee, so that the House can ask the Minister further about why a more determined effort is not being made, and especially why the Council is not putting its weight directly to the wheel and adopting Conclusions on this matter.

1 The EU and the post-2015 development agenda

Committee's assessment	Politically important
<u>Committee's decision</u>	Not cleared from scrutiny; for debate in European Committee B; drawn to the attention of the International Development Committee
Document details	Commission Communication: <i>A decent Life for all: from vision to collective action</i>
Legal base	—
Department	International Development and Environment, Food and Rural Affairs
Document numbers	(36070), 10412/14 + ADD 1, COM(14) 335

Summary and Committee's conclusions

1.1 This Joint Communication is the latest stage in a process that began with Commission Communication 7075/13 — “*A decent life for all: ending poverty and giving the world a sustainable future*”. That earlier Commission brought together the debate about what international framework should succeed the MDGs¹ and the process to establish new Sustainable Development Goals (SDGs) arising from the Rio+20 — where government leaders agreed that the new SDGs should be coherent and integrated with the post-2015 development agenda.² Commission Communication 12434/13 on the Commission's perspectives on financing the post-2015 development framework is also relevant.³ Both Communications were examined in a European Committee debate on 11 December 2013.⁴

1.2 The 25 June 2013 Council Conclusions on the “Overarching Post 2015 Agenda”⁵ stressed that the post-2015 process should reinforce the international community's commitment to poverty eradication and sustainable development and set out a single comprehensive and coherent framework for effective delivery and results at all levels. The framework should be defined around a single set of global goals in order to drive action in all countries. The EU and its Member States reiterated their commitment to play a full and active role in the work to define the post-2015 framework and to work inclusively with all partners, including civil society, scientific and knowledge institutions, local authorities, the private sector and social partners, in considering priority areas for the framework.

1.3 This follow-up Joint Communication sets out the Commission's and European External Action Service's thinking on the post-2015 development agenda, so as to secure

¹ The eight goals UN Millennium Development Goals (MDGs) that, in 2000, the UN set itself to achieve, most by 2015: eradicate extreme poverty and hunger; achieve universal primary education; promote gender equality; reduce child mortality; improve maternal health; combat HIV/Aids, malaria and other diseases; ensure environmental sustainability; develop a partnership for development — each with associated targets and benchmarks to measure progress.

² See (34747), 7075/13: Thirty-ninth Report HC 86-xxxviii (2012–13), [chapter 6](#) (17 April 2013).

³ See (35203), 12434/13: Fourteenth Report HC 83-xiv (2013–14), [chapter 7](#) (11 September 2013) for our consideration of this Commission Communication.

⁴ The record of the European Committee is available at *Gen Co Deb*, European Committee B, 11 December 2013, cols [3-20](#).

⁵ See http://eu-un.europa.eu/articles/en/article_13692_en.htm.

international agreement for a new set of sustainable development goals (SDGs) that would shape global development priorities to 2030. The Committee first considered this Joint Communication at its meeting on 2 July 2014.⁶

1.4 The next stage was the UN Secretary General's (UNSG) Open Working Group (OWG) report, which was adopted at the 69th UNGA in September 2014 (see "Background" below). A synthesis of this report was to feed into the intergovernmental negotiations due to commence in early 2015 that Kenya and Ireland would facilitate, and which would culminate in a Summit at the 70th UNGA in September 2015, when the post-2015 framework would be agreed.

1.5 In our 3 September 2014 Report, we noted that we were content thus far with the Ministers' (Baroness Northover and Dan Rogerson) clarification regarding both the negotiating timetable and in what ways "the EU will negotiate on behalf of Member States"; the latter being essentially because:

- of EU competence in development issues;⁷
- this is a tried and tested method, with previous such processes having demonstrated that negotiating as the EU is more likely to secure UK objectives than acting alone, given the tendency in UN negotiations to adopt a "bloc" approach;⁸ and
- because the Ministers envisage a "team EU approach", with a burden sharing agreement enabling individual Member States, including the UK, to lead negotiations on certain issues or goal areas.

1.6 However, as the Ministers noted, how this would work in practice needed to be agreed with the Commission, Member States and legal advisers; we asked the Ministers to write again with full information on these arrangements, once they had been agreed, explaining how they reflected the proper division of competences under the Treaties.

1.7 On the last occasion upon which we considered it, the Ministers set out their aims with regard to the Council Conclusions that were due to be agreed in December 2014, shortly after the publication of the UNSG's synthesis report. We asked them to write to us with their evaluation of those Council Conclusions, at which point we envisaged recommending that this Commission Communication be debated, so that the House would have the benefit of both documents when the debate took place.

⁶ See Fifth Report HC 219-v (2014–15), [chapter 4](#) (2 July 2014).

⁷ The EU's competence in development cooperation and humanitarian aid is a specific form of shared competence commonly referred to as a parallel competence. The treaties define the nature and scope of the EU's competence as follows: "In the areas of development cooperation and humanitarian aid, the Union shall have competence to carry out activities and conduct common policy: however the exercise of that competence shall not result in Member States being prevented from exercising theirs". (Article 4(4) TFEU). While the Maastricht Treaty (1993) provided the first explicit treaty basis for cooperation with developing countries, the Nice Treaty (2003) provided a legal basis for financial and technical cooperation with third countries, notably including non-developing countries in the Balkans, the Middle East and North Africa. Most recently, the Treaty of Lisbon (2009) added an explicit basis for humanitarian aid. More generally, the EU's competence in development cooperation and humanitarian aid is defined in detail in Part V of the TFEU, which sets out the overall framework of the EU's external action. For a full discussion of these issues, see [Review of the Balance of Competences between the United Kingdom and the European Union: Development Cooperation and Humanitarian Aid Report](#).

⁸ I.e. the G77, EU and JUSCANZ (Australia, Canada New Zealand, Japan, US).

1.8 We also continued to look forward to hearing from them in the New Year about arrangements that, as they rightly put it, “reflect the proper division of competences under the Treaties”.⁹

1.9 The Ministers now describe the Council Conclusions¹⁰ as remaining firm on principle, avoiding setting out a detailed negotiating position prematurely, yet maintaining strong reference to UK priorities on poverty eradication, gender, environmental sustainability, climate change and governance. The Ministers continue to advocate a final framework of goals and targets that is simple, inspiring and workable while retaining the breadth and balance of the 17 goals and 169 targets proposed in the OWG Report, and characterise the Conclusions as a good basis upon which to continue to build support for this approach. The UN Secretary General’s OWG synthesis report — which highlights the inseparability of environmental sustainability from poverty eradication and growth, and proposes six “essential elements” to frame the post-2015 goals and targets — will, they say, be an important input into the intergovernmental negotiations that commence in January, a helpful framing of the issues and a pointer to the need for a more focused outcome on post-2015. They confirm that a further Commission Communication and subsequent Council Conclusions on means of implementation is due in the New Year, and will be working to ensure effective co-ordination between the goals and financing tracks.

1.10 The Ministers also say that the exact details of the negotiating arrangements for the negotiations within the EU remain to be discussed and developed under the Latvian Presidency and that they continue to favour “a “Team EU” or similar approach involving EU actors, the Presidency and Member States based on their expertise”; this, they believe, would be “beneficial in allowing us to maximise our ability to achieve UK objectives”; but, they recognise:

“an EU position may require compromise or may not be reached in certain areas and will therefore need to ensure sufficient flexibility for both the EU and Member States to play a constructive role in negotiations without prejudicing existing competence/representation arrangements.”

1.11 The Ministers conclude by asserting that “the UK has been a key player in post-2015 discussions”, and declare that they are “committed to ensuring an ambitious and implementable framework that is needed to drive action over the next fifteen years”.

1.12 We note that there are still question marks over the detailed arrangements that will underpin the “Team EU” approach, and that some compromise and flexibility may be needed at times. However, as has been noted previously, this approach is tried-and-trusted, and to the best of our knowledge has not infringed upon the proper division of competences under the Treaties in the past.

1.13 Although the Ministers offer to continue to keep the Committee updated, we now look forward to the forthcoming Communication on means of implementation. At

⁹ Twenty-fourth Report HC 219-xxiii (2014–15), [chapter 5](#) (3 December 2014).

¹⁰ [A transformative post-2015 agenda](#): endorsed at the Foreign Affairs Council (Development) on 12 December, adopted by the General Affairs Council on 16 December and endorsed by the Environment Council on 17 December 2014; 39 paragraphs over seven pages.

that point, we ask the Ministers to update the Committee on the “Team EU” arrangements.

1.14 In the meantime, we think that it is now time for these issues to be debated in European Committee B, and so recommend.

Full details of the documents: Commission Communication: *A decent Life for all: from vision to collective action*: (36070), [10412/14](#) + ADD 1, COM(14) 335.

Background

1.15 The report of the OWG proposes 17 goals and 169 targets. The UNGA welcomed the report and decided that it should be the main basis for integrating sustainable development goals into the post-2015 development agenda, while recognising that other inputs should also be considered in the intergovernmental negotiation process.

1.16 The Ministers (Baroness Northover and Dan Rogerson) reported that the UK had secured the majority of its objectives in the OWG report: that poverty eradication is the greatest global challenge; dedicated goals on gender, economic growth and peaceful societies and good governance; proposals relevant to addressing climate change and integration of environmental sustainability. But they regarded a framework of 17 goals and 169 targets as too difficult to implement and “insufficiently compelling to drive action”; had therefore argued for a shorter and more manageable framework since the OWG’s publication; and were encouraging others to follow the UK’s lead.

1.17 In the meantime, Council Conclusions were due to be agreed at both Foreign Affairs (Development) and Environment Councils on 12 and 17 December respectively, shortly after the publication of the UNSG’s synthesis report. The Government’s aim was that these Conclusions should:

- “set the broad parameters of the EU’s negotiating position”;
- provide “a basis for a simple, prioritised, inspiring and balanced set of goals with a strong focus on eradicating extreme poverty with sustainable development at the core” and “a high level EU vision for the post-2015 development agenda”;
- elaborate the guiding principles for the EU including on universality, accountability, a people-centred and rights-based approach, built around an agenda that should aim to eradicate poverty in all its dimensions and achieve sustainable development;
- set out key areas of focus for the EU building on inputs to date including the report of the UN OWG on Sustainable Development Goals and the forthcoming UN SYG’s synthesis report; and
- set out initial views on a new global partnership to facilitate the implementation, review and monitoring of the SDGs which they expect to be further elaborated in early 2015.

1.18 The Ministers undertook to update the Committee as soon as details of the negotiating arrangements within the EU were resolved but were “clear that these need to reflect the proper division of competences under the Treaties”.¹¹

1.19 They also anticipated, early in the New Year, a further Commission Communication, focused on the means of implementation of the post-2015 agenda and monitoring and accountability.

1.20 In the meantime, in view of “the limited time available”, the Ministers were “keen for this matter to clear Parliamentary scrutiny at the earliest opportunity” and hoped their letter provided the Committee “with sufficient information to do that and to support the negotiating position” outlined therein (see our most recent previous Report for full details).

1.21 Recalling that the precursor Commission Communication, “*A decent life for all: ending poverty and giving the world a sustainable future*”, was debated in European Committee, we noted it had always been our intention that, once the OWG report had appeared, this Commission Communication should likewise be debated. However, as the Ministers said, there was now limited time before the adoption of Council Conclusions — though only because, for no apparent reason, it had taken them ten weeks to tell us about the OWG report. We nonetheless had no objection to the Ministers pursuing the adoption of Council Conclusions on the lines they described at December 2014’s Foreign Affairs and Environment Councils.

1.22 Thereafter, we asked them to write to us with their evaluation of those Council Conclusions, at which point we envisaged recommending that this Commission Communication be debated, so that the House would have the benefit of both documents when the debate took place.

1.23 We also continued to look forward to hearing from them in the New Year about arrangements that, as they rightly put it, “reflect the proper division of competences under the Treaties”.

1.24 In the meantime, the Commission Communication remained under scrutiny.

1.25 We also again drew these developments to the attention of the International Development Committee.¹²

The Ministers’ letter of 8 January 2015

1.26 The Ministers (Baroness Northover and Dan Rogerson) write as follows:

Council Conclusions

“The Council Conclusions: ‘A transformative post-2015 agenda’ were endorsed at the Foreign Affairs Council (Development) on 12 December and adopted by the General Affairs Council on 16 December. They were endorsed by the Environment

¹¹ For a full discussion of these issues, see [Review of the Balance of Competences between the United Kingdom and the European Union: Development Cooperation and Humanitarian Aid Report](#).

¹² See Twenty-fourth Report HC 219-xxiii (2014–15), [chapter 5](#) (3 December 2014).

Council on 17 December.¹³ They update and set the broad parameters of the EU's negotiating position. They helpfully remain firm on principle, avoid setting out a detailed negotiating position prematurely, yet maintain strong reference to our priorities on poverty eradication, gender, environmental sustainability, climate change and governance.

“We need a final framework of goals and targets that is simple, inspiring and workable while retaining the breadth and balance of the 17 goals and 169 targets proposed in the Open Working Group (OWG) Report. It must have a strong focus on eradicating extreme poverty with sustainable development at the core. This is within reach in the forthcoming negotiations and the Conclusions provide a good basis for us to continue to build support for this approach.

“The Conclusions welcome the UN Secretary General's synthesis report, which was published on 4 December and proposes a framework and organising principles for the final goals framework. The report will be an important input into the intergovernmental negotiations that commence in January. It provides a helpful framing of the issues and points to the need for a more focused outcome on post-2015.

“The report highlights the inseparability of environmental sustainability from poverty eradication and growth, and proposes six ‘essential elements’ to frame the post-2015 goals and targets. How these elements relate to one another will need to be clarified in due course and we will need to ensure that there is sufficient integration of important cross-cutting issues such as environmental sustainability and climate change, into all relevant goals and targets.

“Additionally, we are pleased that the Conclusions recall that the EU has formally undertaken to collectively commit 0.7% of GNI to Official Development Assistance by 2015. This is an important signal that we take the means of implementation seriously and that we will collectively honour our commitments. We anticipate a further European Commission Communication and subsequent Council Conclusions on means of implementation in the New Year and we will be working to ensure effective co-ordination between the goals and financing tracks.

EU negotiating arrangement

“The Council Conclusions do not establish the exact details of the negotiating arrangements for the negotiations within the EU. We will be discussing and developing these under the Latvian Presidency and, as we have previously highlighted, would favour a ‘Team EU’ or similar approach involving EU actors, the Presidency and Member States based on their expertise. We believe this would be beneficial in allowing us to maximise our ability to achieve UK objectives. We recognise, of course, that an EU position may require compromise or may not be reached in certain areas and will therefore need to ensure sufficient flexibility for

¹³ [Post-2015 agenda](#).

both the EU and Member States to play a constructive role in negotiations without prejudicing existing competence/representation arrangements.

“The UK has been a key player in post-2015 discussions. We are committed to ensuring an ambitious and implementable framework that is needed to drive action over the next fifteen years. We will be happy to keep the Committee updated.”

Previous Committee Reports

Twenty-fourth Report HC 219-xxiii (2014–15), [chapter 5](#) (3 December 2014), Ninth Report HC 219-ix (2014–15), [chapter 10](#) (3 September 2014) and Fifth Report HC 219-v (2014–15), [chapter 4](#) (2 July 2014); also see (34747) 7075/13: Fourteenth Report HC 83-xiv (2013–14), [chapter 1](#) (11 September 2013) and Thirty-ninth Report HC 86-xxxviii (2012–13), [chapter 6](#) (17 April 2013). Also see (35203) 12434/13: Fourteenth Report HC 83-xiv (2013–14), [chapter 7](#) (11 September 2013).

2 EU Development Assistance: EuropeAid’s evaluation and results-oriented monitoring systems

Committee’s assessment	Politically important
Committee’s decision	Not cleared from scrutiny; for debate in European Committee B; drawn to the attention of the International Development Committee
Document details	European Court of Auditors’ (ECA) Special Report: <i>EuropeAid’s evaluation and results-oriented monitoring systems</i>
Legal base	Article 287(4) TFEU; —
Department	International Development
Document number	(36569), —

Summary and Committee’s conclusions

2.1 Within the European Commission, the Directorate-General for Development and Cooperation — EuropeAid — is responsible for:

- formulating EU development policy and defining sectoral policies in the field of external aid;
- drawing up the multiannual programming of the external aid instruments together with the European External Action Service (EEAS); and

— fostering coordination between the EU and the Member States on development cooperation and externally representing the EU in this field.¹⁴

2.2 This European Court of Auditors' (ECA) Special Report looks in detail at EuropeAid's evaluation and Results-Orientated Monitoring (ROM) systems. ROM is not a full evaluation, but rather a short, on-the-spot, monitoring exercise.

2.3 Evaluation, on the other hand, is the systematic and objective assessment of the design, implementation and results of an ongoing or completed programme or policy. The main purpose is to assess whether the objectives of a programme have been met and why, and to formulate recommendations with a view to improving interventions in the future, and enhancing decision making.

2.4 The Court found that EuropeAid's evaluation and ROM systems are not sufficiently reliable. Though well-organised, they lack overall supervision of programme evaluation activities. Insufficient attention is paid to the efficient use of evaluation and ROM resources. The evaluation and ROM systems: do not sufficiently ensure that relevant and robust findings are produced; do not ensure that maximum use is made of findings; and do not provide adequate information on results achieved. These factors, the auditors say, limit considerably EuropeAid's capacity to account for the actual results achieved.

2.5 The Commission accepts nearly all of the CoA's recommendations (on the efficient use of evaluation and ROM resources, the prioritisation and monitoring of evaluations, the implementation of quality control procedures, the demonstration of results achieved and the follow-up and dissemination of evaluation and ROM findings); but rejects recommendations to modify the monitoring system so that data remains available three years after completion of a project and to extend the follow up period for strategic evaluations.

2.6 The Special Report was published on 11 December 2014 under cover of the following press release:

“Two of the key elements of the accountability framework operated by the European Commission's Directorate-General for Development and Cooperation (EuropeAid) are its evaluation and results-oriented monitoring (ROM) systems. In its special report published today, the European Court of Auditors (ECA) is critical of the reliability of these systems.

“Karel Pinxten, the ECA Member responsible for this report, said: ‘The demand for accountability for EU expenditure in all fields has never been higher. It is not good enough to report achievements in vague global terms. The Commission needs to have the building blocks necessary for a comprehensive reporting system which provides meaningful information for its own management and for its external stakeholders. One of these components is a strong evaluation system which feeds into an overall reporting process. At the present time, EuropeAid's system is inadequate’.

¹⁴ For full information, see [DG DEVCO](#).

“The evaluations of projects and programmes which are organised by Commission delegations and carried out in partner countries are unsatisfactorily managed: overall supervision is inadequate, the amount of resources used is unclear and access to the results of these evaluations is lacking’, according to Mr Pinxten.

“Most programme evaluations are carried out before the impacts and sustainability of measures can be ascertained. There is, generally, no requirement for *ex-post* evaluations and, as a result, these are rarely carried out. Indeed, whereas ROM contractors previously carried out *ex-post* exercises in a certain percentage of cases, this practice has recently been discontinued. There is therefore a serious lack of third-party assessment of impacts and sustainability.

“The auditors found thematic and country evaluations (strategic evaluations) to be better managed and more results-focused than programme evaluations. However, the absence of well-defined objectives and indicators frequently hampers the work of the evaluators and limits the usefulness of their work. In addition, the planned strategic evaluation programme for the 2007-2013 period was not executed in full.

“The systems in place do not ensure that maximum use is made of the findings of the evaluations. Weaknesses were found in the follow-up not only of programme evaluations but also of strategic evaluations and ROM findings.

“The detailed recommendations in the report are intended to pave the way for the necessary improvements. Given the considerable sums involved, with annual development expenditure in the region of 8 billion euro, it is imperative that robust evaluation systems are implemented without delay.”¹⁵

2.7 The Parliamentary Under-Secretary of State at the Department for International Development (Baroness Northover) says:

- well-functioning evaluation and monitoring processes are vital to achieving and demonstrating value for money for EU tax-payers;
- the UK’s Independent Commission for Aid Impact (ICAI), the Dutch Government’s development agency (IOB) and the Overseas Development Institute (ODI) have all previously produced reports with similar criticisms of EuropeAid’s evaluation and monitoring functions;
- she and her officials have pressed for the EU’s evaluation and monitoring functions to improve for some time, including working hard with the Commission and other Member States to promote results-based programming through the introduction of a new results monitoring framework;
- progress so far has been slower than she would have wanted, and she and her officials will push the Commission to accelerate its work in this area;
- the Commission’s response needs to result in a real transformation in the way evaluations are conducted and used;

¹⁵ See the ECA [Special Report](#).

- she would like the Commission to look further at the case for implementing the ECA recommendation on enabling monitoring data to remain available three years after completion of a project, and will raise this at official level; and
- she will continue to press for improvements in both evaluation and monitoring, and will closely monitor the Commission's progress in implementing the CoA's recommendations.

2.8 EuropeAid — i.e. the Directorate-General for Development and Cooperation — implements a wide range of the Commission's external assistance instruments financed by the European Development Funds (EDF) and the general budget; almost all the EDF interventions are managed by EuropeAid. Yet there would seem to be a long way to go in the crucial area of metrics.

2.9 We made this same observation only two months ago, when considering an earlier ECA Special Report No. 16/2014, which examined the effectiveness of blending regional investment facility grants with financial institution loans to support EU external policies. This, too, involved the Commission's ROM process and methodology and its results framework, and noted that, as of now, the Commission had yet to establish the sort of results framework that its counterparts, both international and bilateral (e.g. DfID) had long-established, to provide an accountability tool to communicate results to stakeholders and a management tool to provide performance data to inform management decisions, thus ensuring that resources are allocated efficiently.

2.10 We also recalled that, in April 2014, the then Minister (Lynne Featherstone) had:

- declared that better, timelier results data was “vital if we are to secure good value for money in our development programmes and demonstrate this to UK taxpayers”, and was “something the UK has been consistently calling for since DfID's Multilateral Aid Review...was first published in 2011”;
- pointed out that the proposal was not something new and that, on the contrary, it would do no more than bring the EU into line with other multilateral and bilateral development actors, including her own Department; and
- also pointed out that the costs of implementing a results framework would be “more than offset in the long run by increased value for money from Commission aid programmes”.¹⁶

2.11 Yet, under the rubric “Using our experience to improve the quality of our development engagement”, EuropeAid nonetheless asserts that it “has a long and rich experience in evaluation” and “recognises that the evaluation of its interventions is crucial if it is to learn from experience in order to enhance its effectiveness in development cooperation”.¹⁷

¹⁶ See (35735), 17709/13: Forty-seventh Report HC 83-xlii (2013–14), [chapter 1](#) (30 April 2014), *Paving the way for an EU Development and Cooperation Results Framework*.

¹⁷ See [EuropeAid](#).

2.12 We suggested that her successor might therefore need to do a touch more than simply monitor the Commission's progress in adapting its ROM process and methodology to blending, and in devising and implementing a proper results framework, if the clearly defined success criteria were ever to be established that she rightly regarded as vital to understanding the effectiveness with which the Commission uses the EU taxpayers' resources in its development activities around the globe.¹⁸

2.13 Given these ECA findings regarding the ROM and evaluation systems themselves, we feel this all the more so. There is a regrettable air of hand-wringing; of there being little that can be done other than to keep on knocking on the door. Conversely, there is little sign of a real drive to back the ECA's basic conclusion — that, to pave the way for the necessary improvements relating annual development expenditure in the region of €8 billion, “it is imperative that robust evaluation systems are implemented without delay”. The lack of impetus is best summed up by the fact that, as the Minister puts it: “No date has been set for this to go to Council”. It is plain that only if the Council presses the Commission will the necessary improvements be made in the right timeframe.

2.14 We accordingly recommend that this Special Report be debated in European Committee, so that the House can question the Minister further about why a more determined effort is not being made, and why the Council is not putting its weight directly to the wheel through the adoption of Council Conclusions.

2.15 We also draw this chapter of our Report to the attention of the International Development Committee.

Full details of the documents: European Court of Auditors' (ECA) Special Report No. 18/2014 —: *EuropeAid's evaluation and results-oriented monitoring systems*: (36569), —.

Background

2.16 The European Court of Auditors (ECA) carries out audits, through which it assesses the collection and spending of EU funds. It examines whether financial operations have been properly recorded and disclosed, legally and regularly executed. It also, via its Special Reports, carries out audits designed to assess how well EU funds have been managed so as to ensure economy, efficiency and effectiveness.¹⁹

2.17 In this Special Report, the ECA looks at what it describes as two of the key elements of the accountability framework operated by the European Commission's Directorate-General for Development and Cooperation (EuropeAid) — its evaluation and results-oriented monitoring (ROM) systems.

2.18 The auditors note that, within the Commission's decentralised organisational framework, EuropeAid has set up its own results accountability framework which comprises the monitoring, evaluation and reporting of its activities:

¹⁸ See (36451), —: Twentieth Report HC 219-xix (2014-15), [chapter 14](#) (19 November 2014).

¹⁹ See [European Court of Auditors](#).

- *Evaluation* is “the systematic and objective assessment of an on-going or completed programme or policy, its design, implementation and results”;
- *ROM* is “a standardised external review, specific to external aid, designed to look at programmes’ performance”.

2.19 The ECA defines the main purposes of these parts of the accountability framework as “to improve the implementation of ongoing programmes and the design of future programmes and policies through feedback and lessons learned, and to provide a basis for accountability”.

2.20 The Court found that EuropeAid’s evaluation and ROM systems are not sufficiently reliable.

2.21 Overall, EuropeAid’s evaluation and ROM functions are judged to be well-organised, but to lack overall supervision of programme evaluation activities. Also, insufficient attention is paid to the efficient use of evaluation and ROM resources.

2.22 The evaluation and ROM systems:

- do not sufficiently ensure that relevant and robust findings are produced (programme evaluation plans are based on insufficiently clear prioritisation criteria; there is no monitoring system to identify and address frequent deviations from evaluation plans; quality control procedures are not implemented consistently for ROM and programme evaluations);
- do not ensure that maximum use is made of findings (because proper mechanisms are not in place to monitor their follow-up and dissemination); and
- do not provide adequate information on results achieved (due to insufficiently well-defined objectives and indicators, the limited proportion of *ex post* evaluations, and ROMs and inherent limitations in the evaluation methodology for budget support).

2.23 These factors, the auditors say, limit considerably EuropeAid’s capacity to account for the actual results achieved.

2.24 The Court provides recommendations on the efficient use of evaluation and ROM resources, the prioritisation and monitoring of evaluations, the implementation of quality control procedures, the demonstration of results achieved and the follow-up and dissemination of evaluation and ROM findings.

The Government’s view

2.25 In her Explanatory Memorandum of 8 January 2015, the Parliamentary Under-Secretary of State at the Department for International Development (Baroness Northover) says that, in its response to the report, the Commission has said that “it considers that the systems for strategic evaluations overall are reliable even if they could be improved”, but has accepted nearly all of the CoA’s recommendations; the exceptions being:

- “a recommendation to modify the monitoring system so that data remains available three years after completion of a project (the Commission rejected this recommendation on the basis that the benefit is not yet shown); and
- “a recommendation to extend the follow up period for strategic evaluations (the Commission partially accepted this, subject to its own further analysis)”.

2.26 She then continues as follows:

“Well-functioning evaluation and monitoring processes are vital to achieving and demonstrating value for money for EU tax-payers. The CoA report is critical of EuropeAid’s evaluation and ROM functions. It finds that whilst they are generally well organised, individual evaluations and monitoring exercises are of variable quality, and there is no systematic method of ensuring that evaluations actually lead to improvement in programme quality. The UK’s Independent Commission for Aid Impact (ICAI), the Dutch Government’s development agency (IOB) and the Overseas Development Institute (ODI) have all previously produced reports with similar criticisms of EuropeAid’s evaluation and monitoring functions.

“The Commission have acknowledged the need to improve, and have accepted the vast majority of the CoA’s recommendations. Once implemented, we would expect these recommendations to lead to an improvement in the Commission’s monitoring and evaluation effort, which should generate better information on which to base decisions about projects and programs, and ultimately deliver better value for money.”

The Government’s view

2.27 The Minister continues her comments thus:

“The UK has pressed for the EU’s evaluation and monitoring functions to improve for some time, including working hard with the Commission and other Member States to promote results-based programming through the introduction of a new results monitoring framework. Evaluation and monitoring are essential to ensuring that the Commission gets value for money for tax-payers, and learning so as to improve policy and practice.

“The UK welcomes that this report has shed further light on this important topic. The UK also welcomes the Commission’s clear acceptance of the need to improve, and its commitment to implement the majority of the CoA’s recommendations. Progress so far has been slower than we have wanted, and we will push the Commission to accelerate its work in this area. The UK is clear that the CoA’s report is not a confirmation of the Commission’s existing approach, and the Commission’s response needs to result in a real transformation in the way evaluations are conducted and used.

“On the CoA recommendation that the Commission did not accept (to modify the monitoring system so that data remains available three years after completion of a project), the UK would like the Commission to look further at the case for implementing this, and will raise at an official level.

“The UK will continue to press for improvements in both evaluation and monitoring, and will closely monitor the Commission’s progress in implementing the CoA’s recommendations. The UK has a seconded national expert working in the Commission’s evaluation unit and two seconded national experts in the results unit. We will continue to use these positions to offer technical support to the Commission on results and evaluation.”

Previous Committee Reports

None, but see (36451), —: Twentieth Report HC 219-xix (2014–15), [chapter 14](#) (19 November 2014).

3 Emissions Trading System: market stability reserve

Committee’s assessment	Politically important
<u>Committee’s decision</u>	Not cleared from scrutiny; further information awaited
Document details	Draft Decision on the establishment and operation of a market stability reserve for the greenhouse gas emission trading system
Legal base	Article 192(1) TFEU; co-decision; QMV
Department	Energy and Climate Change
Document numbers	(35755), 5654/14 + ADDs 1–2, COM(14) 20

Summary and Committee’s conclusions

3.1 The EU’s Emissions Trading System (ETS) involves the granting of allowances covering emissions of carbon dioxide, and the System’s third phase (from 2013–20) introduced an EU-wide cap, which is allocated by auctioning. However, although the cap had originally been seen as ambitious, the economic crisis radically reduced the level of emissions, resulting in a substantial surplus of allowances. The Commission therefore proposed that the planned auctions of a certain quantity should be postponed (“backloaded”) until later, but, as this would not affect the structural surplus, it said that it would also consider a number of options to address this.

3.2 As a consequence, it put forward in January 2014 this draft Decision establishing a market stability reserve, which could help in the short term to address the current allowance surplus, and also make the ETS more resilient to any potential future large-scale disturbance by setting parameters for adjusting auction volumes to address the mismatch between the fluctuating level of emissions but largely fixed supply of allowances. The Government sees the ETS as a central component for delivering cost effective emissions reductions, and has pressed for proposals to address the surplus of allowances. It therefore broadly welcomed the proposal, whilst believing that any mechanism needs to be

supported by robust analysis, based on clear and transparent rules, and respect Member States' fiscal sovereignty. It also said that it would be undertaking a detailed analysis of the specific parameters put forward to assess the likely impacts.

3.3 In our Report of 26 February 2014, we said that, given the central role of the ETS, we thought it right to draw the proposal to the attention of the House, but, in view of the Government's comments, we decided to hold the document under scrutiny, pending receipt of this further information. We have now received a letter from the Government, drawing attention to its announcement on 20 October 2014 that it supported the proposal, but would be seeking to strengthen it by an earlier introduction of the reserve, by placing backloaded allowances straight into it, and by ensuring that allowances remain in the reserve during "business as usual". It also points out that the conclusions of the October 2014 European Council provided a political commitment to reform the ETS through the market stability reserve, and that, although there is currently no majority view, a number of Member States support the UK's approach.

3.4 The Government's letter goes on to draw attention to an external research study of the effectiveness of a range of options, which it says provides strong evidence to support the UK's objective. In particular, it showed that a strengthened reserve would reduce the EU ETS surplus sooner, incentivising low carbon investment; smooth price increases over the coming decade; reduce the costs of purchasing allowances over the long term; reduce uncertainty about expected future prices, and increase the likelihood of low carbon investment being made; and respond to future shocks and provide stability for the EU ETS.

3.5 Discussions amongst Member States are on-going, whilst a plenary vote is expected in the European Parliament in April. The Government regards this as an ambitious timetable, but one which is necessary to ensure that reform is delivered urgently in order to provide certainty to industry and restore the effectiveness of the ETS. It also says that, once the stability reserve is agreed, the Commission is expected to issue proposals for Phase IV of the EU ETS (from 2021).

3.6 We are grateful to the Government for this update, and we have noted the position which the UK has adopted (and which it is pressing other Member States to support in the Council). We have also noted that there appears to be a broad measure of support for the principle for a market stability reserve, with the main issue being the precise parameters of any such arrangement. We have therefore considered whether to clear the proposal, but, as the outcome in the Council is not yet known, and the proposal is currently subject to consideration in the European Parliament, we think it would be prudent to hold it under scrutiny for the time being. We would therefore be glad if the Government could continue to keep us posted of further developments.

Full details of the document: Draft Decision concerning the establishment and operation of a market stability reserve for the Union greenhouse gas emission trading scheme and amending Directive 2003/87/EC: (35755), 5654/14 + ADDs 1–2, COM(14) 20.

Background

3.7 The EU's Emissions Trading System (ETS) obliges Member States to grant to undertakings in certain areas an allowance covering emissions of carbon dioxide, and to

establish for each of the first two trading periods a national plan dealing with the total quantity of allowances and their allocation. The System's third phase (from 2013–20) incorporates a number of fundamental changes, with the individual Member State allocation caps having been replaced by an EU-wide cap on allowances (which will decrease by 1.74% annually), and with auctioning having become the default system of allocation.

3.8 When the Commission reported in 2012²⁰ on the operation of the System, it noted that the cap had originally been seen as ambitious, but that the economic crisis had radically reduced the level of emissions. As a result of this (and temporary elements directly related to the transition to phase III), there was likely at the start of that phase to be a surplus of over 1.5 billion, or even 2 billion, allowances. It therefore proposed that the auctions of a certain quantity of allowances planned for 2013, 2014 and 2015 should be postponed ("backloaded") until later, but, as this would not affect the structural surplus, it went on to consider a number of options to address this, which it intended to explore with stakeholders.

3.9 This in turn led the Commission to put forward in January 2014 this draft Decision, which would establish a market stability reserve, in order to help in the short term to address the current allowance surplus, and also make the ETS more resilient to any potential future large-scale disturbance by adjusting auction volumes to address the mismatch between the largely fixed supply but flexible demand from fluctuating emissions, without affecting the total long-term supply.

3.10 More specifically, as from the start of Phase IV of the ETS in 2021, 12% of the cumulative surplus in the market²¹ which would otherwise have been auctioned would be withheld annually and placed into the Market Stability Reserve, unless the volume to be withheld was below 100 million allowances. 100 million allowances in the Reserve would be returned to the market if the total number of allowances in circulation fell below 400 million, or if the allowance price for more than six consecutive months was more than three times the average price of allowances on the European carbon market during the two preceding years. The proposal also included a provision to smooth out the peak in supply caused by the reintroduction to the market in 2020 of the allowances which had been 'backloaded', as well as any other increases to auction volumes at the end of Phase III. Finally, it specified that, where average auction volumes in 2020 are more than 30% higher than expected volumes in 2021 and 2022, the 2020 volume should be reduced by two-thirds of the difference, with the reduced amount then returned in even instalments across each of the years 2021 and 2022.

3.11 As we noted in our Report of 26 February 2014, the Government sees the ETS as a central component for delivering cost effective emissions reductions, and has long called for legislative proposals to address the surplus of allowances and strengthen the incentive for investment in low-carbon technology. It is therefore open to considering the potential for supply side flexibility mechanisms (including a market stability reserve), but believes

²⁰ (34430), 16537/12: see Twenty-fifth Report HC 86-xxv (2012–13), [chapter 14](#) (19 December 2012).

²¹ Defined as the number of allowances issued to EU ETS participants since 1 January 2008 plus surrendered international credits less total verified emissions for the same period. Allowances in the market stability reserve are also deducted from the total.

that any such mechanism needs to be supported by robust analysis, based on clear and transparent rules, and respect Member States' fiscal sovereignty. Consequently, whilst it broadly welcomed this proposal, it said that it would be undertaking a detailed analysis of the specific parameters put forward to assess the likely impacts.

3.12 In addition, the Government noted that the supply of allowances in the ETS market is currently determined many years in advance and remains fixed during each Phase, and suggested that, whilst this had provided a measure of certainty, this had not been sufficient to support decisions to invest in low carbon technologies. It also commented that this had created pressure for ad hoc reforms, such as back-loading, which had added to the uncertainty, and created a risky investment environment: and it suggested that a properly designed market stability reserve with a clear set of rules might give a more stable investment signal and remove a significant source of policy uncertainty for investors and improve the resilience of the ETS.

3.13 We said that, given the central role of the EU ETS, we thought it right to draw the proposal to the attention of the House. At the same time, however, we noted that, whilst the Government had given it a broad welcome, it had also flagged up a number of reservations, and would be carrying out a detailed assessment of the likely impact. We therefore decided to hold the document under scrutiny, pending receipt of this further information.

Minister's letter of 6 January 2015

3.14 We have now received a letter of 6 January 2015 from the Parliamentary Under-Secretary of State at the Department for Energy and Climate Change (Amber Rudd). She notes that the Government announced on 20 October 2014 that its position was to support the proposal, but to seek to strengthen it so as to tackle fully the surplus of allowances, help to provide a credible, low-carbon investment signal, and ensure that Europe can meet its greenhouse gas emission reduction commitments more cost-effectively. She adds that this should involve an earlier introduction of the reserve in 2017, placing backloaded allowances straight into the reserve, and amendments to ensure that allowances remain in the reserve during "business as usual" circumstances, providing protection against rapidly rising prices, should these occur in the future. She also points out that the conclusions of the October 2014 European Council provided a political commitment to reform the ETS through the market stability reserve, and that, although there is currently no majority view, a number of Member States support the UK's approach.

3.15 The Minister goes on to say that the Government commissioned an external research study to assess the design of a stability reserve, and which investigated the effectiveness of a range of options. She says that this provided strong evidence to support the UK's objective, and showed that a strengthened reserve would:

- reduce the EU ETS surplus sooner, incentivising low carbon investment;
- smooth price increases over the coming decade, avoiding instability and creating a more gradual price trajectory to 2030;
- reduce the costs to EU ETS operators of purchasing allowances over the long term;

- reduce uncertainty about expected future prices, and therefore de-risk low carbon investment making it more likely investments will be made; and
- respond to future shocks and provide stability for the EU ETS.

3.16 The Minister adds that discussions amongst Member States are on-going, and that the UK is encouraging ambitious stances from those who have yet to agree positions, in order that the Council should reach an early qualifying majority which incorporates the strengthening amendments. She notes that the European Parliament is also discussing the proposal, with a vote due in the ENVI Committee on 23 February, which, if favourable, would be instrumental in getting a positive outcome in the plenary vote, which is expected in April. She comments that this is an ambitious timetable, but one which is necessary to ensure that reform is delivered urgently in order to provide certainty to industry and restore the effectiveness of the ETS as soon as possible. She also says that, once the stability reserve is agreed, the Commission is expected to issue proposals for the next phase of the EU ETS (Phase IV, from 2021), including measures for continued free allocation of allowances to industry to prevent the risk of carbon leakage.

Previous Committee Reports

Thirty-seventh Report HC 83-xxxiv (2013–14), [chapter 5](#) (26 February 2014)

4 EU zootechnical legislation

Committee's assessment	Politically important
<u>Committee's decision</u>	Not cleared from scrutiny; further information awaited
Document details	Draft regulation regarding zootechnical conditions for trade in breeding animals and their germinal products
Legal base	Articles 42 and 43(2) TFEU; co-decision; QMV
Department	Environment, Food and Rural Affairs
Document numbers	(a) (35810), 6445/14, COM(14) 5 (b) (35809), 6444/14, COM(14) 4

Summary and Committee's conclusions

4.1 EU zootechnical legislation currently comprises four species-specific (vertical) Directives, and, as these cover similar ground, the Commission has sought to simplify matters by putting forward a draft Regulation (document (a)) which would consolidate them into a single measure (and which is accompanied by a draft Directive (document (b)) which would amend references to zootechnical legislation).

4.2 We were initially told by the Government that UK welcomed this, but that more time was needed to make a fuller assessment of the implications of the new requirements, and to ensure that these are consistent with those applying in other sectors, whilst being proportionate to the breeding sector. It went on to say that it would be carrying out an assessment of the proposal and expected to provide an update, and our Chair indicated that we would reserve final judgement until we had seen that assessment.

4.3 The Government has now written further to say that, whilst the UK still supports all the legislative requirements being in one regulation, it does have some concerns over the extension of certain provisions for cattle to other species. Thus, whilst it recognises that some official controls are necessary, it considers that those proposed are overly prescriptive and disproportionate, given that there is no food safety or health risk involved. It would therefore like to see much lighter touch arrangements.

4.4 It adds that some of these concerns have been addressed in recent working groups, and that the Latvian Presidency will be continuing discussions over the next six months. It expects that a revised proposal will be issued in the spring, and has said that it will provide a further update when this has been assessed.

4.5 These proposals are both complex and technical, and, although they essentially involve the consolidation of existing measures, we now think it right, in view of what the Government has recently told us, to draw them to the attention of the House. We also propose to hold them under scrutiny, pending further information on the progress of this dossier under the Latvian Presidency.

Full details of the documents: (a) Draft Regulation on the zootechnical and genealogical conditions for trade in and imports into the Union of breeding animals and their germinal products: (35810), 6445/14, COM(14) 5 and (b) Draft Directive amending Directive 89/608/EEC, 90/425/EEC and 91/496/EEC as regards references to zootechnical legislation: (35809), 6444/14, COM(14) 4.

Background

4.6 EU zootechnical legislation is concerned essentially with the promotion of free trade in breeding animals and their genetic material (semen, ova and embryos), and currently comprises four species-specific (vertical) Directives relating to cattle, pigs, sheep and goats, and equines.²² In particular, these deal with the approval and recognition of breeding organisations, breeders associations, and private undertakings; the registration and classification of animals in herd-books, flock-books stud-books and (in the case of hybrid breeding pigs) registers; performance testing and genetic evaluation; and the format and content of associated zootechnical certificates.

The current document

4.7 As these measures cover similar ground, the Commission sought to simplify matters by putting forward in February 2014 a draft Regulation (document (a)) which would consolidate them into a single measure, whilst also setting out rules on imports from third countries of breeding animals, their semen, ova and embryos, and the designation of reference centres for breeding of animals. As this proposal, and one put forward in 2013 on official controls²³ relating to food and feed law, would make redundant references to zootechnical legislation in certain other EU Directives, it is accompanied by a draft Directive (document (b)) which would delete those references.

The Government's view

4.8 The Explanatory Memorandum which the Parliamentary Under-Secretary at the Department of Environment, Food and Rural Affairs (George Eustice) sent us on 27 February 2014 observed that zootechnical legislation is important in facilitating trade in high quality breeding animals and their genetic material, and that, as a major exporter, the UK welcomed this streamlining and consolidation. However, he added that, whilst it therefore broadly supported the proposals, more time was needed to make a fuller assessment of the implications of the new requirements, notably as regards the implications of the provisions on official controls as compared with the current arrangements, and to ensure that these are consistent with those applying in other sectors, whilst being proportionate to the breeding sector.

4.9 As the Minister went on to say that the Government would be carrying out an assessment of the proposal and expected to provide an update, our Chairman wrote to him

²² These are respectively Council Directive 2009/157/EC, Council Directive 88/661/EEC, Council Directive 89/361/EEC and Council Directive 90/427/EEC. In addition, Council Directive 91/174/EEC deals with other animals and Council Directive 94/82/EC with imports.

²³ See (34922), 9464/13: Ninth Report HC 83-ix (2013-14), [chapter 6](#) (10 July 2013).

on 5 March 2014 to say that we would reserve final judgement on whether these measures required a substantive Report to the House until we had seen that assessment. We have now received a further letter of 5 January 2015, which says that, whilst the UK still supports the aim of simplification, and of all the legislative requirements being in one regulation, it does have some concerns over the extension of provisions for cattle to other species. Specifically, these relate to the power enabling the Commission to set common rules for performance testing and genetic evaluation, the authorisation of designated institutions for performance testing, and the designation of EU reference centres.

4.10 The Minister says that the UK has expressed concern that most of these delegated powers are unnecessary, and believes that the proposal should not introduce new (or extend existing) administrative, operational or technical provisions, that its provisions should impose as light a burden as possible, and be proportionate and flexible enough to cover current industry practices: it would also like to see improvements to reflect concerns for conservation and sustainable use of animal genetic resources. In short, he says that, whilst the Government recognises that some provisions for official controls are necessary, it considers that those proposed are overly prescriptive and disproportionate, given that there is no food safety or health risk involved. It would therefore like to see much lighter touch arrangements — a view it says is shared by nearly all Member States.

4.11 The Minister also comments that the proposal has provided an opportunity for information on equine breeding to be entirely separated from horse identification for animal health and food safety purposes, and would like to see this separation made mandatory for food safety reasons. He adds that full legislative separation would be consistent with the commitment made by the Commission following the horsemeat scandal, to ensure that passports are delivered only by competent authorities as well as delivering a consistent approach across species. He says that the UK will continue to press for this, but recognises that this is difficult, due to operational differences between Member States.

4.12 The Minister says that some of these concerns (including those on delegated powers) have been addressed in recent working groups, and that the Latvian Presidency will be continuing discussions over the next six months. He expects that a revised proposal will be issued in the spring, and has said that he will provide a further update when this has been assessed.

Previous Committee Reports

None.

5 Inland waterways: freight

Committee's assessment	Legally and politically important
<u>Committee's decision</u>	Not cleared from scrutiny; further information requested
Document details	Draft Council Decision to allow Austria, Belgium and Poland to participate in a convention about contract law for inland waterways freight
Legal base	Articles 2(1), 81(2) and 218(6), point (a) TFEU; consent; QMV
Department	Transport
Document numbers	(36582), 17025/14 + ADD 1, COM(14) 721

Summary and Committee's conclusions

5.1 The Budapest Convention on the Contract for the Carriage of Goods by Inland Waterways is intended to harmonize contractual and navigational standards on inland waterways in European countries. Article 29 of the Convention contains provisions on the choice of law by the parties to a contract for carriage falling under the Convention. Those provisions affect the rules laid down in Regulation (EC) No. 593/2008 on the law applicable to contractual obligations (Rome I), thus Member States cannot now lawfully ratify or accede to it without an EU authorization.

5.2 Ten Member States became Contracting Parties to the Convention before Rome I came into force. This draft Council Decision would allow three further Member States, Austria, Belgium and Poland, to become Contracting Parties.

5.3 The Government comments that since the UK is not a party to the Budapest Convention, the provisions do not have any impact on UK businesses or operations involving contracts for the carriage of goods by inland waterways nor in relation to the three Member States seeking authorisation. It adds that, because the matter falls under Title V TFEU (Justice and Home Affairs), the Government needs, however, to consider the draft Council Decision's impact on its opt-in position under that Title. It asks to have our views on its proposed approach to the opt-in by 12 February.

5.4 We note that neither the Budapest Convention nor Austria, Belgium and Poland becoming Contracting Parties to it have any impact for UK interests.

5.5 However, we are concerned about the Government's request for our views on its proposed approach to the opt-in. Although it tells us that it believes the opt-in applies, the Government does not indicate what, and why, its decision on whether to opt in might be. We await that necessary information, first promised to Parliament in June 2008 by Baroness Ashton (and confirmed by the current Minister for Europe in June 2011), before we can offer the Government our views on an opt-in decision.

5.6 We should also like to have the Government's view as to the choice of legal bases for the draft Council Decision, particularly whether Article 2(1) needs to be cited; and

whether Article 218(6) TFEU is appropriate for a Decision authorising Member State action, in the light of paragraphs 53 and 54 of Case C-399/12.

5.7 Meanwhile the document remains under scrutiny.

Full details of the documents: Draft Council Decision authorising Austria, Belgium and Poland to ratify, or to accede to, the Budapest Convention on the Contract for the Carriage of Goods by Inland Waterways (CMNI): (36582), [17025/14](#) + ADD 1, COM(14) 721.

Background

5.8 The Budapest Convention on the Contract for the Carriage of Goods by Inland Waterways (CMNI) (the Budapest Convention) is intended to harmonize contractual and navigational standards on inland waterways in European countries. It was adopted in 2000 by a Diplomatic Conference organised jointly by the Central Commission for the Navigation of the Rhine, the Danube Commission and the United Nations Economic Commission for Europe and entered into force on 1 April 2005.

5.9 Article 29 of the Budapest Convention contains provisions on the choice of law by the parties to a contract for carriage falling under the Convention. Those provisions affect the rules laid down in Regulation (EC) No. 593/2008 on the law applicable to contractual obligations (Rome I). Rome I came into force on 24 July 2008, and deals with the law applicable to contractual obligations. It applies, in situations involving a conflict of laws, to contractual obligations in civil and commercial matters. Therefore, the Budapest Convention is an agreement falling partly under exclusive EU and Member States cannot lawfully ratify or accede to it without an EU authorization.

5.10 Ten Member States, Bulgaria, Croatia, Czech Republic, France, Germany, Hungary, Luxembourg, the Netherlands, Romania, and Slovakia, became Contracting Parties to the Budapest Convention before the entry into force of Rome I. Belgium ratified the Convention on 5 August 2008. Austria and Poland have on several occasions expressed their interest in becoming Contracting Parties to the Convention. Cyprus, Denmark, Estonia, Finland, Greece, Ireland, Italy, Latvia, Lithuania, Malta, Portugal, Slovenia, Spain, Sweden and the UK have indicated to the Commission that they do not have inland waterways covered by the scope of the Convention.

The document

5.11 This draft Council Decision would authorize Austria and Poland to ratify, or to accede to, the Budapest Convention, a copy of which is annexed to the draft. The draft Council Decision would also, given the Belgian ratification after entry into force of Rome I, regularise the situation by authorising, *ex post*, Belgium to ratify the Convention.

The Government's view

5.12 In his Explanatory Memorandum of 5 January the Minister of State, Department for Transport (Mr John Hayes) says that, since the UK is not a party to the Budapest Convention, the provisions do not have any impact on UK businesses or operations

involving contracts for the carriage of goods by inland waterways nor in relation to the three Member States seeking authorisation. He adds that, because the matter falls under Title V TFEU (Justice and Home Affairs), the Government needs, however, to consider the draft Council Decision's impact on its opt-in position under that Title.

5.13 The Minister explains that:

- it is the view of the EU institutions that, as this is a matter of exclusive competence, the UK Protocol does not apply (because it is bound by the Rome I Regulation);
- this is the basis for the current wording of recital 11²⁴ of the draft Council Decision; and
- the Government, however, believes that the opt-in does apply and will seek to have the recital amended to properly reflect the UK's position.

5.14 The Minister adds that, as it appears that the UK must notify the Commission of its opt-in decision by 18 March, it would be helpful to have our views on the proposed approach to the opt-in by 12 February.

Previous Committee Reports

None.

6 EU-Turkmenistan relations

Committee's assessment	Legally and politically important
<u>Committee's decision</u>	Not cleared from scrutiny; further information requested
Document details	Draft Council and Commission Decision on the Conclusion of a Partnership and Cooperation Agreement (PCA)
Legal base	Articles 91, 100(2), 207, 209 and Article 218(6)(a) TFEU; Article 101 of the Treaty establishing the European Atomic Energy Community; QMV
Department	Foreign and Commonwealth Office
Document number	(36553), —

²⁴ "The United Kingdom and Ireland are bound by Regulation (EC) No. 593/2008 of 17 June 2008 on the law applicable to contractual obligations (Rome I) and are therefore taking part in the adoption of this Decision."

Summary and Committee's conclusions

6.1 Partnership and Co-operation Agreements (PCAs) were introduced as an instrument for developing the EU's relationship with third countries in the early 1990s. They were primarily targeted at the countries of the former Soviet Union, though more recently their geographical scope has widened. These agreements provide a broad framework for developing the EU's political and economic relations with the countries in question, and establish an institutional basis within which these relations can be discussed regularly.

6.2 Turkmenistan is the only one of the five Central Asian States that does not have a PCA with the EU. An EU-Turkmenistan PCA was signed on 25 May 1998, but has not yet entered into force. Turkmenistan ratified the PCA in 2004. However, only once all Member States have ratified and following the assent of the European Parliament, and conclusion and ratification by the EU will its PCA enter into force. In the absence of a full PCA, an Interim Trade Agreement (ITA), dating back to 2009, currently exists between Turkmenistan and the European Union.

6.3 In our Report of 17 December 2014 we set out the background to this PCA detail and drew this proposal to the attention of the House in view of a number of legal and procedural issues, including serious failings by the Government to meet its scrutiny obligations. The Minister has now written in response to the questions we have raised.

6.4 We are grateful for the response from the Minister and his further assurance that steps have been taken to minimise the risk of a repeat of the scrutiny failures experienced in this case.

6.5 We note that the text of this draft Decision remains *limité* despite Government efforts to secure its declassification, and will remain so until European Parliament assent has been obtained. We, like the Government, see no justification for the delay in making this document public. It would be unacceptable for a draft to be given to the European Parliament, but withheld from this House.

6.6 Not being able to consider the text does not help remove our concern about the exercise of competence. The Minister indicates that "The Council Decision on Conclusion necessarily reflects the competence areas captured in the Agreement". This statement does not unambiguously indicate whether the text of the Decision clearly provides that that the EU is only acting where it has *exclusive* competence, or whether it specifies (in the absence of a declaration of competence attached to the PCA itself) the provisions of the PCA in respect of which the EU is acting.

6.7 As previously indicated we disagree with the Government that the UK opt-in is engaged in respect of the provisions of the PCA concerning Mode IV services.²⁵ The Government has now indicated that it does not intend to opt-in. As a consequence of this divergence of approach, we consider that the UK would be bound by these provisions as part of the EU, whilst the Government considers that it is not. However this difference of approach will not make a significant practical difference because this PCA is a mixed agreement entered into by both the Member States and the EU. The

²⁵ I.e. services provided by the movement of the service provider across borders and which therefore interact with immigration law.

rights and obligations relating to Mode IV services will, on the Government's view, therefore bind or benefit (as the case may be) the UK, acting in its own right.

6.8 We therefore retain this document under scrutiny pending sight of the text, which we shall examine, in particular, for clarity as to the respective exercise of competence between the EU and the Member States.

Full details of the documents: Draft Council and Commission Decision on the conclusion by the European Union and the European Atomic Energy Community of the Partnership and Cooperation Agreement establishing a Partnership between the European Communities and their Member States, of the one part, and Turkmenistan, of the other part: (36553), —.

The Minister's letter of 31 December 2014

6.9 The Minister apologises again for the errors and oversights in scrutiny and comments that—

“These mistakes naturally do not meet the high standards which I expect. I would, however, like to assure you that steps have been taken to minimise the risk of these issues recurring in future.”

6.10 He outlines the position with regards to public availability of the text of the proposed Decision:

“The current advice from the EU is that they do not intend to do this until after it has been passed to the European Parliament. However, we feel that this should be declassified: we have consistently pressed for the *limité* restriction to be removed and we will continue to do so.”

6.11 On the issues of the legal basis, competence and the UK opt-in he informs the Committee as follows:

“On the matter of legal bases, the reason for the retention of the transport legal bases in the Council and Commission Decision is that certain articles of the Turkmenistan agreement (for example Article 22, 23, 30 and 31) relate to trade in transport. By contrast, the relevant provision in the Philippines agreement dealt with transport cooperation (Article 38). The reason for the retention of the transport legal bases is that Article 207 TFEU, which deals with the common commercial policy, specifically excludes transport from its scope. This is because Article 207(5) states that the negotiation and conclusion of international agreements in the field of Transport shall be subject to Title VI of Part three and to Article 218. Title VI of Part three contains the relevant transport legal bases. The Government sees no reason to disagree with this analysis.

“The Committee asks about the exercise of competence. The Council Decision on Conclusion necessarily reflects the competence areas captured in the Agreement, the text of which was agreed in 1998. As set out in the Explanatory Memorandum, these areas are common commercial policy, an area of exclusive EU competence, transport, which is shared competence and development, which is parallel

competence. Officials will scrutinise proposals for the implementation of the agreement at the relevant time including the competence of the EU and Member States respectively.

“In relation to the Opt-in, given that the UK is already compliant with the Mode IV provisions of the PCA and the fact that the Commission would be very unlikely to accept such an application, we have taken the decision not to seek a post-adoption opt-in.”

Previous Committee Reports

Twenty-seventh Report HC 219-xxvi (2014–15) [chapter 5](#) (17 December 2014); and see (35680), 18055/13: Thirty-ninth Report HC 83-xxxvii (2013–14), [chapter 8](#) (12 March 2014) and Twenty-sixth Report HC 19-xxiv (2008–09), [chapter 12](#) (15 July 2009).

7 EU External Action: the Instrument for Stability

Committee’s assessment	Politically important
Committee’s decision	Not cleared from scrutiny; further information requested
Document details	Commission Report: <i>Annual Report on the Instrument for Stability in 2013</i>
Legal base	—
Department	Foreign and Commonwealth Office
Document numbers	(36557), 16391/14 + ADDs 1–3, COM(14) 717

Summary and Committee’s conclusions

7.1 The Instrument for Stability (IfS) is the financial instrument designed to respond to crises and instability in third countries quickly and address major global challenges (such as non-proliferation, trafficking, organised crime and terrorism). The IfS was launched in 2006, as one of a set of instruments falling under Heading 4 of the Common Foreign and Security Policy budget, with funding of €2.1 billion for the period 2007–13.

7.2 A revised Instrument contributing to Stability and Peace (IcSP) was introduced in 2014, to cover the 2014–20 financial perspective (no major changes, essentially an expanded scope; see paragraph 7.17 below for details). It has a budget of €2.4 billion.

7.3 This Commission Report is on activities financed by the IfS in 2013. Work undertaken by the IfS is split into two policy components:

- short term projects (67% of total funding), designed to provide assistance to help third countries respond to crises or emerging crises: over the period 2007–13, the IfS has made available €1.08 billion, funding 288 projects responding to crises in over 70

countries or regions worldwide; in 2013, €210.7 million was spent worldwide, the largest areas of spend being 38% in Middle East and North Africa and 34% in Africa; and

- longer-term programmable measures (33% of total funding), which seeks to address security and safety threats in a trans-regional context, risk mitigation linked to Chemical, Biological, Radiological and Nuclear (CBRN) materials and pre- and post-crisis capacity building: over the period 2007–13 €98.63 million was made available for this element; in 2013, €30.3 million was committed to trans-regional threats, €44.3million for CBRN risk mitigation and €24 million for pre- and post-conflict capacity building in third countries (see paragraphs 7.18–7.20 below for full details).

7.4 The Minister for Europe (Mr David Lidington) says that in 2013:

- the short term component has continued to work well, with projects contributing to UK objectives, though, with reporting on implementation “a little *ad hoc*”, his officials will be working on improving the reporting over the next 12 months;
- on the long term side, there has been some improvement: regular dialogue with the Commission in Brussels through quarterly Contact Point meetings; regular informal consultations with Member States on the 2015 programming for the Instrument contributing to Stability and Peace (IcSP);
- this is a welcome development and should ensure more participation from Member States in the new Instrument from 2014–20;
- he is pressing for similar consultation on the short term side;
- the UK has also used the six-monthly Management Committees to steer and influence initiatives towards UK objectives, and is:
 - “working to persuade the Commission to further improve transparency, to communicate further with the EU Delegations to promote the UK’s voice at an earlier stage in the drafting process and to find ways to remove the barriers that prevent UK companies from bidding to win contracts, which would also increase our leverage”;
- the UK has worked to promote the valuable work conducted worldwide under the IfS in 2013 via UK diplomatic missions overseas;
- the IfS continues to contribute effectively to UK objectives in fragile countries, in important areas of work around crisis handling, particularly under the short term component of the Instrument; and
- UK officials are “currently working on ways to more effectively influence and directly access IcSP funding for long term objectives under the new Instrument”.

7.5 As in previous years, this annual report is essentially a backward-looking, self-congratulatory activity analysis, outlining what has been spent where and on what, with nothing to say about how effective that expenditure has been.

7.6 Not surprisingly, since this report concentrates on the now-defunct IfS, the Minister says little about the new IcSP, though what he does have to say is not altogether reassuring — suggesting as he does that the Commission/European External Action Service (EEAS) is reluctant to allow Member States to have any real control; that there are no mechanisms that will ensure some sort of evaluation and appropriate levels of transparency; and that the Minister and his officials will have to be working hard to make it work in UK, and especially UK firms', interests (see paragraph 7.20 below for details). This cannot be right — especially as there is even more money involved in the new financial perspective and the scope has been widened to embrace any country and a greater range of possible threats to stability and peace and ways of tackling them.

7.7 The IcSP Regulation²⁶ itself has nothing specific to say on these matters, although it does provide for the Commission to adopt “exceptional assistance measures”, “interim response programmes”, “thematic strategy papers” and “multiannual indicative programmes” by means of Commission implementing legislation.²⁷ Conversely, the Regulation plainly guarantees that preparation, programming, implementation and monitoring measures under this Regulation shall be carried out, “where possible and where appropriate”, in consultation with civil society; and that the Commission and the EEAS should hold regular and frequent exchanges of views and information with the European Parliament and provide access to documents in order for the EP’s right of scrutiny of Commission implementing legislation to be exercised “in an informed manner”.

7.8 We would accordingly like the Minister to fill in the blanks, and provide more detailed information on how the Member States are to be involved the preparation, programming, implementation and monitoring measures, and are to be granted regular and frequent exchanges of views with the Commission and EEAS, and access to documents.

7.9 We would also like to know:

- what the Stability and Peace Instrument Committee consists of, and how it operates;
- what is preventing the UK becoming involved in an earlier stage in the drafting process, and of what;
- what the barriers are that prevent UK companies from bidding to win contracts;
- what monitoring measures are to be used to assess effectiveness; and
- what the prospects are for annual IcSP reports being more analytical, more self-critical and more focussed on outcomes.

7.10 In the meantime, we shall retain the Commission report under scrutiny.

²⁶ Regulation 230/2014 establishing an instrument contributing to stability and peace.

²⁷ Which involves scrutiny by a comitology committee comprising representatives of the Member States, chaired by the Commission.

Full details of the documents: 2013 Commission Annual Report to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on *the Instrument for Stability*: (36557), [16391/14](#) + ADDs 1–3; COM(14) 717.

Background

7.11 Towards the end of the previous Financial Perspective, the Commission and Council decided to replace the then plethora of financial instruments for the delivery of external assistance with a simpler, more efficient framework. Instead of the wide range of geographical and thematic instruments that had grown up in an *ad hoc* manner over time, the new framework comprises six instruments only, four of them new. The four new instruments are:

- an Instrument for Pre-Accession Assistance;
- a European Neighbourhood and Partnership Instrument;
- a Development Cooperation and Economic Cooperation Instrument; and
- an Instrument for Stability.

7.12 The first three all essentially repackage existing EC activity. The *Instrument for Stability (IfS)*, however, was a new instrument to tackle crises and instability in third countries and address trans-border challenges including nuclear safety and non-proliferation, the fight against trafficking, organised crime and terrorism.²⁸

7.13 The previous Committee cleared the draft IfS Regulation on 13 July 2006.²⁹ At that time, it noted that an original concern — how in practice it would be prevented from encroaching on Common Foreign and Security Policy (CFSP) activities and objectives — had been overcome: activities covered by the Regulation were limited to those falling within the scope of the Community’s powers relating to development co-operation and economic co-operation; the Commission would be required to submit all projects for the opinion of the Stability Instrument Management Committee, composed of representatives of all Member States, in order to exercise proper political control.

7.14 The Instrument for Stability was allocated €2.1 billion between 2007 and 2013. The UK’s contribution was 17%, i.e. €350.5 million.

7.15 For the 2014–20 financial perspective, a revised IfS was introduced via EU Regulation No. 230/2014 of 11 March 2014³⁰ — the “Instrument contributing to Stability and Peace” (IcSP): the IcSP Regulation is based on both Article 209 (Development Cooperation) and Article 212 (Economic, Financial and Technical Cooperation with Third Countries other than developing countries) TFEU, giving this instrument a worldwide scope of action that allows the IcSP to support global and trans-regional actions potentially involving all kinds

²⁸ Two existing instruments, for Humanitarian Aid, and for Macro Financial Assistance, were judged not to be in need of modification, and were maintained.

²⁹ See Thirty-fifth Report HC 34–xxxv (2005–06), [chapter 11](#) (13 July 2006).

³⁰ OJEU No. L77/1 of 15/03/2014.

of countries (i.e. fragile, developing, emerging, in-transition, industrialized, candidate or potential candidate countries). In addition to its worldwide scope, the IcSP is not tied to ODA eligibility requirements, which allows for the provision of core counter-terrorism assistance or for the funding of non-country-specific actions. Compared with the IfS Regulation, the new IcSP Regulation expands into new areas of cooperation (e.g. climate change and security, new forms of illicit trafficking, cybersecurity, SALW, etc.) and incorporates some important innovations in some other fields (e.g. possibility of having counterterrorism cooperation programmes at country and regional levels), while maintaining much of the focus of the past IfS Regulation as regards pre- and post-crisis capacity building. The *raison d'être* of the IcSP is to address those conflict, peace and security issues having an impact on development or other cooperation policies of the EU — and very often on the EU's own security, too — and which cannot be addressed under any other EU cooperation instrument, which is described as a critical “programming principle” that will underpin the IcSP Strategy and accompanying programming.³¹

The 2013 Annual Report

7.16 In his Explanatory Memorandum of 19 December 2014, the Minister explains that work undertaken by the IfS is split into two policy components:

- *Article 3 of the IfS Regulations* (67% of total funding), which deals with short term projects designed to provide assistance to help third countries respond to crises or emerging crises: over the period 2007–13, the IfS has made available €1.08 billion, funding 288 projects responding to crises in over 70 countries or regions worldwide; in 2013, €210.7 million was spent worldwide, the largest areas of spend being 38% in Middle East and North Africa and 34% in Africa; and
- *Article 4 of the IfS Regulations* (33% of total funding), which covers longer-term programmable measures to address security and safety threats in a trans-regional context, risk mitigation linked to Chemical, Biological, Radiological and Nuclear (CBRN) materials and pre- and post-crisis capacity building: over the period 2007–13 €98.63 million was made available for this element; in 2013, €30.3 million was committed to trans-regional threats, €44.3million for CBRN risk mitigation and €24 million for pre- and post-conflict capacity building in third countries.

7.17 The Minister says that, in general terms:

- the IfS has continued to allow the EU to respond quickly and flexibly to crisis and instability overseas when timely financial help cannot be provided by other EU sources; and
- IfS projects focus on a range of key issues, such as supporting democracy and good governance, mediation, confidence building and strengthening the rule of law in EU partner countries.

7.18 Looking in more detail at this activity, the Minister highlights:

³¹ See the [IcSP Strategy](#).

- ***under Article 3:***

- programmes in the Sahel, complementing other EU work in the area, particularly a long term IfS Counter Terrorism programme, support to the UN mission AFISMA and the CSDP missions EUTM Mali and EUCAP Sahel Niger: in Mali, a €20 million package of support included assistance in re-establishing State presence in the north and in the electoral process; in Niger, projects totalling €18.5 million focussing on municipal policing, employment generation activities and peace and reconciliation activities;
- support both within Syria itself and in neighbouring countries, particularly supporting the needs of the refugee population in Jordan and Lebanon but also in Turkey and Iraq; projects included support to improve living conditions, including governance structures, education, healthcare and psycho-social support; within Syria the IfS has been able to implement projects providing basic healthcare, food security and education;
- other large programmes in 2013 have included support to the security sector, human rights observation and inter-community dialogue in the Central African Republic; a programme of disarmament, demobilisation and reintegration in Ivory Coast; and a capacity building programme to improve policing in Burma.

- ***under Article 4:***

- annual Action Programmes for the three broad objectives: threats to security and safety; risk mitigation for CBRN materials; and pre- and post-crisis capacity building;
- continued work to fight organised crime along cocaine and heroin routes, which was extended to cover new countries in Africa and Latin America and the West Africa Police Information System (WAPIS), implemented by Interpol, and rolled out to five pilot countries; under the heroin programme, two major projects were launched in 2013: one aimed at strengthening cooperation between law enforcement agencies in Central Asia and the other tackling human trafficking in countries along the heroin route. Counter terrorism programmes continued with implementation of a programme in the Sahel, and two new programmes were agreed — one looking a terrorist financing in the Horn of Africa and the other a programme Countering Violent Extremism in Pakistan; other smaller programmes relating to cyber security, falsified medicine and small arms have also been agreed;
- continued support under the CBRN Risk Mitigation programme for the Centres of Excellence: five local Regional Secretariats are now operational and four more were inaugurated during 2013;
- other programmes included support for export control for dual use goods, support for re-training of former scientists in the former Soviet Union and the fight against illicit trafficking of CBRN materials, as well as support for the destruction of Syrian chemical stockpiles;

- continued work on conflict prevention activities: the Civil Society Dialogue Network supported by the IfS, has contributed to 40 dialogue meetings over the last three years; in particular, mediation has been provided in Mali, Central Africa Republic and Somalia; Women Peace and Security and support for Early Warning Systems were major themes for 2013, resulting in proposals for 17 countries covering a range of gender-related issues, strengthening capacity to analyse conflict risks and contributing to reducing conflict and tension.

The Government's view

7.19 The Minister comments as follows:

“The short term component continued to work well, with projects contributing to UK objectives. Member States have taken the opportunity to discuss proposed projects on a monthly basis at PSC level.³² Member States also receive reporting on implementation but this can be a little *ad hoc*. My officials will be working on improving the reporting over the next 12 months.

“On the long term side, there has been some improvement. Member States have the opportunity to engage in regular dialogue with the Commission in Brussels through quarterly Contact Point meetings. The Commission has also started regular informal consultations with Member States on the 2015 programming for the Instrument contributing to Stability and Peace. This is a welcome development and should ensure more participation from Member States in the new Instrument from 2014-2020 and we are pressing for similar consultation on the short term side. Member States have made better use of online portals, particularly on the Centres of Excellence programme, which details individual project content. The UK has also used the six-monthly Management Committees to steer and influence initiatives towards UK objectives. My officials are also working to persuade the Commission to further improve transparency, to communicate further with the EU Delegations to promote the UK's voice at an earlier stage in the drafting process and to find ways to remove the barriers that prevent UK companies from bidding to win contracts, which would also increase our leverage.

“The UK welcomes the valuable work conducted worldwide under the IfS in 2013, as detailed in this annual report and has worked to promote the IfS with UK Embassies overseas. The IfS continues to contribute effectively to UK objectives in fragile countries, in important areas of work around crisis handling, particularly under the short term component of the Instrument and my officials are currently working on ways to more effectively influence and directly access IcSP funding for long term objectives under the new Instrument.”

³² Political and Security Committee: the committee of ambassador-level officials from national delegations who, by virtue of article 38 TEU, under the authority of the High Representative for Foreign Affairs and Security Policy (HR) and the Council, monitor the international situation in areas covered by the CFSP and exercise political control and strategic direction of crisis management operations, as set out in article 43 TEU. The chair is nominated by the HR.

Previous Committee Reports

None, but see (35240), 12862/13: Thirteenth Report HC 83-xiii (2013–14), [chapter 47](#) (3 September 2013) and (27653), — (27654), — (27655), —: Thirty-fifth Report HC 34–xxxv (2005–06), [chapter 11](#) (13 July 2006).

8 Statistics

Committee’s assessment	Politically important
Committee’s decision	Not cleared from scrutiny; further information requested
Document details	Draft Regulation about Commission powers in relation to EU external trade statistics
Legal base	Article 338 TFEU; co-decision; QMV
Department	Office for National Statistics
Document numbers	(35303), 13517/13, COM(13) 579

Summary and Committee’s conclusions

8.1 Regulation (EC) 471/2009 concerning statistics on EU trade with non-Member States, contains pre-Lisbon Treaty provisions about the comitology powers of the Commission. This draft Regulation would replace the remaining pre-Lisbon comitology provisions in Regulation (EC) 471/2009 with powers allowing the Commission to adopt delegated and implementing acts.

8.2 When we first considered this proposal, we noted, whilst accepting the Government’s case for its general support for the proposal, its intention to secure improvements in the text, in order to properly circumscribe the Commission’s use of delegated acts. When we considered the matter again, earlier this month we heard of the Government’s progress in meeting its objective. But we also heard of a threatened dilution of the Commission’s obligation to consult with experts on the preparation of delegated acts. We noted the Government’s intention to abstain, on parliamentary scrutiny grounds, from voting on the proposal and looked forward to a full account of the outcome of the Presidency’s efforts to rush this matter to a premature conclusion.

8.3 The Government tells us now that a blocking minority prevented adoption of the Italian Presidency’s compromise text, because of the issue about consultation of experts, and that the proposal has been passed to the Latvian Presidency to consider the next steps.

8.4 **We are grateful to the Government for this account of where matters now stand on this draft Regulation. However, we wish to consider the proposal again when there is clarity as to how the experts issue is to be resolved. Meanwhile the document remains under scrutiny.**

Full details of the documents: Draft Regulation amending Regulation (EC) No. 471/2009 on Community statistics relating to external trade with non-member countries as regards conferring of delegated and implementing powers upon the Commission for the adoption of certain measures: (35303), [13517/13](#), COM(13) 579.

Background

8.5 Regulation (EC) 223/2009, commonly referred to as the “European Statistical Law”, is the framework legislation for the European Statistical System (ESS), comprising the Commission’s statistical office (Eurostat) and producers of official statistics in Member States. All other legislation under which EU statistics are produced must be made in accordance with the European Statistical Law.

8.6 Regulation (EC) 471/2009 concerns statistics on EU trade with non-Member States. It contains pre-Lisbon Treaty provisions about the comitology powers of the Commission. The Commission’s comitology committee for statistics is the European Statistical System Committee (ESSC), which oversees the full range of EU statistics and of which the UK’s National Statistician is a member.

8.7 This draft Regulation would replace the comitology provisions in Regulation (EC) 471/2009 with powers allowing the Commission to adopt delegated and implementing acts. For statistics, a delegated act, on which the ESSC advises, can be used to amend the detail of requirements to ensure that data collected remained topical and relevant. The proposed Regulation includes a clause restricting the scope of the changes, as follows: “The Commission should ensure that these delegated acts do not impose a significant additional administrative burden on the Member States or on the respondent units”. A statistics implementing act is used to ensure a common approach among Member States to implementing aspects of the Regulation’s requirements. An implementing act can only be adopted with the agreement of Member States through QMV in the ESSC.

8.8 When we first considered this proposal, we noted, whilst accepting the Government’s case for its general support for the proposal, its intention to secure improvements in the text, in order to properly circumscribe the Commission’s use of delegated acts. When we considered the matter again, earlier this month we heard of the Government’s progress in meeting its objective. But we also heard of the Presidency’s rush, after much delay, to force final agreement on the draft Regulation at a COREPER meeting on 17 December 2014. We noted, in particular, a threatened dilution of the Commission’s obligation to consult with experts on the preparation of delegated acts.

8.9 While we recognised the progress made in negotiation of this proposal, we found the Presidency’s precipitate rush to final agreement regrettable. Nevertheless, we noted the Government’s intention to abstain, on parliamentary scrutiny grounds, from voting on the proposal. We looked forward to a full account from the Government of the outcome of the Presidency’s efforts. Meanwhile the document remained under scrutiny.

The Minister's letter of 6 January 2015

8.10 The Minister for Civil Society, Cabinet Office (Mr Rob Wilson) writes, as promised, with a further update on the Government's efforts to properly circumscribe the Commission's use of delegated acts, telling us that:

- the Presidency decided to postpone discussion of its compromise text to the COREPER meeting on 19 December 2014;
- at this meeting, it was explained that the European Parliament had insisted on removal of the operative article text on Commission consultation of Member State experts when preparing delegated acts;
- the Presidency and the Commission endeavoured to find a compromise by proposing Council and Commission Statements to record the willingness of the Commission to follow the normal process of consulting Member States in the preparation of delegated acts in the domain in question;
- however the UK Permanent Representative, under instruction, sought to ensure that the provision was included in the main articles of the text;
- France, Austria, Greece, Portugal, Romania, Slovakia, Cyprus and Bulgaria joined the UK in forming a blocking minority for this reason, stating that otherwise an unwelcome precedent would be set and it would create the potential for reduced Member State influence over delegated acts; and
- the Presidency handed the dossier to the incoming Latvian Presidency for them to consider the next steps.

Previous Committee Reports

Seventeenth Report HC 83-xvi (2013–14), [chapter 13](#) (9 October 2013) and Twenty-eighth Report HC 219-xxvii (2014–15), chapter 11 (7 January 2015).

9 Statistics

Committee's assessment	Politically important
Committee's decision	Not cleared from scrutiny; further information requested
Document details	Draft Regulation concerning harmonised indices of consumer prices
Legal base	Article 338(1) TFEU; co-decision; QMV
Department	Office for National Statistics
Document numbers	(36570), 16612/14 + ADD 1; COM(14) 724

Summary and Committee's conclusions

9.1 Regulation (EC) No. 2494/95 provides the existing regulatory framework for the production of harmonised indices of consumer prices in the EU. It aimed to provide the Commission, Member States and the public with consistent data for Member States and the EU as a whole and has led to 20 Implementing Regulations.

9.2 The aim of this draft Regulation is to rationalise the existing legal framework and implement some new provisions to reflect developments in consumer prices statistics and the EU legal framework over the last 20 years.

9.3 The Government tells us that it supports the intention to reconcile and simplify the legislative framework for these indices and welcomes those elements of the proposal which should provide for improved efficiencies in compiling the necessary data. However it is concerned about provisions related to the use of Delegated Acts in the draft Regulation and intends to seek amendments to minimise any risk of abuse by the Commission of any delegated powers.

9.4 Whilst we accept the Government's favourable view of the thrust of this proposal we note its concern about the Delegated Act aspects of the draft Regulation. So before we consider this matter again we wish to hear about developments in the Government's efforts to mitigate those concerns. Meanwhile the document remains under scrutiny.

Full details of the documents: Draft Regulation on harmonised indices of consumer prices and repealing Council Regulation (EC) No. 2494/95: (36570), [16612/14](#) + ADD 1; COM(14) 724.

Background

9.5 The Harmonised Index of Consumer Prices (HICP), otherwise known as the Consumer Prices Index, provides a measure of inflation used for effective economic policy-making, and particularly in the area of monetary policy. Regulation (EC) No. 2494/95 provides the existing regulatory framework for the production of HICPs in the EU. This Regulation aimed to provide the Commission, Member States and the public with consistent data for Member States and the EU as a whole and has led to 20 Implementing Regulations.

The document

9.6 The aim of this draft Regulation is to rationalise the existing legal framework and implement some new provisions to reflect developments in consumer prices statistics and the EU legal framework over the last 20 years. In particular:

- the need for standardised rules that ensure utmost comparability has increased, notably with regard to economic policy-making by the Commission and the European Central Bank;
- the technical aspects of data collection and index compilation have changed dramatically due to the progress made with IT tools — powerful IT systems now make it possible to use methodological approaches that were impossible to apply

nearly two decades ago, for example, the use of point-of-sale scanner data changes data collection practices substantially; and

- the new legal context created by the Lisbon Treaty introducing Delegated and Implementing Acts has to be taken into account.

9.7 The draft Regulation aims to simplify and clarify legal requirements for the compilation of the HICP in Member States. In particular, it would:

- establish the scope of application;
- introduce an improved framework for quality assurance;
- introduce a legal basis to the classification of products used by official statisticians in compiling the HICP (set out in and annex to the draft Regulation); and
- give the Commission delegated power, through both Delegated Acts and Implementing Acts, to supplement or amend certain non-essential elements of the Regulation.

The Government's view

9.8 In his Explanatory Memorandum of 7 January the Minister for Civil Society, Cabinet Office (Mr Rob Wilson), says that the Government supports the intention to reconcile and simplify the legislative framework for the HICP and welcomes those elements of the proposal which should provide for improved efficiencies in compiling the necessary data. But he adds that:

- there is a risk that the Commission would use Delegated Acts to force the UK and other Member States to collect additional data or in ways which the Government feels to be unnecessary or at disproportionate cost;
- it will therefore seek amendments to the proposal that ensure that any such risks are minimised;
- within this, the Government will seek to ensure that the Commission's use of Delegated Acts would be subject to regular review and that it would have an obligation to ensure that any proposed Delegated Acts 'impose no significant extra burdens on Member States' along with an obligation to present relevant information on costs based on information from Member States; and
- the Government will seek to ensure that Member States would be consulted in the preparation of Delegated Acts.

Previous Committee Reports

None.

10 The EU approach to resilience

Committee's assessment	Politically important
<u>Committee's decision</u>	Cleared from scrutiny (decision reported on 9 October 2013); further information requested; drawn to the attention of the International Development Committee
Document details	Commission Staff Working Document: <i>Action Plan for Resilience in Crisis Prone Countries 2013–2020</i>
Legal base	—
Department	International Development
Document numbers	(35181), 11554/13, SWD(13) 227

Summary and Committee's conclusions

10.1 The EU is one of the world's largest donors, providing life-saving assistance to people affected by various crises. A 2012 Communication outlined how the Commission proposed to help countries and communities to be better prepared to cope with and recover from natural disasters. Resilience would become an integral component of EU humanitarian and development assistance, addressing a broader set of risks, such as flooding and cyclones. Future programmes would focus much more on building people's long-term resilience to predictable shocks and stresses. The Committee cleared the Commission Communication in November 2013,³³ and then engaged in discussion with the then Minister (Lynne Featherstone) about the Council Conclusions that fed into this subsequent Action Plan, which was submitted for scrutiny in August 2013.

10.2 The then Minister welcomed the Action Plan, and endorsed its three priorities:

- EU support to the development and implementation of national and regional approaches;
- innovation, learning and advocacy; and
- methodologies and tools to support resilience.

10.3 However, how the Action Plan was implemented is what would matter most — especially the sharing of lessons and making sure, as the then Minister put it, this became “an integral way of how it does business” and of how well the different parts of the EU system worked together — “how they generate and pool the political engagement and technical capacity to support delivery, and increase the flexibility of engagement, including finance, in order to adjust to changing risks on the ground”.

10.4 When we considered her Explanatory Memorandum and the Action Plan last autumn, we asked the then Minister to write in a year's time with whatever information

³³ See (34303), 14616/12: Twentieth Report HC 86-xx (2012–13), [chapter 30](#) (21 November 2012).

was then available about the reviewing of implementation and an indication of what the future review timeline was.

10.5 The Minister’s letter reveals that, a year later, this request was perhaps a touch premature. We would therefore be grateful if she or her successor would provide the Committee with something similar in two years’ time, by when systems that are “being systematically factored into European Commission programmes and assistance” (see the Minister’s letter at paragraph 11.16 below for detail) should be up-and-running, and capable of showing measurable outcomes.

10.6 In the meantime, we are again drawing this chapter of our Report to the attention of the International Development Committee.

10.7 Full details of the document: (35181), 11554/13, SWD(13) 227: Commission Staff Working Document: *Action Plan for Resilience in Crisis Prone Countries 2013–2020*

Background

10.8 The EU is one of the world’s largest donors, providing life-saving assistance to people affected by various crises. Commission Communication 14616/12, which we cleared in November 2012, outlined how the Commission proposed to help countries and communities to be better prepared to cope with and recover from natural disasters. The focus was on the experience gained in tackling food security resulting from drought in the Horn of Africa and the Sahel. The wider aim was to use this and other experience to make resilience an integral component of EU humanitarian and development assistance, addressing a broader set of risks, such as flooding and cyclones. Future programmes would focus much more on building people’s long-term resilience to predictable shocks and stresses. The Commission set out its “10 Steps to increase resilience in food insecure and disaster prone countries”. The Commission would generate an Action Plan for implementing this new approach by the end of March 2013. The Council would adopt Conclusions sometime during the Irish Presidency.³⁴

10.9 Subsequent exchanges with the then Minister (Lynne Featherstone) are set out in our previous Report. The then Minister noted that:

- the UK had a resilience adviser Seconded National Expert working in DG-ECHO which she said had “greatly assisted our influencing of the Council conclusions and the Action Plan”;
- publication of the Action Plan was moved to fall after adoption of the Council Conclusions³⁵ “in order to allow for it to take on board the messages contained within them.”³⁶

³⁴ See (34303), 14616/12: Twentieth Report HC 86-xx (2012–13), [chapter 30](#) (21 November 2012).

³⁵ See the [Council Conclusions](#).

³⁶ See Seventeenth Report HC 83-xvi (2013–14), [chapter 17](#) (9 October 2013).

Commission Staff Working Document SWD(13) 227: *Action Plan for Resilience in Crisis Prone Countries 2013–2020*

10.10 In submitting it for scrutiny on 27 August 2013, the then Minister welcomed the Action Plan. She noted that, since 2000, disasters had killed 1.1 million people, affected 2.7 billion, caused economic loss of over US\$1.3 trillion, increased poverty, slowed the achievement of the Millennium Development Goals and inflamed instability. With disasters expected to become more frequent and severe, the then Minister said that helping countries manage risks should no longer be seen as a humanitarian endeavour, but first and foremost a development one. She went on to note that the cornerstone of the Action Plan was accordingly much better integration between the EU’s humanitarian, development and political engagement, to help countries tackle more comprehensively those factors that lead to repeated crises. Against this background, the Action Plan had three priorities, which the Minister endorsed:

- EU support to the development and implementation of national and regional approaches;
- innovation, learning and advocacy; and
- methodologies and tools to support resilience.

10.11 The then Minister also noted other parallel commitments to integrate disaster resilience in humanitarian assistance and development investments: the US Resilience Strategy launched in November 2012, the World Bank report *Managing Disaster Risk for a Resilient Future* (ditto) and DFID’s own commitment to embed disaster resilience in all its country programmes by 2015 (see our previous Report for full details).

10.12 In its Conclusion, the Committee noted that the need for this sort of approach was evident, and the way in which the process had been taken forward was exemplary — notably the involvement of DFID. However, how the Action Plan was implemented would be what mattered most — especially the sharing of lessons and making sure, as the then Minister put it:

“this becomes an integral way of how it does business... how well the different parts of the EU system work together, how they generate and pool the political engagement and technical capacity to support delivery, and increase the flexibility of engagement, including finance, in order to adjust to changing risks on the ground.”

10.13 The Committee accordingly found it curious that then Minister made no mention of Monitoring and Evaluation; whereas the Commission Staff Working Document said that:

- each priority action included in the Action Plan was linked to an overall objective and a specific output, so as regularly to monitor effective implementation of the Action Plan;
- a performance management framework, as well as related monitoring and evaluation frameworks would be developed, allowing to track progress on the implementation of the Plan;

- the Commission and the EEAS would engage with the Member States to review progress made on the resilience agenda at regular intervals, looking in particular at the policy, programming, mobilisation and use of funding, implementation modalities and results; and
- regular reviews of the Action Plan would be organised to assess progress and adapt the Action Plan where necessary, building on the lessons learnt throughout the implementation of the Action Plan, thus allowing for further elaboration of resilience building actions in the years to come.

10.14 This was, we observed, as it should be. Though no specific timeline was given, we therefore asked the then Minister to write in a year's time with whatever information was then available about the reviewing of implementation and an indication of what the future review timeline was (an annual report, for example; or a review by the European Court of Auditors).

10.15 We also draw these developments to the attention of the International Development Committee.³⁷

The Minister's letter of 11 December 2014

10.16 The Parliamentary Under-Secretary of State at the Department for International Development (Baroness Northover), noting that the Committee felt that it was how the Action Plan would be implemented that would matter most, writes as follows:

“Progress has been good and in many cases has exceeded the targets. In the Sahel region, the Global Alliance for Resilience Initiative (AGIR) initiative is firmly established and the framework is in place to coordinate government and donor support to improve food and nutrition security over the long term. Eight countries have finalised national dialogues leading to the identification of Country Resilience Priorities. These identify plans and concrete actions to build resilience in the agriculture, food and nutrition sectors in Burkina Faso, Chad, Mali, Niger, Senegal, Cote D'Ivoire, Guinea (on hold due to the Ebola crisis) and Togo. AGIR principles have been included in the objectives of the 11th European Development Funds in the Regional and National Implementation Plans in all relevant Sahel countries.

“The Supporting the Horn of Africa's Resilience (SHARE) initiative has translated the political commitments outlined in the Action Plan into a process for country resilience-building interventions. Early projects have been implemented in Djibouti, Ethiopia, Kenya and Somalia. In Ethiopia and Kenya SHARE Country Programming Papers, setting out resilience building programmes, have been integrated into national frameworks and are under implementation.

“Resilience approaches are being systematically factored into European Commission programmes and assistance in fragile and vulnerable countries and into the Commission's Humanitarian Aid and Civil Protection Department's (ECHO) humanitarian responses. Strategic assessments, to determine resilience objectives, are

³⁷ Seventeenth Report HC 83-xvi (2013-14), [chapter 17](#) (9 October 2013).

underway in Nepal, Bangladesh, Haiti, Yemen, South Sudan, Mali and Central Africa Republic. In these countries ECHO, Development and Cooperation (DEVCO), Member States and other donors are joining efforts.

“There is now evidence that resilience is being systematically integrated into European Development Fund and Development Cooperative Instrument programming as well as Humanitarian Implementation Plans. For instance, DFID’s humanitarian team was extensively consulted on the EU’s resilience programme to Somalia over a six-month period; and in Ethiopia the EDF strategy includes building up the coping capacities of the population over the coming 3 to 5 years. To support these initiatives, the EU is developing guidelines and monitoring tools; as well as running training courses in Brussels and with country delegations.

“Resilience is a DFID priority and we are funding a seconded national expert within ECHO working on these issues”.

Previous Committee Reports:

Seventeenth Report HC 83-xvi (2013–14), [chapter 17](#) (9 October 2013); also see (34303), 14616/12: Twentieth Report HC 86-xx (2012–13), [chapter 30](#) (21 November 2012).

11 EU Relations with Fiji

Committee’s assessment Committee’s decision	Politically important Cleared from scrutiny (decision reported on 4 September 2013)
Document details	Draft Council Decision concerning the political consultation process between the EU and Fiji
Legal base	Articles 9 and 96 of the Cotonou Agreement, and Article 37 of the Development Cooperation Instrument; QMV
Department	Foreign and Commonwealth Office
Document numbers	(35272), 13123/13, COM(13) 599

Summary and Committee’s conclusions

11.1 The EU/ACP Cotonou Agreement, which includes Fiji, allows for consultations when any ACP state breaches Cotonou’s “essential elements” — respect for human rights, democratic principles or the rule of law — and, where appropriate, the application of “appropriate measures”, which normally involve continuing support for civil society and the general population but suspension of direct technical assistance to the government.

11.2 In the case of Fiji, a peaceful military coup took place in 2006; between then and 2013, there was general progress towards a return to constitutional democracy, interspersed with

some setbacks; and, in autumn 2013, with the clear prospect of the right outcome, the “appropriate measures” were extended until March 2015 in the expectation that subsequent developments would enable them to be ended.

11.3 The Minister for Europe (Mr David Lidington) now reports that, in the light of general elections last September, resulting in a return to a parliamentary democracy; the Commonwealth’s lifting of Fiji’s partial suspension, allowing it to return as a full member; and the recommendations of a subsequent EU Verification Mission, the November 2014 Foreign Affairs Council decided that the “appropriate measures”, suspending development cooperation with the government, should be discontinued; that political engagement should be reinforced; and that (as is normal in such circumstances) the President of Fiji should be informed that the special measures under Article 96 would be discontinued

11.4 The road back to democratic governance in Fiji has plainly been long and, at times, fitful; but is, of course, nonetheless to be warmly welcomed. What role the EU’s approach has played is for others to decide. But there can be little doubt that it was better to remain engaged with those outside an illegitimate government who needed help, than either to carry on as normal or stand aside.

Full details of the document: Draft Council Decision amending Decision 2007/641/EC, concerning the Republic of Fiji Islands and extending the period of application thereof: (35272), 13123/13, COM(13) 599.

Background

11.5 The EU/ACP (African, Caribbean and Pacific) Cotonou Agreement, which includes Fiji, allows for consultations when any ACP state breaches Cotonou’s “essential elements” — respect for human rights, democratic principles or the rule of law. Article 37 of the Development Cooperation Instrument (DCI) details the process for deciding this. In order to support this process, the Agreement allows for the introduction of “appropriate measures”.

11.6 In December 2006, after months of tension between Fiji’s military and government, Military Commander Bainimarama mounted a swift and peaceful coup and appointed himself as Interim Prime Minister. In April 2007, Fiji’s Interim Government (IG) agreed to meet a number of commitments designed to return Fiji to democracy and the rule of law, including free and fair elections by March 2009; failure to meet these commitments would jeopardise continued EU financial assistance including support for the sugar industry.

11.7 Our previous Report summarises developments since and the EU response. In brief, in 2011, after a review of future engagement with Fiji, the EU decided on a partial and targeted resumption of development assistance focussed on vulnerable populations, strengthening civil society and supporting democratisation activities, but with no funds being channelled via Fiji’s IG. Then, in 2012, in recognition of some tentative steps taken by Fiji’s IG towards the restoration of democracy by 2014, the Commission proposed that the EU should express its readiness to engage in new formal dialogue regarding these developments and the opening of discussions on possible programming assistance under the next EDF (i.e. EDF 11 covering 2014–20), subject to the successful conclusion of the constitutional consultation process then under way in Fiji. However, subsequent political

developments and a continuing lack of progress against the benchmarks set out in the Council Decision put all of that on hold.

11.8 The proposal that the Committee considered on 4 September 2013 was, effectively, to restart the process over the next 18 months. The Minister for Europe supported this. He noted that a revised constitution had been published on 22 August 2013; that elections were scheduled for September 2014; and that electronic voter registration was nearing completion, with over 530,000 voters registered. He judged these to be “welcome initial steps to assist a return to democracy”; but also noted that continuing restrictions on human rights and fundamental freedoms and concerns about political interference in the constitutional process — overall, it was still too early to assess whether these initial positive steps would pave the way for a return to democracy. He accordingly supported the Commission’s overall approach to Fiji, which both recognised progress made and noted ongoing concerns that would need to be addressed for Article 96 to be lifted, and agreed that:

- the EU should express its readiness to engage in an enhanced dialogue regarding these developments;
- the period of application of Decision 2007/641/EC should be extended for a further eighteen months:

11.9 This, he said, would allow sufficient time to analyse the Fijian government’s commitment to free and fair elections, plus allow for any slippage in date; and also factor in the launch of programming discussions for the 11th EDF. The Minister also agreed with the proposal that the enhanced political dialogue should include a review of the agreed commitments of 2007, and to adapting the appropriate measures accordingly, with the ultimate goal of normalising relationships with Fiji.

11.10 All of this seemed sensible. As well as clearing the Council Decision from scrutiny, we again reported these developments to the House because of the continuing importance of the Cotonou Agreement in the EU’s relations with the ACP countries — not only in providing a framework for development assistance, but also as a template for promoting democracy, good government and the rule of law more widely throughout the ACP countries.³⁸

The Minister’s letter of 4 December 2014

11.11 The Minister recalls that the restrictions on Fiji were extended to the end of March 2015, and continues as follows:

“Since the extension was put in place, Fiji has successfully held a general election, resulting in a return to a parliamentary democracy. The election was observed by a Multinational Observation Group, co-led by Australia, India and Indonesia. UK and EU observers participated in the mission. Since the election, the Commonwealth has lifted Fiji’s partial suspension allowing it to return as full members. An EU Verification Mission subsequently visited Fiji following the election.

³⁸ Thirteenth Report HC 83-xiii (2012-13), [chapter 50](#) (4 September 2013).

“On 29 October 2014, the EU published its Verification Mission report on the fulfilment of the commitments agreed with the Republic of the Fiji islands in 2007. This report strongly recommended ‘that in light of the recent developments and the overall atmosphere in the country, the appropriate measures suspending development cooperation with the government should be discontinued and... political engagement should be reinforced’. It also recommended that the necessary steps to finalise round 11 of the European Development Fund (Pacific) with Fiji were carried out. At a meeting in Brussels on 20 November, the EU agreed to accept the recommendations in the report and to inform the President of Fiji that the special measures under Article 96 would be discontinued.”

11.12 The Minister encloses a copy of this letter, which we reproduce at the Annex to this chapter of our Report.

Previous Committee Reports:

Thirteenth Report HC 83-xiii (2012–13), [chapter 50](#) (4 September 2013).

Annex: letter from the EU to the President of Fiji

“We congratulate Fiji on the successful elections held in September 2014, and look forward to the full consolidation of the return to democracy.

“It is our pleasure to inform you that the application of the Special Measures that limited development cooperation with Fiji following the events of 2006 will be discontinued.

“We intend to work with the Fijian Government to finalise as soon as possible the programming of development assistance to be provided under the 11th European Development Fund.

“The European Union stands ready to support Fiji as it seeks to ensure that democracy is sustained through the consolidation of the rule of law, the strengthening of relevant institutions, the oversight of Parliament, constructive engagement with civil society, and the enhancement of the role of women, which would build on the encouraging improved representation of women in government and in parliament.

“Such consolidation will facilitate the reinvigoration of the strong partnership between the European Union and Fiji, which is founded on respect for human rights and democratic principles. These are the cornerstone of the ACP Partnership Agreement itself.

“We look forward not only to a full re-engagement with Fiji through development co-operation, but also to a strengthening of political dialogue.”

12 European security and defence: following up the December 2013 European Defence Council

Committee's assessment	Politically important
<u>Committee's decision</u>	Cleared from scrutiny (by Resolution of the House of 12 March 2014); further information requested; drawn to the attention of the Defence and Foreign Affairs Committees
Document details	Joint Communication: <i>The EU's comprehensive approach to external conflict and crises</i>
Legal base	—
Department	Foreign and Commonwealth Office
Council numbers	(35696), 17859/13 , JOIN(13) 30

Summary and Committee's conclusions

12.1 This Joint Communication (on how the EU could take a more “Comprehensive Approach” in its external relations policies and actions), the High Representative’s review of the European External Action Service (EEAS) and a Commission Communication, *Towards A More Competitive and Efficient Defence and Security Sector*, were all prepared ahead of the December 2013 European Council — the first since 2007 to review that EU’s Common Foreign and Security Policy and defence activities.³⁹

12.2 The EEAS Report was subsequently debated in European Committee on 13 January 2014;⁴⁰ and the two Commission Communications were finally debated in European Committee on 12 March 2014 — the Government having rejected the Committee’s recommendation that such an infrequent and important process warranted debate on the floor of the House.⁴¹

12.3 As our most recent Report relates in detail, we have been corresponding with the Minister for Europe (Mr David Lidington) about scrutinising a number of “follow-up” documents — the *EU MSS (EU Maritime Security Strategy)*; *the Defence Implementation Road Map*; *a proposed new EU Cyber Defence Policy Framework*; and new EDA projects and work on developing what was originally described as a new “Policy Framework for systematic and long term cooperation on capabilities”, and which we presumed was *the “Policy Framework for Defence Cooperation”* to which he had referred most recently. The Minister had undertaken to “submit these in line with the usual procedures or provide as much information as possible once those documents have been finalised”. We had also asked for, but not received, a report on the September 2014 “informal” Defence Ministers’ meeting; and asked the Minister to confirm that these further “inputs” that we had not seen

³⁹ European “Defence” Council Conclusions, [pp.1-11](#).

⁴⁰ *Gen Co Deb*, European Committee B, 13 January 2014, [cols. 3-24](#).

⁴¹ *Gen Co Deb*, European Committee B, 12 March 2014, [cols. 3-24](#).

would also be deposited for scrutiny, and in good time for them, where appropriate, to be debated prior to the June 2015 European Council.

12.4 But, before any response was received, we noted that, in its Conclusions, the November 2014 “Defence” Foreign Affairs Council had adopted a new *EU Cyber Defence Policy Framework*, a *Policy Framework for Systematic and Long-Term Defence Cooperation* and a *Progress Catalogue 2014* (assessing the critical military shortfalls resulting from the Headline Goal process and their impact on CSDP). Given that these Conclusions presumably reflected the September 2014 informal discussions by EU Defence Ministers, of which we had also heard nothing, we asked the Minister to explain why; and why, too, we were given no information prior to the event that such wide-ranging Council Conclusions were in prospect.

12.5 We also asked why the Minister had not either submitted the documents referred to above “in line with the usual procedures” or provided “as much information as possible once those documents have been finalised”, and asked him now to do one or the other. In either event, we asked him to explain how they were on the right side of any UK “red lines” and how they protected and promoted UK interests (see our most recent Report for the full detail).⁴²

12.6 In two separate letters, the Minister for Europe and the Parliamentary Under-Secretary for Reserve Forces at the Ministry of Defence (Mr Julian Brazier) say that:

- the 18 November 2014 Foreign Affairs Council (Defence) conclusions were not received until 10 November, the day before the House rose for recess; they did not expect such a lengthy text, which largely repeats previous agreements from the December Council (DEC13), but other Member States wished to reaffirm the commitments therein; this was acceptable, provided the “carefully negotiated DEC13 language was adhered to without any unwelcome additions”; they “negotiated hard to resist expansionist language (such as the EU as a “strategic global actor”), and also “ensured the language that mattered to us from DEC13 was inserted: overall, “the Government is content that the FAC (Defence) conclusions do not cross UK red lines and are largely a repeat of existing commitments from DEC13”;
- the 9-10 September 2014 EU Defence Ministers informal meeting discussed the EU Battlegroup; DEC13 follow up; the EDA and CSDP Operations; discussions were “wide ranging but ... little progress was made”; where “decisions are made or issues are moved forward significantly”, they “will ensure we keep Parliament updated;
- Progress Catalogue 2014 represents “a comprehensive picture of the prioritised capability shortfalls in the short-term and the operational risks such shortfalls present”: being “EU Restricted”, it cannot be shared with the Committee; however, they support the assessment of the 42 identified capability shortfalls, and note that 12 out of the 14 critical shortfalls (which have an adverse impact on the ability to deploy to theatres and can lead to delays in the initial phase of an operation) are also reflected in the NATO shortfall list; and emphasise that they “will continue to insist that any EU work to address these shortfalls must be complementary, not duplicative, of NATO’s efforts;

⁴² Twenty-second Report HC xxi (2014–15), [chapter 17](#) (26 November 2014).

- Article 44 TEU theoretically allows a “coalition of the willing” from inside the EU to take on a crisis management task with EU political and logistical backing but without full participation of all Member States; however, it has never been used and negotiations to establish how it would work are currently in progress; whilst content in principle with the concept, they do not want common funding to automatically apply; and whilst the execution of a task could be delegated to a group of Member States, they could not agree to delegate responsibility for it when conducted in the EU’s name and therefore want the same standards of planning and organisation to apply as for any other mission;
- they support exploring the scope for more cooperation between CSDP missions and other EU activities, such as EUROPOL and FRONTEX — for example, in EU civilian border management missions — and agree that examining the scope for better information sharing and working practices between related areas is beneficial and supports the Comprehensive Approach;
- they support the overall “Train and Equip” concept (which seeks to enable conflict affected states to manage crises and build capacity themselves through EU training and, where appropriate, the provision of equipment) but have some concerns about how it might be implemented; have “successfully lobbied to embed the UK vision to ensure that the ‘EU’ has no role in providing lethal equipment” but should “provide a useful coordination mechanism for Member States and third party equipment requests”; and have resisted calls for new structures to support it; the November FAC Conclusions agreement on a formal road map for implementation of train and equip, to be delivered by June 2015, “should be an important conclusion of the June European Council”.

12.7 As the “Background” section below and the Ministers’ letters relate, the process seems still to be suffering from the same erratic response as a year ago, when we were similarly endeavouring to ensure thorough prior scrutiny of the preparations for a “Defence” European Council (then “DEC13”, now the June 2015 counterpart, “JEC 15”).

12.8 Although our most recent Report on these matters⁴³ was relayed to the Foreign and Commonwealth Office immediately after our meeting in the normal way, the Minister for Europe’s letter of 8 December makes no mention of it. Moreover, it is plain from our letter of 8 January 2014 (see the Annex to this chapter of our Report), that the Committee asked him to do much more than “share” the *Cyber Defence Policy Framework* document with us — a document that was originally conceived as a Commission Communication but which has been taken off the scrutiny radar screen without anyone letting us know, despite the Committee’s clear expectations.

12.9 Furthermore, the joint letter of 10 December 2014 from him and the Parliamentary Under-Secretary for Reserve Forces was not received by the Committee until 6 January 2015.

⁴³ Ditto.

12.10 In addition, pace what the Ministers say, we have still received no update on the EU Maritime Security Strategy in response to our most recent Report on that matter.⁴⁴ We therefore ask them to clarify this, and to respond to our Report forthwith.

12.11 Nor have we received the Policy Framework for Defence Cooperation, which we have been seeking to scrutinise prior to adoption, and have not seen, but which was adopted by the 19 November 2014 “Defence” FAC.

12.12 We again ask that this document and document 15585/14, the EU *Cyber Defence Policy Framework*, be deposited forthwith in the normal way: i.e. with a full Explanatory Memorandum, properly summarising the document in question and setting out the Government’s views in detail, explaining how they meet UK objectives and safeguard any relevant “red lines”. This is particularly important given the clear evidence (see the “Background” section below) that the UK continues to have to be a restraining force against those among the Member States and in the institutions who maintain their long-standing ambition to develop a full-blown, self-standing EU defence capability.

12.13 Looking ahead, and bearing in mind that Parliament will be dissolved at the end of March, prior to the May general election, that the main discussions are to take place at the 8 May 2015 Foreign Affairs (Defence) Council, and that the Committee may not have been established prior to the June 2015 European “Defence” Council, we ask the Ministers to provide their next update no later than 21 February, i.e. immediately after the 18–19 Defence Ministers’ “informal meeting” to which they refer. This update should include information on how, in all the circumstances, UK interests are to be safeguarded.

12.14 We have already noted that an *Action Plan on the EU Comprehensive Approach* is to be developed before the end of the first quarter of 2015, and made it clear that we expect the Minister for Europe to provide information between now and then on what was being considered, and to deposit the final version for scrutiny (see paragraph 12.25 below). The Ministers also mention the development of a *formal road map for implementation of “Train and Equip”*. Given the timing considerations referred to above, we should be grateful if that update would also include a situation report on the development of these proposals, and how they envisage their being scrutinised prior to adoption.

12.15 We also note that, in future, when we ask for a “read-out” of “informal” Defence or Foreign Affairs Councils, we would like them to be provided in a timely fashion: it is for the Committee, not the Government, to decide whether “decisions” have been made or issues “moved forward significantly.”

12.16 In the meantime, we are again drawing the situation to the attention both of the House and of the Defence and Foreign Affairs Committees.

⁴⁴ See (35857), [7537/14](#): Twenty-second Report HC xxi (2014–15), [chapter 18](#) (26 November 2014).

Background

12.17 As of last October:⁴⁵

- both the *EU MSS* and the *Defence Implementation Road Map* had been submitted for scrutiny;
- we awaited a report from the Minister on the *EU MSS Action Plan*;⁴⁶
- the *Defence Implementation Road Map* remained under scrutiny pending receipt of the Opinion that we had requested of our colleagues on the Defence Committee;⁴⁷ and
- in terms of substance, we were as yet little the wiser about either the *Cyber Defence Policy Framework* or the *Policy Framework for Defence Cooperation*.

12.18 We therefore asked the Minister to let us know when he expected to be able to deposit these for scrutiny too, and at that time, also to provide us with:

- a summary and his assessment of the informal discussions by EU Defence Ministers on 9 September to which he referred (which we presumed were analogous to the well-established “Gymnich” arrangements for such discussions among EU Foreign Ministers); and
- information on how he proposed to handle scrutiny of the review of CSDP financing and the separate Athena mechanism review.

12.19 Looking further ahead, we asked the Minister to confirm that these further “inputs” would also be deposited for scrutiny, and in good time for them, where appropriate, to be debated prior to the June 2015 European Council.

12.20 In the meantime, we drew this further information not only to the attention of the House at large, but also to the Foreign Affairs and Defence Committees.⁴⁸

12.21 Since then, we have: dealt with the review of the Athena financing mechanism,⁴⁹ received the Opinion of the Defence Committee and recommended a European Committee debate on the *Defence Implementation Road Map*;⁵⁰ and received a (very limited) update on the equivalent “output” from the EU MSS, namely the *EU MSS Action Plan*.⁵¹

12.22 But, before hearing from the Minister concerning the other matters, we noted that the 18 November 2014 Foreign Affairs (Defence) Council had adopted substantive

⁴⁵ See Thirteenth Report HC 219-xiii (2014–15), [chapter 33](#) (15 October 2014).

⁴⁶ See (35857), 7537/14: Second Report HC 219-ii (2014–15), [chapter 4](#) (11 June 2014).

⁴⁷ See (36180), 11358/14: Ninth Report HC 219-ix (2014–15), [chapter 19](#) (3 September 2014).

⁴⁸ See Thirteenth Report HC 219-xiii (2014–15), [chapter 33](#) (15 October 2014).

⁴⁹ See (36464), —: Eighteenth Report HC 219-xvii (2014–15), [chapter 12](#) (5 November 2014).

⁵⁰ See (36180), 11358/14: Eighteenth Report HC 219-xvii (2014–15), [chapter 1](#) (5 November 2014).

⁵¹ See (35857), [7537/14](#): Twenty-second Report HC xxi (2014–15), [chapter 18](#) (26 November 2014).

conclusions, running to 13 paragraphs and four pages,⁵² which said that, among other things, the Council had:

- adopted the *EU Cyber Defence Policy Framework*, which focuses on “supporting the development of Member States cyber defence capabilities related to CSDP; enhancing the protection of CSDP communication networks used by EU entities; promoting civil-military cooperation and synergies with wider EU cyber policies, relevant EU institutions and agencies as well as with the private sector; improving training, education and exercises opportunities; and enhancing cooperation with relevant international partners”;
- adopted a *Policy Framework for Systematic and Long-Term Defence Cooperation*, which “[i]n view of deepening cooperation in Europe, ... will guide the cooperative approaches of Member States, through their national decision making processes, when developing defence capabilities...[and] [i]n line with the European Council Conclusions, ... has been put forward in full coherence with existing NATO planning processes”;
- agreed the *Progress Catalogue 2014*, which “provides an assessment of the critical military shortfalls resulting from the Headline Goal process and their impact on CSDP”.

12.23 Given that these wide-ranging Council Conclusions presumably reflected the informal discussions by EU Defence Ministers on 9 September, of which we had also heard nothing, we asked the Minister to explain why; and why, too, we were given no information prior to the event that such wide-ranging Council conclusions were in prospect.

12.24 We also asked why the Minister had not either submitted the documents referred to above “in line with the usual procedures” or provided “as much information as possible once those documents have been finalised”, and asked him now to do one or the other. In either event, we asked him to explain how they were on the right side of any UK “red lines” and how they protected and promoted UK interests.

12.25 With regard to this specific Joint Communication, *The EU’s comprehensive approach to external conflict and crises*, we noted that an Action Plan was to be developed before the end of the first quarter of 2015, and made it clear that we expected the Minister to provide information between now and then on what was being considered, and to deposit the final version for scrutiny.

12.26 We also asked the Minister to illustrate what the Council had in mind by “a more structured approach to cooperation between the CSDP missions and operations and Freedom/Security/Justice actors, notably the EU Agencies (EUROPOL, FRONTEX and CEPOL) and with INTERPOL”.

12.27 More generally, we said that we would like to feel more confident than we currently did that the Minister would live up to his professed commitment to “upstream” scrutiny of

⁵² See the Annex to our previous Report and Foreign Affairs (Defence) Council conclusions [18 November 2014](#).

major CSDP developments, and work with us to make this an effective reality. At the beginning of this year, he and his MOD counterpart had described the December 2013 “Defence” European Council Conclusions as “a good outcome for the UK”, demonstrating “how we have shifted the parameters of the debate on EU defence cooperation onto the UK’s agenda for an operational CSDP focused on cost-effective delivery as part of the Comprehensive Approach to conflict and its causes, that complements NATO”, and seeing implementation of the Conclusions as presenting “positive opportunities for the UK to continue to shape CSDP in the right direction”, though need them nonetheless “to pay close attention in certain areas going forward”.

12.28 We noted at the time that, notwithstanding the Government’s claims to the contrary, there were still many within the institutions that did not share the Government’s vision — witness the NATO secretary general being invited to the European Council discussion only after UK lobbying, rather than as a matter of course,⁵³ and continuing doubt over the general direction of travel being underlined soon afterwards in the remarks of the then President of the European Council at the Munich Security Conference (which neatly skate over the question we posed), viz:

“Starting this year, Europeans will be launching new joint defence programmes, for cutting-edge drones, satellite communication, cyber defence and air-to-air refuelling. It is the start of a process. All these tools: at the service of Europe’s interests and security.”⁵⁴

12.29 Even now, the Minister was fighting what appeared to be a difficult battle over the EU Operations Centre,⁵⁵ against other Member States who continued to want it to evolve into a full-blown EU command and control facility (Operational Headquarters).⁵⁶ At the same time, the Council reiterated “the urgent need of enabling the EU and its Member States to assume increased responsibilities to act as a security provider, at the international level and in particular in the neighbourhood, thereby also enhancing their own security and their global strategic role by responding to these challenges together”, leaving open to interpretation of what was meant by its “increased responsibilities” and a “security provider, at the international level and in particular in the neighbourhood”. The Council Conclusions also talk of an assessment of the critical military shortfalls resulting from the Headline Goal process and their impact on CSDP: but provide no indication as to what they are. Ditto the Delphic reference to “ongoing deliberations looking into the full potential of the use of Article 44 TEU”.⁵⁷

12.30 In the short term, we looked forward to hearing more from the Minister, as outlined above. Beyond that, we hoped that we had illustrated why, going forward, this process

⁵³ See Twenty-ninth Report HC 83-xxvi (2013–14), [chapter 9](#) (8 January 2014).

⁵⁴ See [Munich Security Conference](#).

⁵⁵ Agreed at the December 2004 European Council: located within the EUMS structure in Brussels, designed to establish a further option for the planning and conduct of small-scale EU military, “civ/mil” or civilian operations; not a standing, fully manned headquarters, but basically a room full of computers and the other paraphernalia used in such operations and capable of being augmented by staff for a particular operation. The staff of 16 is provided voluntarily by Member States at their own cost.

⁵⁶ See (36510), —: Twenty-second Report HC xxi (2014–15), [chapter 19](#) (26 November 2014)..

⁵⁷ See The Lisbon Treaty, [Article 44](#) TEU.

needs proper Parliamentary scrutiny and why we continued to look to the Minister to facilitate it.

12.31 We again drew these developments to the attention of the Defence and Foreign Affairs Committees.⁵⁸

The Minister's letter of 8 December 2014

12.32 The Minister begins his letter by referring to one from the Committee of 8 January 2014 in which it “asked that we share with you the *EU Cyber Defence Policy Framework*”, which he notes was formally adopted by the Foreign Affairs Council on 18 November 2014, and to which he attaches a copy for the Committee's information.

12.33 He continues as follows:

“The December (2013) European Council agreed the importance of protecting information networks and infrastructure which support CSDP operations/missions through the development of an EU Cyber Defence Policy Framework. This is not a new Strategy, but flows from the CSDP section of the June (2013) General Affairs Council Conclusions on an EU Cybersecurity Strategy. The EU Cybersecurity Strategy is not a legislative document and is therefore non-binding on Member States.

“The EU Cyber Defence Policy Framework is intended to increase resilience of EU networks/institutions and promote the development of Member States' cyber defence/resilience capabilities. I should make clear that this document describes the EU networks defences against unwanted intrusion, rather than in a wider military sense. It is in line with UK CSDP and cyber policy and limited to developing a roadmap and projects focused on:

- “Member States' development of cyber defence capabilities, research and technologies through the development and implementation of a comprehensive roadmap for strengthening cyber defence capabilities;
- “the reinforced protection of communication networks supporting CSDP structures, missions and operations;
- “the mainstreaming of cyber security into EU crisis management; raising awareness through improved training, education and exercise opportunities for the Member States;
- “synergies with wider EU cyber policies and all relevant other actors and agencies in Europe such as the EU Agency for Network and Information Security;
- “to cooperate with relevant international partners, notably with NATO, as appropriate;

⁵⁸ See Twenty-second Report HC xxi (2014–15), [chapter 17](#) (26 November 2014).

“A lot of UK information passes through EU IT networks and institutions and, as such the UK supports any movement toward EU Institutions taking active responsibility for improving the Cyber defence of their networks, information, and infrastructure. Cyber defence remains a sovereign responsibility and capability and it is good to see that the framework respects Member State competence in this area.

“The Policy Framework also calls for closer cooperation between the EU and NATO on cyber defence (exchange of best practice, training and development of improved cyber resilience capabilities). This is in line with the new NATO Enhanced Cyber Policy that also called for closer cooperation between the two international partners and was agreed at the NATO Summit in September. We welcome this closer cooperation and that the Policy Framework respects the institutional framework of NATO.”

The Ministers’ letter of 10 December 2014

12.34 In their joint letter, the Minister for Europe and the Parliamentary Under-Secretary for Reserve Forces at the Ministry of Defence (Mr Julian Brazier) respond to our most recent requests as follows:

“Separate updates from the FCO on the EU Maritime Security Strategy Action Plan and the Cyber Defence Policy Framework were already being prepared for the European Scrutiny Committee when we received your report. The MOD also submitted an update letter dated 26 November on the result of the European Defence Agency (EDA) Steering Board.⁵⁹ These should all now be with the ESC.

“Turning to the 18 November 2014 Foreign Affairs Council (Defence) conclusions, the Government received the first official draft of the conclusions on 10 November, the day before the House rose for recess, making it impossible to share an analysis of them with the Committee in advance. Furthermore, we did not expect to see such a lengthy text that largely repeats previous agreements from the December Council. Our preference was a much shorter document focused on the progress made since December on, for example, the Comprehensive Approach and the civilian Shared Services Centre.

“However, the majority of other Member States wished to reaffirm the commitments made at the December 2013 European Council (DEC13). We judged this acceptable, provided the carefully negotiated DEC13 language was adhered to without any unwelcome additions. We negotiated hard to resist expansionist language (such as the EU as a “strategic global actor”). We also ensured the language that mattered to us from DEC13 was inserted. This includes references to EU/NATO co-operation (including the importance of the Wales’ Summit agreements) and the continued importance of investment in defence. Overall, the Government is content that the FAC (Defence) conclusions do not cross UK red lines and are largely a repeat of existing commitments from DEC13. During the course of the FAC (Defence) the UK

⁵⁹ See (36256), — and (36257), —: Twenty-fifth Report HC 219-xxiv (2014-15), [chapter 10](#) (10 December 2014). This deals with the draft EDA 2015 Budget and the 2014 EDA Head of Agency report, which describes progress on the Agency’s main output areas and provides an overview of Agency activities.

also vetoed a proposed increase in the EDA budget, which you are due to scrutinise in the coming weeks.

“The report references the EU Defence Ministers informal meeting in Milan on 9/10 September. At this meeting Ministers discussed the EU Battlegroup; DEC13 follow up; the EDA and CSDP Operations. As ever the discussions were wide ranging but in this case little progress was made. Where decisions are made or issues are moved forward significantly we will ensure we keep Parliament updated.

“The discussion on the December Council saw ministers put forward their views on a range of topics including the policy framework for systematic and long term defence cooperation and the Maritime Security Strategy, on which you have received separate updates. The exchange on the EU Battlegroup reiterated the challenges to usability and deployability but offered no solutions. The UK maintains that political will is the major barrier to deployment of the EUBG. Discussions in the EDA session revolved around the budget and renewal of the mandate of the EDA, on which you separately received an update. The operations session was a stock take of the five CSDP military operations. An extension of EUFOR CAR was the focus and you have already cleared the Explanatory Memorandum on this.

“Turning to your specific queries (that have not been covered in separate updates):

- **“Progress Catalogue 2014:** This document represents a comprehensive picture of the prioritised capability shortfalls in the short-term and the operational risks such shortfalls present. The document itself is marked “EU Restricted” and we are unable to share it with the Committee. However, HMG supports the assessment of the 42 identified capability shortfalls, of which 14 are assessed as critical and therefore have an adverse impact on the ability to deploy to theatres (especially at strategic distance) and can lead to delays in the initial phase of an operation. The UK notes that 12 out of the 14 critical shortfalls are also reflected in the NATO shortfall list. **We will continue to insist that any EU work to address these shortfalls must be complementary, not duplicative, of NATO’s efforts.**
- **“Article 44:** Article 44 already exists in the Lisbon Treaty and theoretically allows a “coalition of the willing” from inside the EU to take on a crisis management task with EU political and logistical backing but without full participation of all Member States. However, it has never been used as the arrangements to underpin it have not been defined. Negotiations to establish how it would work are currently in progress.

“Whilst we are content in principle with the concept, we have certain red line conditions which we have made clear to other Member States. Firstly, we do not want common funding to automatically apply, it should be voluntary. This reflects the fact that when Article 44 is used, the mission will be by nature only of interest to a number of Member States. Secondly, we can delegate the execution of a task to a group of Member States, but we cannot delegate responsibility for it when conducted in the EU’s name. Therefore, we want the same standards of planning and organisation to apply as for any other mission.

- **“ATHENA and the Review of CSDP Financing:** There is some overlap between the ATHENA Review process (which happens every 3 years) and the separate review of CSDP financing which is a December 2013 Council tasking. The Explanatory Memorandum on the Athena Council Decision was cleared by the ESC on the 5th November (Committee reference 36464). As outlined in the EM, we expect negotiations on ATHENA to conclude at either the FAC on 15 December or at an upcoming COREPER. The Lords’ European Union Committee has not yet cleared the Council Decision from scrutiny and has requested an additional EM alongside the revised draft council decision once negotiations have been concluded. This EM will also be sent to the ESC.

“We expect discussions on the wider CSDP financing review to continue into the New Year. Progress on this has been slow, with few areas of agreement between Member States. It could yet yield some positive results, in particular efficiency savings from the civilian Shared Services Centre. However, for many other Member States this discussion is primarily about extending common funding which the UK will continue to block.

- **“Freedom, Security and Justice:** The UK supports exploring the scope for more cooperation between CSDP missions and other EU activities, such as EUROPOL and FRONTEX. For example, in EU civilian border management missions there can be linkages with the work of FRONTEX, the EU’s border management agency. We agree that examining the scope for better information sharing and working practices between related areas is beneficial and supports the Comprehensive Approach.
- **“Train and Equip:** Supporting capacity building efforts in crisis affected third states is a December European Council 2013 tasking, as outlined in previous updates. Train and Equip seeks to enable conflict affected states to manage crises and build capacity themselves through EU training and, where appropriate, the provision of equipment. We support the overall concept as it could both improve the operational impact of CSDP missions and reduce the need for CSDP activity by addressing a crisis or pre-crisis situation, including in regions of importance to us such as Africa.

“However we have some concerns about how it might be implemented. Brussels negotiations have focussed on the scope, methodology and resources available to implement the initiative. We successfully lobbied to embed the UK vision to ensure that the ‘EU’ has no role in providing lethal equipment; that the EU should provide a useful coordination mechanism for Member States and third party equipment requests; and resisted calls for new structures to support it. The November FAC Conclusions agreed a formal road map for implementation of train and equip, to be delivered by June 2015 and should be an important conclusion of the June European Council.”

12.35 The Ministers conclude by saying that they will:

“write again to update you on our thinking and objectives for the June European Council (JEC15) discussion on defence in the New Year. Leading up to JEC15 on

25/26 June, the main discussions will be a Defence Ministers informal meeting on 18/19 February and on 8 May FAC (Defence). Currently, our overall goal is for JEC15 to be a stock take of the progress made since the December European Council, as many of these existing commitments remain undelivered. We do not want to see a raft of new initiatives tabled that will distract from existing objectives and exceed the EU's capacity to deliver them.”

Full details of the documents: Joint Communication: *The EU's comprehensive approach to external conflict and crises*: (35696), [17859/13](#), JOIN(13) 30.

Previous Committee Reports

Twenty-second Report HC 219-xxi (2014–15), [chapter 17](#) (26 November 2014), Thirteenth Report HC 219-xiii (2014–15), [chapter 33](#) (15 October 2014), Fifth Report HC 219-v (2014–15), [chapter 13](#) (2 July 2014) and Twenty-ninth Report HC 83-xxvi (2013–14), [chapter 9](#) (8 January 2014); also see (36180), 11358/14: Ninth Report HC 219-ix (2014–15), [chapter 19](#) (3 September 2014) and (35857), 7537/14: Second Report HC 219-ii (2014–15), [chapter 4](#) (11 June 2014).

Annex: the Committee's letter to the Minister of Europe dated 8 January 2014:

“FOLLOW UP TO THE 2013 ‘DEFENCE’ EUROPEAN COUNCIL

“Because of pressure of time there was no opportunity to discuss this topic in real depth at yesterday's evidence session.

“As the Committee made clear, it regards national parliaments as having a central role in the control of ESDP and CSDP. That being so, the question arises as to how the various proposals emerging from the Council Conclusions are to be properly scrutinised. The Committee accordingly hopes that you will find a summation of its expectations helpful.

“In the first instance, there are to be the debates on the three preparatory documents:

- “the High Representative's review of the European External Action Service (which the Committee recommended should be on the floor of the House, prior to the European Council, but which the government is insisting should take place in European Committee on 13 January);
- “the Commission Communication: *Towards A More Competitive and Efficient Defence and Security Sector* (which the Committee recommended should take place in European Committee, prior to the European Council); and
- “the HR's proposals on CSDP (which the Committee recommended should take place on the floor of the House, after the European Council).

“Related to this is the revised Joint Communication on the *EU Comprehensive Approach* which the Committee considered at today's meeting and which it has “tagged” to those debates.

“Later this year, Joint Communications will presumably enable the Committee to scrutinise the *EU Cyber Defence Policy Framework* and the *EU Maritime Security Strategy*.

“In addition, even though their precise format is unspecified, the Committee would expect to be able to scrutinise, prior to adoption:

- “the HR’s report on the financial aspects of EU missions and operations;
- “the Commission/HR/EDA roadmap for implementing the Commission Communication on Defence and Security, designed in particular to ensure the full and correct implementation and application of the two 2009 defence Directives, with a view to opening up the market for subcontractors, ensuring economies of scale and allowing a better circulation of defence products;
- “the invitation to the HR and EDA to put forward an “appropriate policy framework for defence planning”;
- “the invitation to the EDA to examine and report in 2014 on ways in which Member States can cooperate more effectively and efficiently on pooled procurement projects;
- “The HR report to the Council in 2015 assessing the impact of changes in the global environment and the challenges and opportunities arising for the Union; and
- “The report from the Council issues in June 2015, assessing concrete progress on all these fronts, to enable the European Council to provide further guidance.”

13 Rules of procedure of the General Court

Committee’s assessment

Legally important

Committee’s decision

Cleared from scrutiny

Document details

Draft Rules of Procedure of the General Court

Legal base

Articles 254 TFEU; QMV except for language provisions which require unanimity

Department

Foreign and Commonwealth Office

Document numbers

(35911), 7795/14, —

Summary and Committee’s conclusions

13.1 The General Court (previously known as the Court of First Instance) was established in 1989 as the second tier court below the Court of Justice. It now deals with a wide range of cases:

- Direct actions brought by Member States or individuals to seek the annulment of EU actions, a declaration that the EU has unlawfully failed to act, or damages;
- Actions for annulment of the decisions of the Boards of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) and of the Community Plant Variety Office (CPVO);
- Appeals against decisions of the Civil Service Tribunal; and
- Miscellaneous minor and consequential matters including applications for interim measures.

13.2 This Court is currently experiencing severe difficulties in handling its caseload, exacerbated by the fact that the Council has been unable to agree to a Court of Justice proposal to increase its number of judges by 12.

13.3 As outlined in more detail in our Report of 14 May 2014, these draft Rules of Procedure are intended to (a) consolidate, clarify, simplify and restructure the existing rules, (b) ensure consistency with the redrafted rules of the Court of Justice, (c) facilitate the more efficient operation of the Court, and (d) deal with the handling of confidential information, particularly confidential security sensitive material submitted to the Court to justify restrictive measures, for which there is no current procedure (Article 105).

13.4 The remaining outstanding issue is Article 105. The Minister for Europe (Mr David Lidington) now indicates that there is qualified majority support for a draft suggested by the Court and outlines in detail how this would work. It does not meet UK requirements in two respects: the rules would not enable confidential information to be withdrawn at any time; nor do they provide for judgments to be checked for accidental disclosure of sensitive information before being issued. In the light of this, the Minister intends to abstain when this matter comes to a vote in the Council and to lodge a statement that the absence of these safeguards will limit the types of information that the UK will be able to submit to the Court and seeking a review of the mechanism in the light of practical experience.

13.5 We are grateful for the further information provided by the Minister. In general this substantial revision of the draft Rules of the General Court will improve its transparency and efficiency. Whilst Article 105 will provide a system for handling confidential information, hitherto totally lacking, we note that it falls short of the Government's objectives and may need further revision in the light of practical experience, particularly in handling cases involving restrictive measures.

13.6 Given that the draft Rules are now likely to command a qualified majority and the Government propose to abstain we now clear this document from scrutiny.

Full details of the documents: Draft Rules of Procedure of the General Court: (35911), [7795/14](#), —.

The Minister's letter of 5 January 2015

13.7 The Minister updates the Committee with progress on this negotiation:

“On 4 December the Court submitted a revised draft which my officials shared with the Committee. This was acceptable to all other Member States but fell short of UK expectations. Despite our objections, the Presidency concluded that a qualified majority existed and that the revised Rules of Procedure would be adopted by the Council in early 2015. The precise date has yet to be finalised and we have asked the Latvian Presidency to postpone it until we complete Parliamentary scrutiny. We have also made clear that the UK will abstain when this is adopted and will make a national statement clarifying our position.”

13.8 With regard to confidential material the Minister indicates that special measures enabling the Court to consider evidence not made available to the other party are likely to be called upon in only a limited number of cases, since it is often possible to sufficiently justify restrictive measures using non-confidential information.

13.9 The Minister further indicates that other Member States accepted the Court’s position that such special measures needed to be proportionate and did not push for an equivalent to the UK Special Advocate provisions.

13.10 He summarises how the proposed Article 105 will work:

- The party who does not have access to the material will at all times know that an application to treat information as confidential has been made by the other party, and will have sight of the non-confidential reasons cited for the use of a closed procedure;
- The Court will decide where material is relevant for the purposes of its decision and also whether that material is confidential for the purposes of the case;
- If material is relevant and confidential, the Court will order what procedures need to be adopted, such as the production of a non-confidential summary to be disclosed to the other party. At that stage, the party who has produced the evidence can withdraw it, but Article 105 makes it clear that in those circumstances, any material which is withdrawn will not be taken into account in determining the case; and
- Only in narrow circumstances can the Court take into account material which is not disclosed to the other party. It will, however, always take into account, in its assessment of that material, that it has not been disclosed to the other party.

13.11 The Government’s objections to this procedure and how it intends to deal with the position are explained as follows:

“As regards the safeguards for owners of confidential information, the situation remains as set out in my previous letter. The Court’s final draft of Article 105 would not enable us to withdraw confidential material at any stage of the proceedings and does not make provision for security checking of judgments and orders to prevent accidental disclosure of information. These have been key elements of our equivalent domestic regime. While we do not rule out the possibility of using Article 105, the absence of these safeguards will limit the types of information we are able to submit and will make that clear in our national statement. We will also suggest that the Council review the mechanism in due course in light of practical experience.”

Previous Committee Reports

Twenty-fifth Report HC 219-xxiv (2014–15) [chapter 5](#) (10 December 2014), Fiftieth Report HC 83-xlv (2013–14), [chapter 3](#) (14 May 2014); and see (32675) 8787/11: Forty-seventh Report HC 428-xlii (2010–12), [chapter 12](#) (23 November 2011), Thirty-fourth Report HC 428-xxx (2010–12), [chapter 9](#) (22 June 2011).

14 EU Military Advisory Mission in the Central African Republic (EUMAM CAR)

Committee's assessment	Politically important
Committee's decision	Cleared from scrutiny
Document details	Council Decision on establishment of an EU Military Advisory Mission to the Central African Republic (EUMAM CAR)
Legal base	Articles 42 (4) and 43 (2) TEU; unanimity
Department	Foreign and Commonwealth Office
Document number	(36595), —

Summary and Committee's conclusions

14.1 The Council agreed to establish operation an EU military operation in the Central African Republic (EUFOR CAR) on 10 February 2014. It was launched on 1 April 2014 and operates under a UN Security Council mandate (UNSCR 2134 (2014)). It ends on 15 March 2015.

14.2 Earlier, some 1,600 French troops had been deployed in the CAR since early December 2013 on a mission to stem fighting between predominantly Muslim militants, known as the ex-Séléka,⁶⁰ and bands of Christian vigilantes, the Anti-balaka.⁶¹

14.3 UN SCR 2149 (2014) authorised the UN Peacekeeping Operation, MINUSCA, which replaced the African Union Mission (MISCA) on 15 September 2014. MINUSCA should reach Full Operational Capability in April 2015.

14.4 The Minister for Europe (Mr David Lidington) believes that EUFOR CAR has had a positive effect, successfully improving and maintaining security around the airport and in the 3rd and 5th districts of the capital, Bangui; the establishment of this EU Military Advisory Mission (EUMAM CAR) would support the UN's deployment and "help lock in the security gains and trust that EUFOR CAR has built up with the local population and government". In particular it would, he says:

⁶⁰ Séléka was an alliance of rebel militia factions that overthrew the Central African Republic government on 24 March 2013. Nearly all the members of Séléka are Muslim.

⁶¹ The term used to refer to the Christian militias formed after the rise to power of the Seléka; Anti-balaka means "anti-machete" or "anti-sword" in the local Sango and Mandja languages.

- begin the process of security sector reform of the FACA in CAR;
- cement the current positive civil-military co-operation;
- provide a positive signal of EU support to the Interim President of CAR and her interim government following their request for priority to be given to reforming and training of the FACA; and
- deepen EU and UN common cooperation in CAR.

14.5 Despite the progress thus far, the Minister says that the situation in the CAR remains dire and fragile. The population continues to suffer from extrajudicial killings, arbitrary arrests and detention, torture, recruitment and use of child soldiers and sexual violence against women and children. Security sector reform is vital. CAR's interim Prime Minister has warned that if no direction is given to the under-utilised CAR national army, known as the FACA, there is a real risk they could turn against the population; and CAR's interim President has requested that priority be given to reforming and training the FACA. The UN (which has the lead on security sector reform) has welcomed the prospect of the EU beginning the process. Building state institutions can only be considered when there is sufficient and effective political dialogue, leadership and security. The UK's immediate priorities are to ensure: that a safe and secure environment is established and maintained, particularly in Bangui, to enable the right conditions for a sustainable political process; and for the UN to coordinate the humanitarian response effectively. An EU Military Advisory Mission meets the UK's objective of working with and through international organisations to ensure peace and security are delivered to CAR.

14.6 A mission of 50–60 military advisers is envisaged; there are no plans at present for the UK to contribute troops. Its estimated cost is €7.9 million; the UK share would be €1.24 million. EUMAM CAR will need to deploy on 1 March 2015 to ensure it can reach Full Operational Capability (FOC) by 15 March 2015, and thus have a smooth handover with EUFOR CAR. EUMAM RCA shall end no later than 12 months after having reached FOC.

14.7 Looking further ahead, the Minister says that, at UK request, the Crisis Management Concept (the first stage of the planning process of a possible mission) is based on a “phased approach”, i.e.:

“EUMAM CAR will begin as an advisory mission which, subject to meeting agreed conditions and receiving further political consent from Member States, could transition to conduct targeted non-operational training. We have also emphasized, and gained agreement in Brussels, that EUMAM CAR must work in close co-ordination with the UN. Non-operational training will involve improving the capabilities of existing units, increasing military leadership skills and competences, courses on basic citizenship and military knowledge modules (Human Rights, Gender Equality, international humanitarian law etc.).”

14.8 So far, so good. The case for this second EU mission is compelling. The danger, however, is that — as in the DRC⁶² — what begins as a one-year mission morphs into

⁶² The [EUSEC RD Congo](#) mission has been deployed in the Democratic Republic of the Congo (DRC) since June 2005, reforming their army, working with the other contributing members of the international community, giving advice and assistance directly to the competent Congolese authorities on security-sector reform. Since the original

one that goes on for years. In that case, what began in 2005 with the aim of making sure ex-guerrillas who were now supposedly soldiers actually got paid, has expanded its activities over the past decade into modernising both administration and human resources management, and providing assistance to its Congolese partners in troop training.

14.9 The Minister and his officials have plainly done what they can at this juncture to guard against EUMAM CAR becoming self-generating, but troop training is already in prospect. It will be necessary for there to be a very sound justification for a further mandate in a year's time.

14.10 The Minister also underlines the lead that the UN is to have in SSR and the need for EUMAM CAR to work in close co-ordination with the UN. However, we would like greater clarity about how EUMAM CAR and MINUSCA are to work together, i.e. who is going to do what and with whom, and how the UN is to take the lead on SSR.

14.11 We ask the Minister to provide the answer before the Council Decision to launch the mission is submitted for scrutiny. In the meantime, we now clear this Council Decision from scrutiny.

Full details of the document: Council Decision on a European Union Military Advisory Mission in the Central African Republic (EUMAM RCA): (36595), —.

Background

14.12 On 10 February 2014 the Council adopted Decision 2014/73/CFSP on a European Union military operation in the Central African Republic (EUFOR CAR). It was launched on 1 April 2014, and is due to run until 15 March 2015.⁶³

14.13 EUFOR CAR stems from UN Security Council resolution 2134 of 28 January 2014. It was originally established to provide temporary support, for a period of up to six-months, to help achieve a secure environment in the Bangui area, and contribute to international and regional efforts, i.e., the African Union (AU) peace-keeping force MISCA, so as to protect the populations most at risk, enable the free movement of civilians, and create the conditions required in order to provide humanitarian aid for those who needed it.

14.14 Earlier, via Operation Sangaris, some 1,600 French troops had been deployed in the CAR since early December 2013 on a mission to stem fighting between predominantly

mandate, which aimed to support integration into the Armed Forces of the DRC (FARDC) and to run the "Chain of payments" project for ensuring the security of payments to the military, the mission has expanded its activities in this area with a view to modernising both administration and human resources management, and diversified its activities, providing assistance to its Congolese partners in the field of troop training.

⁶³ See (35747), —: Thirty-fourth Report HC 83-xxxi (2013–14), [chapter 14](#) (5 February 2014) and Thirty-eighth Report HC 83-xxxv (2013–14), [chapter 16](#) (5 March 2014); and (35827), — and (35828), —: Thirty-eighth Report HC 83-xxxv (2013–14) [chapter 18](#) (5 March 2014) for full background and details.

Muslim militants, known as the ex-Séléka,⁶⁴ and bands of Christian vigilantes, the Anti-balaka.⁶⁵

14.15 The most recent Council Decision proposed the extension of EUFOR CAR's mandate until 15 March 2014, at which point "EUFOR RCA shall end". The extension was proposed by interim President Samba-Panza on 10 September 2014; and was welcomed by the UN Department for Peacekeeping Operations in order to provide support to and ensure a smooth handover with the UN Peacekeeping Operation MINUSCA (which was launched on 15 September 2014, into which the AU's 5,200 troops were absorbed, which was to be augmented by an additional 1,800 UN uniformed personnel, and which was due to reach Full Operational Capacity by April 2015).

14.16 When the Committee cleared this Council Decision on 15 October 2014, it found it heartening that EUFOR CAR had been able to make a positive impact in extremely challenging circumstances, and that security and governance as a whole was moving in the right direction: but that it was also right that the UN and, within it, the AU should be taking the lead. The Minister's case for this further extension, to enable this to happen in good order, was compelling: but so, too, was the determination that there shall be no further extension of EUFOR CAR beyond April 2015.⁶⁶

The Minister's letter of 2 January 2015

14.17 The Minister for Europe recalls noting, when submitting the EUFOR RCA Council Decision for scrutiny, that Member States were considering options for future EU engagement in CAR and says that he would like to provide another update at this point for information and to ensure adequate time for parliamentary scrutiny.

14.18 He continues as follows:

Current political and security situation in the CAR

"EUFOR CAR has secured the airport and the 3rd and 5th districts within the capital, Bangui. EUFOR's mandate will expire on 15 March 2015. We judge the handover between the African Union troops (MISCA) to the UN Peacekeeping force (MINUSCA) on 15 September as a successful transfer of authority. However, several months of relative calm in Bangui was shattered in October with an increase in violence including an attack on a MINUSCA convoy. The situation has calmed since then but still remains fragile. Banditry, in particular against the humanitarian community, is now the main problem in Bangui. Elections are scheduled for July 2015. There is a requirement for building state institutions in CAR but this can only be considered when there is sufficient and effective political dialogue, leadership and security.

⁶⁴ Séléka was an alliance of rebel militia factions that overthrew the Central African Republic government on March 24, 2013. Nearly all the members of Séléka are Muslim.

⁶⁵ The term used to refer to the Christian militias formed after the rise to power of the Séléka; Anti-balaka means "anti-machete" or "anti-sword" in the local Sango and Mandja languages.

⁶⁶ See (36377), —: Thirteenth Report HC 219-xiii (2014–15), [chapter 38](#) (15 October 2014).

Security Sector Reform in CAR

“It is clear that, to ensure sustainable security in CAR, it is vital to have security sector reform. The under-utilised CAR national army is known as the FACA and is now considered to be the biggest risk of stability to CAR. The CAR interim Prime Minister has said that if no direction is given to the FACA there is a real risk they will turn against the population of CAR and further destabilise the country. The UN are currently going through and cleansing the database of FACA personnel — removing people that have been involved in threatening the peace and stability of the country. The CAR interim President has requested that priority be given to reforming and training the FACA. The UN (which has the lead on security sector reform in CAR) has requested that the EU starts the process of security sector reform of the FACA in CAR. The UN would then look at putting together a wider plan on security sector reform following elections ensuring it has the buy-in of the newly elected CAR government. In November, the EU started to consider the possibility of developing an advisory mission to the FACA, which might also provide non-operational training if conditions allow.

Crisis Management Concept

“Political endorsement was given for a new EU Military Advisory Mission to CAR (EUMAM CAR) and a Crisis Management Concept (CMC) was approved at the Foreign Affairs Council (FAC) on 15 December. A CMC is the first stage of the planning process of a possible mission. The UK supported the development of a CMC and will work with partners to ensure that the mission will: have a clear mandate, be co-ordinated with the UN, have a realistic scale, be underpinned by proper planning, represent good value for money, and have a clear exit strategy and budget. The severity and scale of the violence and subsequent humanitarian crisis, as well as the potential for the situation to destabilise the region, has justified a UK response. A follow-on mission meets our objective of working with and through international organisations to ensure peace and security is delivered to CAR.

“The CMC incorporates a ‘phased approach’ for EUMAM CAR — starting off as an advisory mission, which, subject to agreed conditions and further political consent, could transition to conduct targeted non-operational training, in co-ordination with the UN. Non-operational training will involve improving the capabilities of existing units’ chain of command, increasing military leadership skills and competences, courses on basic citizenship and military knowledge modules (Human Rights, Gender Equality, international humanitarian law etc.).

“The mission would consist of 50–60 military advisors. The further Security Sector Reform process depends on the elections in CAR as a prerequisite to set up a democratically elected and recognised government. Since elections are scheduled for July 2015, the mission will have a duration of 12 months from the time of reaching full operational capacity.

Timetable and parliamentary scrutiny

“The timetable for EUMAM CAR is tight, with the aim to have the mission on the ground before EUFOR CAR ends to enable continuity and a good handover of contacts and expertise. We will work to ensure we get the necessary documents to the Committees as early as possible to ensure adequate time for clearance. We have very much appreciated the speed at which previous EUFOR CAR documents have been cleared by the Committees and hope the same will be possible for this mission.

“With the CMC approved at the Foreign Affairs Council (FAC) on 15 December, we anticipate that a draft Council Decision to ‘establish a mission’ will be issued at the beginning of January, which we will aim to submit to scrutiny Committees by 8 January with a view to the Council Decision being approved at the FAC on 19 January. A draft Council Decision to ‘launch the mission’ will then be issued late January/early February which we will submit to scrutiny Committees with a view to the Council Decision being approved at the FAC on 9 February.

“The EU Military Advisory Mission to CAR (EUMAM CAR) is envisaged to deploy on 1 March and reach full operational capacity on 15 March, the same date that the mandate for EUFOR expires.”

The draft Council Decision

14.19 In his Explanatory Memorandum of 8 January 2015, the Minister says that, to ensure sustainable security in the CAR:

“it is vital to have security sector reform. The under-utilised CAR national army, known as the FACA, is considered to be a significant risk to the stability of the country. CAR’s interim Prime Minister has warned that if no direction is given to the FACA, there is a real risk they could turn against the population. This would further destabilise the country and put at risk the security gains helped by international forces (EU, AU and UN). Catherine Samba-Panza, CAR’s interim President, has requested that priority be given to reforming and training the FACA. The UN (which has the lead on security sector reform in CAR) has welcomed the prospect of the EU beginning the process of FACA security sector reform.

“The Foreign Affairs Council on 15 December 2014 gave political endorsement for an EU Military Advisory Mission to CAR and approved a Crisis Management Concept (subject to Parliamentary scrutiny). The External Action Service and Member States hope to secure a Council Decision to establish EUMAM CAR at the 19 January 2015 Foreign Affairs Council. Early agreement is needed to allow sufficient time for operational planning to meet an envisaged deployment date of 1 March. This would allow the mission to reach Full Operational Capability (FOC) on 15 March, the same date that the mandate for the separate EU security mission (EUFOR CAR) expires. The mission will last for 12 months from the point it reaches FOC.

“At UK request, the Crisis Management Concept is based on a ‘phased approach’. EUMAM CAR will begin as an advisory mission which, subject to meeting agreed

conditions and receiving further political consent from Member States, could transition to conduct targeted non-operational training. We have also emphasized, and gained agreement in Brussels, that EUMAM CAR must work in close co-ordination with the UN. Non-operational training will involve improving the capabilities of existing units, increasing military leadership skills and competences, courses on basic citizenship and military knowledge modules (Human Rights, Gender Equality, international humanitarian law etc.). The mission will consist of 50-60 military advisors.”

The Government’s view

14.20 The Minister comments as follows:

“The situation in the Central African Republic remains dire. Despite the signing of a cessation of hostilities agreement in Brazzaville on 23 July, renewed fighting continues in several parts of the country, leading to further internal displacements and restrictions to humanitarian access. Several months of relative calm in Bangui was shattered in October with a spike in violence including an attack on a UN convoy. The situation has calmed since then but still remains fragile. The population continues to suffer from extrajudicial killings, arbitrary arrests and detention, torture, recruitment and use of child soldiers and sexual violence against women and children.

“A sustainable recovery from crisis will depend on improved security. There is a requirement for building state institutions in CAR but this can only be considered when there is sufficient and effective political dialogue, leadership and security.”

14.21 The Minister goes on to say that the UK’s immediate priorities for CAR at this critical time are to ensure:

“that a safe and secure environment are established and maintained, particularly in the capital Bangui which will enable the right conditions for a sustainable political process; and for the UN to coordinate the humanitarian response effectively.”

14.22 An EU Military Advisory Mission “meets the UK’s objective of working with and through international organisations to ensure peace and security are delivered to CAR”.

14.23 With regard to EUFOR CAR and the UN Peacekeeping Operation, MINUSCA (which should reach Full Operational Capability in April 2015), the Minister says that establishing EUMAM CAR would support the UN’s deployment and help lock in the security gains and trust that EUFOR CAR has built up with the local population and government; and in particular would:

- begin the process of security sector reform of the FACA in CAR;
- cement the current positive civil-military co-operation;
- provide a positive signal of EU support to the Interim President of CAR and her interim government following their request for priority to be given to reforming and training of the FACA; and

— deepen EU and UN common cooperation in CAR.

14.24 Looking ahead, the Minister then says:

“Before giving our support to the development of a Crisis Management Concept, we worked to ensure that it incorporated a ‘phased approach’ for EUMAM CAR — starting off as an advisory mission which, subject to agreed conditions and further political consent, could transition to conduct targeted non-operational training in co-ordination with the UN. We have also emphasised the importance of a realistic exit strategy as planning continues. The mission aims to complement UN efforts on SSR. Any further steps, following its 12 month mandate, will need to consider progress and CAR internal political reforms.”

14.25 With regard to the Financial Aspects, the Minister says:

“Through the ATHENA mechanism,⁶⁷ the UK would expect to pay a 15.66% share of common costs. The Reference Amount for EUMAM CAR, the initial estimate of the total common costs, will be agreed as part of this Council Decision. The Athena Administrator has made a preliminary analysis of the possible costs EUMAM CAR based on a certain number of assumptions. The Administrator has evaluated the reference amount for the activities foreseen in the draft Council Decision at €7.9m for the 14 month period. The UK’s contribution would therefore be around €1,237,140. HMG would provide this funding from the Peacekeeping budget which on current planning has sufficient capacity and flexibility to absorb this spend in the short term. We continue to argue strongly for the importance of driving down costs and pushing for value for money. At present, there are no plans for the UK to contribute troops.”

14.26 With regard to the immediate *Timetable*, the Minister says:

“The aim is for the adoption of the Council Decision to launch the mission at the Foreign Affairs Council on 19 January 2015 with a further Council Decision to establish the mission being adopted at the Foreign Affairs Council on 9 February 2015 (a further Explanatory Memorandum will be submitted ahead of that decision). EUMAM CAR will need to deploy on 1 March 2015 to ensure it can reach Full Operational Capability by 15 March 2015. This will allow for a smooth handover from EUFOR CAR, the mandate for which expires on 15 March 2015.”

⁶⁷ Athena is the mechanism that handles the financing of common costs relating to EU military operations under the EU’s common security and defence policy (CSDP). It operates on behalf of the 27 EU member states who contribute to the financing of EU military operations (Denmark has opted out of CSDP on military matters). Athena was set up by the Council of the European Union on 1 March 2004. Five active EU military operations currently benefit from Athena financing: EUFOR ALTHEA (Kosovo); EUNAVFOR ATALANTA (anti-piracy); EUTM SOMALIA; EUTM MALI; and EUFOR RCA. Athena manages the financing of common costs for these operations, such as transport, infrastructure and medical services, as well as the nation borne costs, which include lodging, fuel, and similar costs linked to national contingents. Athena is managed by an administrator and under the authority of a Special Committee made up of representatives from the member states contributing to the financing of each operation. See [http://www.consilium.europa.eu/policies/fac/financing-security-and-defence-military-operations-\(athena\)](http://www.consilium.europa.eu/policies/fac/financing-security-and-defence-military-operations-(athena)) for full information.

Previous Committee Reports

None, but see (36377), —: Thirteenth Report HC 219-xiii (2014–15), [chapter 38](#) (15 October 2014); (35747), —: Thirty-fourth Report HC 83-xxxi (2013–14), [chapter 14](#) (5 February 2014) and Thirty-eighth Report HC 83-xxxv (2013–14), [chapter 16](#) (5 March 2014); and (35827), — and (35828), —: Thirty-eighth Report HC 83-xxxv (2013–14) [chapter 18](#) (5 March 2014).

15 Statistics

Committee's assessment	Legally and Politically important
Committee's decision	Cleared from scrutiny (by Resolution of the House of 20 January 2014)
Document details	Draft Regulation to amend the European Statistical Law
Legal base	Article 338 TFEU; co-decision; QMV
Department	Office for National Statistics
Document numbers	(33844), 9122/12, COM(12) 167

Summary and Committee's conclusions

15.1 Regulation (EC) 223/2009 is the framework legislation for the European Statistical System. All other legislation under which EU statistics are produced must be made in accordance with that Regulation. In April 2012, the Commission proposed amendments to four key features of the framework Regulation and this draft Regulation was cleared from scrutiny after debate in January 2014 in European Committee B.

15.2 As we recorded in our last Report, the Government has now told us of a new addition to the text of the draft Regulation, which gives cause for concern and which was being put to COREPER for agreement on 19 December 2014. This addition was about the possibility of inspections by the Commission to investigate whether or not a Member State should be subject to sanction for misrepresenting statistical data. The Government holds that if any relevant sectoral legislation seeks to create a power to impose fines, that power would be unlawful, and any subsidiary power to investigate which was inseparably linked to it would also be impermissible. Therefore the Government was going to vote against the draft Regulation at COREPER and, in the event that the proposal received a qualified majority in support, would make a Minute statement to the effect that it considers the provisions of sanctions regimes that are not foreseen by the Treaty as illegal. We noted the Government's concern about this addition to the draft Regulation and awaited its promised account of the outcome of the COREPER meeting.

15.3 The Government tells us now that, despite criticisms of the new provision by the UK and other Member States, the Presidency decided at the COREPER meeting that there was sufficient support for the compromise text to warrant proceeding to a vote on it at an

ECOFIN Council early in 2015 and that the Government tabled a Minute statement against the new provision, supported by three other Member States.

15.4 We presume that it is unlikely that the Government will be able to prevent adoption of the compromise text by the ECOFIN Council. But, noting its comment about the possibility of Court of Justice adjudication on the use of Article 12.3b in future sectoral legislation, we ask the Government whether it intends to immediately challenge that provision if adopted in the present amending Regulation.

Full details of the documents: Draft Regulation amending Regulation (EC) No. 223/2009 on European statistics: (33844), [9122/12](#), COM(12) 167.

Background

15.5 Regulation (EC) 223/2009 is the framework legislation for the European Statistical System. All other legislation under which EU statistics are produced must be made in accordance with that Regulation. In April 2012, the Commission proposed amendments to four key features of the framework Regulation — the coordinating role of the National Statistical Institutes of Member States, the role and professional independence of the heads of those institutes, self-assessment of the EU statistics produced by a Member State and a published statement of confidence in them and enhanced access to administrative data. The draft Regulation was cleared from scrutiny after debate in January 2014 in European Committee B.⁶⁸

15.6 As we recorded in our last Report, the Government has now told us of a new addition to the text of the draft Regulation, Article 12.3b, which gives cause for concern and which was being put to COREPER for agreement on 19 December 2014. This addition was about the possibility of inspections by the Commission to investigate whether or not a Member State should be subject to sanction for misrepresenting statistical data. The Government holds that if any relevant sectoral legislation made on the basis of Article 338 TFEU (governing statistics) seeks to create a power to impose fines, that power would be unlawful, and any subsidiary power to investigate which was inseparably linked to it would also be impermissible under Article 338. Therefore the Government was going to vote against the draft Regulation at COREPER and, in the event that the proposal received a qualified majority in support, would make a Minute statement to the effect that it considers the provisions of sanctions regimes that are not foreseen by the Treaty as illegal.

15.7 We noted the Government's concern about this addition to the draft Regulation and awaited its promised account of the outcome of the COREPER meeting.

The Minister's letter of 6 January 2015

15.8 The Minister for Civil Society, Cabinet Office (Mr Rob Wilson) reports the COREPER meeting of 19 December 2014 discussed the proposal as anticipated, where the Presidency sought agreement to their compromise text.

⁶⁸ *Gen Co Debs*, European Committee B, 20 January 2014, [cols 3-10](#).

15.9 The Minister says that the UK's Permanent Representative set out the Government's objections to Article 12.3b. He elaborates that:

- this new provision would introduce a sanctions and inspection regime that the Government considers as both undesirable and legally impermissible;
- it is particularly undesirable as it presents a basis for future proposals that could subject the UK to a sanctions regime based on no-notice on-site inspection visits by the Commission to the premises of Government Departments that produce official statistics;
- notwithstanding the need for the Court of Justice to adjudicate on the illegality of such potential future proposals should they become Regulations, the Government considers this to represent an unacceptable risk of an unnecessary increase in the Commission's competence, which it did not foresee in its signing of the Treaty; and
- the provision would also risk unwelcome interference in the operation of normal government business and would run against the principle of subsidiarity, particularly as the Government considers that the UK has a strong legal framework to guard against the concerns this measure is designed to address.

15.10 The Minister tells us that the UK's Permanent Representative introduced a statement to the COREPER minutes, setting out the Government's objections to the references to sanctions in Article 12.3b and that some other Member States presented a variety of objections to the compromise, while Finland, Hungary, and Lithuania joined the Minute statement proposed by the UK, as follows:

“With reference to the proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) no. 223/2009 on European Statistics, the United Kingdom consider that while Article 338(1) TFEU is the legal basis for Regulation 223/2009 it does not constitute an appropriate legal basis for Article 12.3(b) of the proposed regulation. The latter Article provides for a competence of the European Commission to initiate and conduct an investigation, in case sectoral legislation provides for fines in cases where Member States misrepresent statistical data. The United Kingdom underline that Article 338 TFEU does not provide for the imposition of fines or other sanctions in the field of statistics in sectoral legislation, therefore article 12.3(b) is not considered as a legally permissible basis for future sectoral legislation.”

15.11 The Minister continues that:

- the Presidency concluded, however that, despite these objections, there was sufficient support to proceed to a vote on the compromise text at an ECOFIN Council meeting early in 2015, but without a confirmed date; and
- in order to provide further safeguard against future potential use of Article 12.3b to subject the UK and other Member States to a sanctions regime not anticipated by the Treaty, the Government intends to vote against the compromise text at the relevant Council meeting and lay a similar statement in the minutes of that meeting.

Previous Committee Reports

Third Report HC 86-iii (2012–13), [chapter 10](#) (23 May 2012), Nineteenth Report HC 86-xix (2012–13), [chapter 9](#) (7 November 2012), Twenty-seventh Report HC 86-xxvii (2012–13), [chapter 5](#) (16 January 2013), Twenty-ninth Report HC 86-xxix (2012–13), [chapter 6](#) (23 January 2013), Thirty-eighth Report HC 86-xxxvii (2012–13), [chapter 5](#) (26 March 2013), Thirteenth Report HC 83-xiii (2013–14), [chapter 5](#) (4 September 2013) and Twenty-eighth Report HC 219-xxvii (2014–15), chapter 18 (7 January 2015).

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

Department for Business, Innovation and Skills

(36584) Commission Annual Report (2012–2013) on *the application of Council Regulation (EC) No. 953/2003 of 26 May 2003 to avoid trade diversion into the European Union of certain key medicines.*
17047/14
+ ADD 1
COM(14) 737

Department for Education

(36551) European Court of Auditors' Report on *the annual accounts of the European Schools for the financial year 2013 together with the Schools' replies.*
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Department for Environment, Food and Rural Affairs

(36577) European Court of Auditors' Special Report No. 22/2014 — *Achieving Economy: Keeping the costs of EU-financed rural development project grants under control (pursuant to Article 287(4), second subparagraph, TFEU).*
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Department for Transport

(36583) Commission Communication on a *progress report on the implementation of the Railway Safety Directive.*
17042/14
+ ADD 1
COM(14) 740

Foreign and Commonwealth Office

(36552) European Court of Auditors' Special Report: *Can the EU's Centres of Excellence initiative contribute effectively to mitigating chemical, biological, radiological and nuclear risks from outside the EU? (pursuant to Article 287(4), second subparagraph, TFEU).*
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HM Treasury

(36587) Commission Report on *the exercise of the power to adopt delegated acts conferred on the Commission pursuant to Regulation (EC) No. 1060/2009 of 16 September 2009 on credit rating agencies.*
17104/14
COM(14) 743

Home Office

(36565)
16591/14
COM(14) 713

Draft Decision repealing certain acts in the Area of Freedom Security and Justice.

Formal minutes

Wednesday 14 January 2015

Members present:

Sir William Cash, in the Chair

Andrew Bingham

Mr James Clappison

Michael Connarty

Nia Griffith

Kelvin Hopkins

Jacob Rees-Mogg

Henry Smith

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 16 read and agreed to.

Resolved, That the Report be the Twenty-ninth Report of the Committee to the House.

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

[Adjourned till Tuesday 20 January at 3.15pm.]

Standing Order and membership

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

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

The expression “European Union document” covers —

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

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

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

Current membership

Sir William Cash MP (*Conservative, Stone*) (Chair)
 Andrew Bingham MP (*Conservative, High Peak*)
 Mr James Clappison MP (*Conservative, Hertsmere*)
 Michael Connarty MP (*Labour, Linlithgow and East Falkirk*)
 Geraint Davies MP (*Labour/Cooperative, Swansea West*)
 Julie Elliott MP (*Labour, Sunderland Central*)
 Stephen Gilbert MP (*Liberal Democrat, St Austell and Newquay*)
 Nia Griffith MP (*Labour, Llanelli*)
 Chris Heaton-Harris MP (*Conservative, Daventry*)
 Kelvin Hopkins MP (*Labour, Luton North*)
 Chris Kelly MP (*Conservative, Dudley South*)
 Stephen Phillips MP (*Conservative, Sleaford and North Hykeham*)
 Jacob Rees-Mogg MP (*Conservative, North East Somerset*)
 Mrs Linda Riordan MP (*Labour/Cooperative, Halifax*)
 Henry Smith MP (*Conservative, Crawley*)
 Mr Michael Thornton MP (*Liberal Democrat, Eastleigh*)

The following members were also members of the committee during the parliament:

Mr Joe Benton MP (*Labour, Bootle*)
 Jim Dobbin MP (*Labour/Co-op, Heywood and Middleton*)
 Tim Farron MP (*Liberal Democrat, Westmorland and Lonsdale*)

Penny Mordaunt MP (*Conservative, Portsmouth North*)
Sandra Osborne MP (*Labour, Ayr, Carrick and Cumnock*)
Ian Swales MP (*Liberal Democrat, Redcar*)