



House of Commons

European Scrutiny Committee

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# **Fifteenth Report of Session 2007–08**

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**Documents considered by the Committee on 27 February 2008,  
including the following recommendations for debate:**

Promotion of energy from renewable resources

Carbon capture and storage

Reduction of greenhouse gas emissions by 2020

Review of the Emissions Trading Scheme





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*Report, together with formal minutes*

*Ordered by The House of Commons  
to be printed 27 February 2008*



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## 1 Promotion of energy from renewable resources

(29405) 5421/08 + ADDs 1–2 COM(08) 19	Draft Directive on the promotion of the use of energy from renewable resources
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<i>Legal base</i>	Articles 95 and 175(1)EC; co-decision; QMV
<i>Document originated</i>	23 January 2008
<i>Deposited in Parliament</i>	1 February 2008
<i>Department</i>	Business, Enterprise & Regulatory Reform
<i>Basis of consideration</i>	EM of 14 February 2008
<i>Previous Committee Report</i>	None
<i>To be discussed in Council</i>	No date set
<i>Committee's assessment</i>	Politically important
<i>Committee's decision</i>	For debate on the Floor of the House

### Background

1.1 The encouragement of renewable energy has become an increasingly important part of the Community's attempts to reduce greenhouse gas emissions and to improve competitiveness and security of supply, and it has accordingly taken a number of measures to increase the production of renewables. Thus, in 1997, the Commission produced a White Paper which set a target of 12% by 2010 for their share of overall consumption, and this was followed by Directive 2001/77/EC (which sets a corresponding target of 21% for their share of electricity generation), and by Directive 2003/30/EC (which established a reference value under which the share of petrol and diesel sales accounted for by biofuels would rise from 0.5% in 2003 to 2% by 2005 and 5.75% by the end of 2010, but left Member States free to achieve this by means of non-binding indicative targets).

1.2 As we noted in our Report of 21 February 2007, the Commission put forward at the beginning of 2007, in the context of its Communication "*An energy policy for Europe*",<sup>1</sup> a separate Communication comprising a Renewable Energy Road Map.<sup>2</sup> This noted that, with the exception of electricity generation, progress towards meeting the various targets had been disappointing, and that the overall target of 12% for 2010 set in 1997 was unlikely to be met. It therefore suggested that the share of renewables in the Community's energy mix could be increased significantly on the basis of long-term mandatory targets and a stable policy framework. In particular, the Commission suggested that the Community as a whole should have a legally binding target under which renewable energy sources would account for 20% of consumption by 2020, with an additional target requiring biofuels to account for 10% of total petrol and diesel consumption in transport. It also said that, because of the largely national basis for renewable energy support measures, the overall

1 (28276) 5282/07: see HC 41-x (2006–07), chapter 2 (21 February 2007).

2 (28289) 5374/07: see HC 41-x (2006–07), chapter 20 (21 February 2007).

Community target should be reflected in mandatory national targets, but with Member States having the flexibility to promote the renewable energies most suitable to their circumstances through National Action Plans.

1.3 The European Council in March 2007 endorsed these recommendations, and invited the Commission to bring forth the necessary legislative proposals, which it has now done in this document.

### The current document

1.4 In accordance with the remit set by the European Council, the Commission has put forward a draft Directive under which each Member State would be required to adopt a National Action Plan in order to meet the renewable energy target which it has been set for 2020 (see Annex), including a minimum 10% share in the transport sector. In addition, it would have to conform to a series of two yearly interim targets,<sup>3</sup> and to amend its National Action Plan if those targets are not met.

1.5 These underlying aims would be underpinned by a number of further provisions, which would:

- set out how national targets are to be measured, and the activities which can be taken into account: the latter would include certain very large infrastructure projects even if they are not operational in 2020, as well as electricity produced outside the Community, but consumed within it, provided it is produced by a new installation and has the necessary guarantee of origin (certifying its renewable origin);
- standardise and enhance the role of such guarantees of origin, notably in enabling their transfer so as to give Member States flexibility to meet their national targets by developing more cost-effective non domestic renewable energy elsewhere in the Community (though there would be certain restrictions on those transfers);
- require reforms of administrative and regulatory barriers to the growth of renewables, including the simplification of authorisation procedures and minimum levels of renewable energy for new or refurbished buildings;
- require improvements in the provision of information and training about renewable energy, and the development of certification regimes for renewable energy installers; and
- improve the access of renewable energy to the electricity grid by requiring Member States to provide priority access, develop grid infrastructure, and review cost sharing rules.

1.6 The proposal would also establish a sustainability regime for biofuels, under which those counting towards a national target would have to provide a minimum 35% saving in greenhouse gas emissions. This would be accompanied by a prohibition on the use of raw

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<sup>3</sup> These would be based on a progressive reduction in the difference between the actual position in 2005 and the objective set for 2020.

material from undisturbed forests, bio-diverse grasslands and nature protection areas, and on the conversion of wetlands and continuously forested areas for biofuel production. It would also introduce biofuel blends, and require Member States to give a bonus in their biofuel obligations to those from wastes, residues, non-food cellulosic and ligno-cellulosic material.

## The Government's view

1.7 In his Explanatory Memorandum of 14 February 2008, the Minister of State for Energy at the Department for Business, Enterprise & Regulatory Reform (Mr Malcolm Wicks) has provided an extremely detailed appraisal of the implications of the proposal.

1.8 As regards the *legal and procedural issues*, he notes that the Commission has cited Articles 95 and 175(1) of the Treaty as the legal base for the proposed Directive, and that consequently, it would be adopted by qualified majority voting under the co-decision procedure. However, he says that the Government is considering whether Article 175(2) — which requires unanimity and the consultation procedure for measures significantly affecting a Member State's choice between different energy sources and the general structure of its energy supply — should apply as well, notwithstanding the Commission's argument that this Article does not apply because, in general, renewable energy is a close substitute for conventional energy and is supplied through the same infrastructure and logistic systems, and because all Member States already use renewable energy and all have already decided to increase renewable energy's share. He also points out that, following the European Council in spring 2007, the Commission made a political commitment to all Member States that it would attempt to agree the national targets by unanimity.

1.9 As regards the *financial implications*, the Minister says that the draft Directive itself has no direct financial implications, but that the implications of the obligations and actions flowing from it would be significant. In particular, the Commission's proposed target of 15% for the UK would be very challenging, as our current share is less than 2% — lower than most other Member States, and only expected to rise to 5% by 2020 on the basis of current and planned policies. He adds that, whatever the agreed target, the scale of the ambition involved will require a major economic effort and additional financial support measures. It will therefore be necessary to ensure that the Directive encourages the most cost-effective approach to meeting such targets.

1.10 That said, the Minister points out that estimating the likely cost to the UK is difficult, since the future cost of renewable energy technologies is dependent on a wide number of variables, such as the future cost of fossil fuels and carbon/Emission Trading Scheme prices; expected future technology capital costs and capacities; and financing costs, whilst different regulatory structures (such as planning and grid access) also have an impact. He says that some initial assessments have nevertheless been made, which suggest that the direct cost to the UK of meeting a 15% target will be at least £5 billion per annum by 2020, depending on the precise shares achieved by the different sectors, in addition to which there will be indirect costs in the form of higher energy prices. Carbon savings delivered through the increased uptake of renewables will count towards the achievement of the Community's 2020 greenhouse gas emission reduction target and the UK's carbon budgets. The Government needs to do further analysis and work with the Commission on

the issue of costs during the course of negotiations, and our Initial Impact assessment will include more detail on financial implications.

1.11 Turning to the *policy implications*, the Minister begins with a few general comments. First, he says that the proposal is significant, in that renewable energy is an integral part of the Government's strategy to deliver its climate change and wider energy policy goals, and the UK is fully committed to meeting its share of the overall target which will be decided in negotiations. He considers that the proposal provides a good starting point for those negotiations, but that the implications of the ambitious nature of the commitment involved would require an extensive change in how energy is generated and used in the UK. Consequently, achieving the target decided will require enormous investment in technological development, deployment and infrastructure, and other barriers to deployment will need to be tackled at both a national and Community level. (For example, a 15% target would require an approximately ten-fold increase in the proportion of renewable energy in the UK over little more than a decade.)

1.12 The Minister observes that “this will not be easy”, as it will lead to increases in costs for consumers, and will require tough decisions in relation to such issues as planning. Nevertheless, he believes that these hard choices are necessary to drive up renewable deployment in the UK, and so maximise the benefits in terms of reduced emissions, enhanced security of supply and the business opportunities arising from the considerable investment which will be needed. The Minister adds that this will require swift and full delivery of current proposals for encouraging deployment, and he points out that the Government has already introduced a range of measures to increase the use of renewable energy in the UK, such as the Renewables Obligation (which has led to more than a doubling of renewables in UK electricity generation since 2002). In addition, it will be introducing in April 2008 a Renewable Transport Fuel Obligation (which will require fuel suppliers to ensure that at least 5% of their fuel comes from renewable sources by 2010–11). The Directive will nevertheless also require the rapid development of further measures, which will need concerted action across the electricity, heat and transport sectors.

1.13 As regards individual aspects of the proposal, the Minister welcomes the principle of standardising and enhancing the role of Guarantee of Origin Certificates to allow them to be transferred between Member States, and does not believe that this should impact on national support systems for promoting renewables. He also welcomes the opportunity to work with the Commission to ensure that suitable flexibilities are included in the proposal to ensure the cost-effective delivery of the targets set, and he agrees that strengthening the legal and administrative provisions, in order to remove any unreasonable barrier to the integration of renewables into the Community energy system, is crucial to the long-term development of the industry, as are improvements in the provision of suitable information and training.

1.14 However, the Minister says that the Government has concerns about the following aspects of the proposal.

### *Biofuels*

The Minister believes that biofuels are important mainly as a means of reducing greenhouse gas emissions, and that the Directive should therefore promote those giving

the best greenhouse gas savings, whereas it would treat all biofuels alike, apart from those derived from wastes, residues, non-food cellulosic material and lingo-cellulosic material (which generally — but not necessarily — offer greater greenhouse gas savings and which would count double under national obligations). He also says that the Directive must not encourage the production of biofuels which could be environmentally or socially damaging, it being essential to have robust sustainability criteria, with provision for these to be revised in the light of experience. In particular, he notes that the criteria proposed are not as comprehensive as those being developed for the Renewable Transport Fuel Obligation in the UK, and he suggests that there should be provision for the biofuels target to be reviewed and revised if the evidence indicates that it cannot be achieved solely through the use of sustainably-produced biofuels.

Finally, the Minister comments that amendments<sup>4</sup> to the Fuel Quality Directive currently before the Council and the European Parliament would introduce a greenhouse gas target for road transport fuels which would need to be achieved primarily through the use of biofuels, and that it is therefore essential that there should be consistency between the two measures, in terms of the sustainability criteria and the methodology used to assess greenhouse gas emissions.

### *Impact on electricity investment*

The Minister says that achieving the level of ambition implied by the proposed UK target of 15% will require significant increases in the levels of electricity derived from renewable energy sources by 2020. It will therefore be necessary to assess the implications for the electricity grid of having a significantly higher share of renewables on the system, the impact on non-renewables electricity generation investment, and the need for back-up capacity. In addition, it will be necessary to consider carefully the proposal for mandating priority access to the grid for renewables (which is currently discretionary).

### *Heating and cooling*

The Minister suggests that the target proposed will require a major increase in the use of renewables in the heating and cooling sector, which in itself would pose a number of significant challenges for the UK, given the well developed gas network and the low starting point (currently about 0.6%). He also points out that there are significant barriers which will need to be addressed in increasing the deployment of renewables in this sector (for example supply chain issues, consumer acceptability, uncertainty and risk).

### *Impact on achieving wider carbon goals*

The Minister observes that renewable energy is an integral part of the UK strategy for reducing carbon emissions, and will play an important role in meeting its goals for 2020 and 2050 (to reduce carbon emissions by 26–32% and 60% on 1990 levels respectively).

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<sup>4</sup> (28351) 6145/07: see HC 41–xiv (2006–07), chapter 1 (14 March 2007) and HC 41–xxxiv (2006–07), chapter 1 (10 October 2007).

He says it will be necessary to understand both how the measures introduced to increase deployment of renewables will contribute to reductions in emissions, and how they will interact with other low carbon options, particularly as the Government brings forward carbon budgets through the draft Climate Change Bill and looks ahead to the targets for 2020. (For example, the effect on investments in other low carbon technologies, such as nuclear and carbon capture and storage, and the effect on the carbon price and the effective operation of the Emissions Trading Scheme.)

1.15 The Minister points out that the main issues addressed in this proposal were debated in the consultation on the Government's Energy Green Paper and the Strategic European Energy Review between March and September 2006, and that the Commission consulted Member States, stakeholder groups, civil society organisations, NGOs and consumer organisations during 2006. He says that his department is currently undertaking an informal consultation exercise which will allow UK individuals and organisations to comment on the proposal, and that their responses will help determine the position taken in Council and in the European Parliament. He adds that the Government will launch in the summer a formal consultation on what more needs to be done to meet the UK's agreed share of the target, with a view to developing a new Renewable Energy Strategy in 2009. In addition, a formal UK impact assessment of the proposal is currently being prepared, and the Government intends to submit and publish this, alongside its own research findings, in due course.

## Conclusion

1.16 **This document would give effect to the decision taken by the European Council last spring that Member States should be set legally binding targets for increasing the contribution which renewable sources make to overall energy consumption by 2020. As such, its broad aims are in line with current UK policy in this area, but it is clear from the Government's Explanatory Memorandum that the proposal does have very significant implications. For example, the Government describes the proposed target for the UK — requiring a ten-fold increase in the share of renewables in the period in question — as “very challenging”, and as requiring a major economic effort, with the direct cost to the UK of meeting the 15% target currently put at £5 billion a year. The Government adds that there will be indirect costs in the form of higher energy prices for consumers, and that it will require tough decisions in areas such as planning. It also highlights the related proposal that, by 2020, biofuels should account for 10% of total petrol and diesel consumption, representing a significant increase on current levels, and in the process raising concerns that this should not have environmentally and socially damaging consequences, particularly in relation to sustainability.**

1.17 **In the light of these, and the other concerns which we have highlighted in this Report, we consider this to be a very significant proposal, and for that reason we are recommending that it should be debated on the Floor of the House.**

## Annex: Member State Targets for Share of Energy from Renewable Sources by 2020

	Share of energy from renewable sources in final consumption of energy 2005	Target for 2020
Austria	23.2%	34%
Belgium	2.2%	13%
Bulgaria	9.4%	16%
Cyprus	2.9%	13%
Czech Republic	6.1%	13%
Denmark	17.0%	30%
Estonia	18.0%	25%
Finland	28.5%	38%
France	10.3%	23%
Germany	5.8%	18%
Greece	6.9%	18%
Hungary	4.3%	13%
Ireland	3.1%	16%
Italy	5.2%	17%
Latvia	34.9%	42%
Lithuania	15.0%	23%
Luxembourg	0.9%	11%
Malta	0.0%	10%
Netherlands	2.4%	14%
Poland	7.2%	15%
Portugal	20.5%	31%
Romania	17.8%	24%
Slovenia	16.0%	25%
Slovakia	6.7%	14%
Spain	8.7%	20%
Sweden	39.8%	49%
UK	1.3%	15%

## 2 Carbon capture and storage

(29406) 5835/08 + ADDs 1–2 COM(08) 18	Draft Directive on the geological storage of carbon dioxide and amending Council Directives 85/377/EEC, 96/61/EC, Directives 2000/60/EC, 2001/80/EC, 2004/35/EC, 2006/12/EC and Regulation (EC) No 1013/2006.
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<i>Legal base</i>	Article 175(1)EC; co-decision; QMV
<i>Document originated</i>	23 January 2008
<i>Deposited in Parliament</i>	1 February 2008
<i>Department</i>	Business, Enterprise & Regulatory Reform
<i>Basis of consideration</i>	EM of 18 February 2008
<i>Previous Committee Report</i>	None, but see footnotes 5 and 6
<i>To be discussed in Council</i>	No date set
<i>Committee’s assessment</i>	Politically important
<i>Committee’s decision</i>	For debate in European Committee

### Background

2.1 As we have noted in relation to the Commission Communication “*Supporting early demonstration of sustainable power generation from fossil fuels*”,<sup>5</sup> the Commission has concluded that the use of coal and other fossil fuels (notably gas) for the generation of electricity and other energy can continue only if drastic reductions can be achieved in the associated carbon footprint. An earlier Communication “*Sustainable power generation from fossil fuels: aiming for near-zero emissions after 2020*”<sup>6</sup> had set out in January 2007 ways in which this might be achieved, including the development and deployment of carbon capture and storage technologies.

2.2 In March 2007, the Commission was urged by the European Council to develop the necessary technical, economic and regulatory framework to bring environmentally safe carbon capture and storage into deployment, and it has therefore now put forward this proposal.

### The current proposal

2.3 The proposal covers the permanent storage of carbon dioxide<sup>7</sup> both offshore and onshore in such a way as to prevent or reduce as far as possible negative effects on the environment and any resulting risk to human health. As such, it applies to the territory of a Member State, its exclusive economic zone and its continental shelf, but not to the geological storage of carbon dioxide undertaken for research, development or testing of

5 (29399) 57870/08: see chapter 7.

6 (28291) 5239/07: see HC 41–x (2006–07), chapter 18 (21 February 2007).

7 It would not therefore include operations which inject carbon dioxide for other purposes — for example, for Enhanced Oil Recovery (EOR).

new products and processes. It would, however, prohibit the storage of carbon dioxide in the water column.

2.4 More specifically, the proposal would set out provisions in the following areas:

### *Site selection and exploration permits*

Member States would be allowed to determine the areas from which storage sites may be selected, according to the requirements laid down in the draft Directive for their characterisation and assessment, and subject to adherence with internationally non-binding guidance on sub-seabed storage of carbon dioxide laid down in the Convention for the Protection of the Marine Environment of the North East Atlantic (OSPAR). Exploration permits would have to be granted on the basis of objective, published criteria, for a maximum of two years, renewable once for a maximum of two years.

### *Storage Permits*

Permits would be required for all carbon dioxide storage site operators, and the proposal specifies the minimum content for permit applications and for the permits themselves. In particular, the issue of a storage permit by the competent authority of a Member State would be dependent on an opinion being issued by the Commission within six months, failing which it can be assumed that the Member State will be free to issue a permit (although this is not made clear on the face of the proposal). However, if a Member State's decision to issue a permit differs from the Commission's opinion, it will have to justify its decision to the Commission.

### *Operation, Closure and Post-Closure Obligations*

Requirements are laid down for accepting carbon dioxide streams into a storage site, including the keeping of a register of the origin, quantities and characteristics of the accepted carbon dioxide, whilst the stores would have to be monitored, in accordance with an agreed plan, reflecting OSPAR guidance. The proposal also covers inspections and the corrective measures to be taken where an irregularity occurs in the behaviour of the stored carbon dioxide or in the case of leakage.

Where a site is closed, operators would continue to be responsible for monitoring and for any necessary corrective measures until responsibility for the site can be transferred to the State (once all available evidence suggests that the carbon dioxide will be completely contained for the indefinite future). The proposal also contains a requirement for a financial security (or equivalent) to be provided by the storage operator to the competent authority prior to application for a storage permit, and for this to be returned to the operator once the State takes over responsibility (except where the State has had to withdraw the permit because the operator has failed to meet its obligations, in which case the security would be retained by the State until a new operator is found).

### *Third-party access and trans-boundary issues*

The proposal aims to ensure that use of carbon dioxide storage will be maximised across the Community. It would therefore require Member States to ensure that potential users have access to appropriate transport and storage facilities; allow transport network and storage operators to refuse access on the basis of a lack of capacity, so long as enhancements have been made where economical, or where a potential customer is willing to pay for them; require Member States to have dispute settlement arrangements to negotiate access (and also to have arrangements in place for cross-border disputes); and require the relevant competent authorities in Member States to meet the requirements of the Directive jointly in the case of trans-boundary transport or trans-boundary storage complexes.

2.5 The proposal would amend a number of other Directives to cover the entire carbon capture and storage chain, and remove any prohibitions which currently exist in Community law. This includes the Integrated Pollution Prevention and Control Directive to cover carbon capture and the Large Combustion Plant Directive to require carbon capture readiness; the Regulation of Shipments of Waste to allow shipments of carbon dioxide intended for storage; the Water Framework Directive to allow injection of carbon dioxide into certain geological formations, and the Waste Framework Directive to exclude carbon capture, transportation and storage from its scope; the Environmental Impact Assessment Directive to cover both the activities of capture, transportation and storage of carbon dioxide, and carbon capture and storage sites, and the Environmental Liability Directive to include carbon dioxide storage.

2.6 The proposal would also address the issue of capture readiness, in order to support the wish expressed by the European Council in March 2007 that carbon capture and storage should be deployed from 2020, if the technology proves to be viable. It would therefore amend the Large Combustion Plant Directive by creating a requirement for all new combustion plants covered by the existing Directive, and with a capacity of 300 megawatts or more, to have sufficient space for the equipment necessary for carbon capture and compression, and to have assessed the availability of suitable storage sites and transport facilities, and the technical feasibility of retrofitting for carbon dioxide capture.

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

2.7 In his Explanatory Memorandum of 18 February 2008, the Minister of State for Energy at the Department for Business, Enterprise & Regulatory Reform (Mr Malcolm Wicks) says that the Government agrees with the Commission's assessment that, if comparable security of carbon dioxide storage is not achieved at a Community level, there would be a distortion of the carbon market, since carbon dioxide captured and stored could be credited as not emitted under the Emissions Trading Scheme in one Member State, whereas it might not be so credited in another. He also points out that action at a Community level is consistent with the approach in other areas with comparable environmental risk and competition implications.

2.8 However, the Minister says that the Government does not accept the Commission's claim that the proposal is restricted to those requirements needed to ensure a comparable level of environmental protection across the Community or to avoid distortions of

competition. In particular, he points out that Member States would be required to submit to the Commission draft decisions on carbon dioxide storage permits, as well as decisions to transfer responsibility for closed stores to the state, following which they would be able to proceed only after the Commission has had time to issue an opinion, thus giving it a key active role in the domestic regulation in the Member States.

2.9 The Minister also points out that the proposal incorporates non-binding guidance from the OSPAR Convention on sub-seabed storage of carbon dioxide, and that, although this guidance is widely accepted as best practice and the (yet to be ratified) amended OSPAR Convention requires it to be applied to the extent possible, the proposal would make it binding for all Community storage sites. It will therefore need to be analysed further to check that this would not present problems in certain situations.

2.10 In commenting on the policy implications of the proposal, the Minister says that the Government believes that carbon capture and storage is a promising climate change mitigation measure, and he points out that the Energy White Paper 2007 set out a number of activities to demonstrate its feasibility and to encourage its take-up, including the development of a Community legal framework for long-term storage. He also points out that, although the current Energy Bill covers only the offshore storage of carbon dioxide, it would enable transposition of this Directive (including onshore storage) into UK law, when combined with other amendments to UK legislation.

2.11 The Minister says that the Government<sup>8</sup> welcomes this proposal, and considers it to be broadly in line with the UK's own approach, and with existing international agreements. However, he also points out that an amendment to the OSPAR Convention, made in June 2007, to allow all forms of sub-seabed storage of carbon dioxide, has yet to be ratified, and that many of the OSPAR signatories have indicated that they will ratify it once they have legislation in place through transposing the proposed Directive. It is therefore in the interest of the UK that the proposal should be adopted as swiftly as possible, provided it aligns with our objectives.

2.12 Having said that, the Minister suggests that there are some areas of the proposal which do not align with existing international agreements or the UK's offshore approach to carbon dioxide storage, or where further analysis and clarification is required. In particular he says:

- Although the ostensible aim of the proposal is to prevent (or reduce as far as possible) harm to the environment or to human health, it gives little consideration to the process safety issues associated with carbon dioxide capture, transport and injection, and its intentions as regards controlling the injection process and mitigating the consequences of a major loss of containment are unclear. Whilst the

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8 The Minister says that the Scottish Executive welcomes the Community's ambitions for CCS and its strong environmental benefits in carbon reduction, as set out in its draft Directive. It considers that carbon capture presents an "enormous opportunity" both for the environment and for the UK in exporting advanced technology. It suggests that Scotland stands in a strong position to take advantage of these opportunities with its existing knowledge from involvement in oil and gas production in the North Sea. The Scottish Executive comments that Scottish universities have significant research capability in carbon storage in particular, and the Scottish Executive is playing a strong role in assisting further research and ensuring that all opportunities are considered. There is great interest amongst Scottish-based utilities, and feasibility work on carbon storage is already underway. The Scottish Executive has made clear that it is committed to Scotland taking a lead in developing this technology, and that it welcomes the proposal and intends to work with the Westminster Government to ensure that its provisions meet agreed objectives.

UK recognises that the proposal is primarily environmental, its own proposed domestic regime aims to protect other economic uses of sub-surface space, such as the exploitation of oil and gas reserves, and it would like the Directive to require Member States to take into account the need to safeguard economic uses of subsurface space.

- The Government's view is that the exemption for carbon dioxide storage undertaken for research, development and testing of new products is not consistent with the amended OSPAR Convention, which requires all carbon dioxide storage to comply with its Risk Management Framework, and should therefore be removed.
- Some members of industry have expressed a view that five years would be a more suitable duration for an exploration permit, and that this should be extendable to allow a further year to take the measurements required for the permit application.
- The Government does not welcome the requirement to submit draft storage permits to the Commission for review, since this means that there would be a delay of up to six months between the draft decision and the final issue of the permit (plus the time for the Member States to notify the Commission and provide reasons where it deviates from the Commission's decision). A similar difficulty arises on decisions to approve the transfer of responsibility for a site to the State. It is not clear what value the Commission could provide, and that the provisions appear to be inconsistent with the subsidiarity principle, as well as creating considerable uncertainty and delay which could dissuade companies from investing in carbon capture and storage.
- Although monitoring would cease following transfer to the State, and would resume in the event that significant leakages or irregularities are identified, it is not clear how irregularities would be identified if monitoring had ceased (though monitoring in UK responsibility would be transferred to The Crown Estate, who will be able to monitor a storage site periodically).
- Although some members of industry have expressed concern that the requirement for the monitoring plan be updated every five years to take into account technical developments could require the purchase of new equipment, the Government's believes that such a provision is acceptable, as industry will inevitably need to take account of, and learn from, best practice and international experience. Provided the monitoring is 'fit for purpose', there is no need to require the 'state of the art' in all cases, and this should remove the concerns which have been expressed on that score.
- The Government wishes to ensure that the long-term storage liability arrangements in the proposal will be satisfied by the arrangements in the Energy Bill for Crown Estate leasing, since the latter will not be the competent authority overseeing the licensing scheme.
- The Government is also concerned that the liabilities for the store under the Emissions Trading Scheme will also be transferred to the State, which would mean

that, in the event of any leakage, the State would be responsible for remediation, would have to surrender the appropriate Kyoto allowances, and also would have to purchase and surrender allowances under the Emissions Trading Scheme for any carbon dioxide which had escaped. It may therefore be appropriate to seek the removal of Emissions Trading Scheme liabilities once responsibility for a storage site has transferred to the State, and he believes that further analysis is required as the Commission claims that this would upset accounting for ETS EU Allowance Units (EUAs) and Member States' Assigned Amount Units (AAUs) under Kyoto.

- The requirement for financial security to be given prior to the submission of an application for a storage permit needs to be clarified
- Although the proposal includes provisions on cross-border disputes, the London Protocol, which was amended in 2006 to permit carbon dioxide storage, still prohibits its cross-border transportation for disposal into a sub seabed formation. In addition, it appears that the provisions in the proposal are intended to circumvent the issue of how liabilities arising as a result of shared access to carbon dioxide storage sites would be divided between operators resident in different Member States, and Member States themselves. A trans-boundary working group on the Protocol to the London Convention is investigating this, and the UK-Norway-Netherlands North Sea Basin Task Force has begun looking into trans-boundary issues as part of its second work programme.
- Whilst the Government believes that one year may be sufficient time to transpose this Directive, this could be challenging; and, as it would want to see full implementation by all Member States to ensure the ratification of the amendment to the OSPAR Convention (see above), it could accept a longer implementation period in order to ensure that this takes place.

2.13 The Minister has provided an initial assessment of costs in a partial Impact Assessment, but this does little more than identify the areas in which implementation costs might arise in the UK, both for Government (in terms of administering the permit scheme and inspections, and any long-term liabilities under the Emissions Trading Scheme) and industry (in terms of compliance costs, including the provision of financial security and long-term liabilities) He says that a fuller Assessment will follow as appropriate once details and options are finalised.

## Conclusion

2.14 **Although the Government has welcomed this proposal, and considers it to be broadly in line with the UK's own approach, it is clear that it has a number of concerns, arising in part from the relationship between the requirements laid down here and those under corresponding international legislation, and in part from the way in which the arrangements would operate within the Community. In particular, the Government suggests that the need to involve the Commission in the issuing of permits, and in the transfer of site responsibility to the State, is unnecessary, and that there is also a need to clarify both how the long-term storage liabilities would operate and the relationship between what is proposed here and the Emissions Trading Scheme. For these reasons, we are recommending the document for debate in European Committee.**

### 3 Reduction of greenhouse gas emissions by 2020

(29401) 5849/08 + ADD 1 COM(08) 17	Draft Decision on the effort of Member States to reduce their greenhouse gas emissions to meet the Community's greenhouse gas emission reduction commitments up to 2020
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<i>Legal base</i>	Article 175(1)EC; co-decision; QMV
<i>Document originated</i>	23 January 2008
<i>Deposited in Parliament</i>	31 January 2008
<i>Department</i>	Environment, Food and Rural Affairs
<i>Basis of consideration</i>	EM of 14 February 2008
<i>Previous Committee Report</i>	None, but see footnotes 9 and 10
<i>To be discussed in Council</i>	Second half of 2008
<i>Committee's assessment</i>	Politically important
<i>Committee's decision</i>	For debate in European Committee, together with EU document no. 5862/08

#### Background

3.1 In February 2007, we reported on a number of documents relating to climate change and energy — notably two Commission Communications “*Limiting global climate change to 2 degrees Celsius — The way ahead for 2020 and beyond*”<sup>9</sup> and “*An energy policy for Europe*”.<sup>10</sup> Each of these identified the crucial need, on both climate change and energy grounds, to reduce atmospheric concentrations of greenhouse gases, and suggested that the Community should propose a 30% reduction in such emissions by developed countries by 2020, making in the meantime a firm independent commitment to achieve by then at least a 20% reduction through its Emissions Trading Scheme and other climate change policies.

3.2 The European Council in March 2007 agreed that these aims should be achieved by Member States being given precise, legally binding targets, and the Commission has now put forward in this document proposals for achieving this in relation to sources not covered by the Community's Emissions Trading Scheme, such as transport and housing. It thus forms part of a wider package of measures which also includes a new Directive on renewable energy, amendments to the Emissions Trading Scheme, and measures relating to carbon capture and storage.

#### The current proposal

3.3 The Commission says that the reduction required by an individual Member State should be determined in relation to its level of greenhouse gas emissions in 2005 (which provides the latest available verifiable data), and should take into account relative per capita

9 (28275) 5422/07: see HC 41–x (2006–07), chapter 1 (21 February 2007).

10 (28276) 5282/07: see HC 41–x (2006–07), chapter 2 (21 February 2007).

GDP. Thus, Member States with a relatively high per capita GDP would need to reduce their emissions compared with 2005, whilst those with a relatively low per capita GDP (and hence with high growth expectations) would be able to increase their emissions (although the Commission stresses that they would still have to take steps to limit this increase). In addition, no Member State would be required to reduce its emissions in 2020 to more than 20% below 2005 levels, and similarly no Member State would be able to increase its corresponding emissions by more than 20%.

3.4 Against this background the Commission has proposed that a Member State's emissions in 2013 from sources not covered by the Emissions Trading Scheme should not exceed the annual average of the equivalent emissions for the years 2008, 2009 and 2010; that it should achieve by 2020 the reductions set out in the Annex; and that these should be made on a linear basis between 2013 and 2020. However, a Member State would be able to bring forward from the following year a quantity equal to 2% of its emission limit, and, where its emissions are below its limit for a particular year, it would also be able to carry over any excess to the following year.

3.5 In addition, in order to provide flexibility for Member States and to promote sustainable development in third countries, the Commission proposes that a Member State should be able to count towards its target for reducing greenhouse gas emissions from sources outside the Emissions Trading Scheme credits resulting from Clean Development Mechanism (CDM) projects, subject to a maximum in any one year equivalent to 3% of its emissions in 2005, with an additional incentive being provided for projects in the least developed countries (LDCs). The proposal also provides for any necessary adjustments to be made to the targets in the event of any changes in the coverage of the Emissions Trading Scheme.

3.6 At the same time, the Commission also addresses the need for provision to be made for the possibility of the Community seeking a 30% reduction in emissions by 2020, as part of some wider agreement to that effect among developed countries. Accordingly, it proposes that the limits applicable to each Member State should be adjusted on the basis of the Community's resulting greenhouse gas emissions reduction commitment. The overall reduction would be distributed pro rata between sources covered by the Emissions Trading Scheme, and those outside it, with the latter being expected to contribute the same share of the commitment as they will under the existing 20% commitment, as would individual Member States.

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

3.7 In his Explanatory Memorandum of 14 February 2008, the Minister of State for the Environment at the Department for Environment, Food and Rural Affairs (Mr Phil Woolas) points out that the proposal would require the UK to reduce greenhouse gas emissions in 2020 for sectors not covered by the Emissions Trading Scheme by 16% compared with 2005, which he comments is "not above" the range of reduction set out by the Government in its climate Change Bill. He also says that, in order to meet the target, the Government will look first to the measures set out in the UK's March 2006 Climate Change Programme, the May 2007 Energy White Paper, and the new Renewable Energy Strategy. However, he notes that the Community's approach should be based on a

collective effort to meet a Community target, and that the UK will wish to be sure that the distribution of effort among Member States is fair. It would also like the Commission to provide whole economy national targets set against 1990 levels in order to ensure greater transparency and enable greater flexibility in meeting overall emissions reduction targets.

3.8 The Minister adds that the UK supports the Commission in setting out clearly to the rest of the world how the Community would deliver the 30% reduction in emissions as part of a global climate agreement. However, he notes that the proposal sets some restrictions on Member States in terms of compliance against the target in the non-traded sector, with a linear reduction path and limits on the level of project credits which can be used, and says that the UK will want to consider whether these are set at an appropriate level, and what other flexibility might be appropriate to allow Member States to meet their targets in the most cost-effective manner.

## Conclusion

**3.9 This document would, in relation to activities not covered by the Community's Emissions Trading Scheme, give effect to the decision taken by the European Council last spring that Member States should be set precise, legally binding targets for reducing their greenhouse gas emissions by 2020. As such, it breaks important new ground, not only in the manner in which it addresses the issues concerned, but also in its practical effect. In particular, we note the Government's wish to ensure that the 16% reduction which the UK would have to achieve is fair in relation to the targets set for other Member States, and that the proposal is not unduly inflexible, for example in relation to the reduction path to be followed between 2013 and 2020. For all these reasons, we are recommending it for debate in European Committee, alongside the separate proposal relating to the Emissions Trading Scheme.<sup>11</sup>**

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<sup>11</sup> (29402) 5862/08: see chapter 4 of this report.

## Annex: Member State Reductions in Greenhouse Gas Emissions by 2020

	Reductions by 2020 compared with 2005	Resultant emissions in 2020 (t CO <sub>2</sub> equiv)
Austria	-16%	49,842,602
Belgium	-15%	70,954,356
Bulgaria	20%	35,161,279
Cyprus	-5%	4,633,210
Czech Republic	9%	68,739,717
Denmark	-20%	29,868,050
Estonia	11%	8,886,125
Finland	-16%	29,742,510
France	-14%	354,448,112
Germany	-14%	438,917,769
Greece	-4%	64,052,250
Hungary	10%	58,024,562
Ireland	-20%	37,916,451
Italy	-13%	305,319,498
Latvia	17%	9,386,920
Lithuania	15%	18,429,024
Luxembourg	-20%	8,522,041
Malta	5%	1,532,621
Netherlands	-16%	107,302,767
Poland	14%	216,592,037
Portugal	1%	48,417,146
Romania	19%	98,477,458
Slovenia	4%	12,135,860
Slovakia	13%	23,553,300
Spain	-10%	219,018,864
Sweden	-17%	37,266,,279
UK	-16%	310,387,829

## 4 Review of the Emissions Trading Scheme

(29402) 5862/08 + ADDs 1–3 COM(08) 16	Draft Directive amending Directive 2003/87/EC so as to improve and extend the greenhouse gas emission allowance trading system in the Community
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<i>Legal base</i>	Article 175(1)EC; co-decision; QMV
<i>Document originated</i>	23 January 2008
<i>Deposited in Parliament</i>	31 January 2008
<i>Department</i>	Environment, Food and Rural Affairs
<i>Basis of consideration</i>	EM of 14 February 2008
<i>Previous Committee Report</i>	None, but see footnotes 15 and 16
<i>To be discussed in Council</i>	October 2008 (at the earliest)
<i>Committee’s assessment</i>	Politically important
<i>Committee’s decision</i>	For debate in European Committee in conjunction with EU document no. 5849/08

### Background

4.1 Following the adoption of Directive 2003/87/EC,<sup>12</sup> the Community’s Emissions Trading Scheme came into operation on 1 January 2005. This requires Member States to grant free of charge to undertakings in certain areas — notably energy, metal production and minerals — a permit covering emissions of carbon dioxide,<sup>13</sup> and to establish for each of two trading periods (2005–07 and 2008–12) a national plan dealing with the total quantity of allowances<sup>14</sup> and their allocation. Those undertakings with a permit are then able to emit quantities of carbon dioxide up to the permitted limits, and would have to surrender an allowance equal to their actual emissions; however, if an undertaking fails to surrender sufficient allowances, it would be subject to a financial penalty (though any unused balance may be sold to another undertaking).

4.2 The Directive also required the Commission to provide by 30 June 2006 a report on its application, and it duly did so in its Communication “*Building a global carbon market*”.<sup>15</sup> That document described the Scheme as both a key driver behind international carbon trading and as a central instrument in bringing about the reductions in greenhouse gas emissions needed to meet the Community’s commitments under the Kyoto Protocol. Having previously put forward a proposal<sup>16</sup> for including aviation within the Scheme, the Commission suggested that, in order to maintain regulatory stability and predictability,

12 OJ No. L 275, 25.10.03, p.32.

13 Although the activities currently listed are in practice limited to those emitting carbon dioxide, the Scheme also covers other greenhouse gases (methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons and sulphur hexafluoride).

14 The ability to emit one tonne of carbon dioxide equivalent during a specified period.

15 (28070) 15585/06: see HC 41–v (2006–07), chapter 8 (10 January 2007).

16 (26885) 12790/05: see HC 34–viii (2005–06), chapter 1 (2 November 2005).

any further changes should not take effect until the start of the third trading period in 2013, but it went on to identify the four main areas for review. These were the scope of the Directive; further harmonisation of the criteria used to allocate emission allowances, including in particular the possibility of establishing a single Community-wide cap, and allocating allowances through an auctioning system; the need for more robust compliance and enforcement measures; and the possibility of establishing links with comparable third country schemes.

## The current proposal

4.3 In the light of that review, and the European Council's wish to see proposals brought forward to reflect the targets it set in March 2007 for securing larger reductions in the Community's greenhouse gas emissions, the Commission has now proposed this draft Directive which aims to improve and extend the Scheme. As such, it forms part of the wider package of measures on which we are also reporting, but has particular relevance to the draft Decision<sup>17</sup> setting out the emissions reduction targets for individual Member States to achieve by 2020 in areas not covered by the Scheme.

4.4 The Commission says that the underlying aim of the proposal is that the Emissions Trading Scheme should enable the Community to achieve by 2020 a reduction of 30% in greenhouse gas emissions as compared with 1990 as part of an international climate agreement, or, failing that, a unilateral reduction of 20%. Its key elements cover:

### *The scope of the Scheme*

This would be extended, where appropriate, to include all installations whose emissions can be monitored fully, reported and verified in line with current standards and procedures required under the Directive. It would also include new sectors (notably in the chemical industry) and gases, with the definition in the latter case being linked to that in the United Nation's Framework Convention on Climate Change (UNFCCC). In addition, the capture, transport and geological storage of greenhouse gases would in future be covered by the Scheme.

However, in order to reduce the administrative burden, installations emitting less than 10,000 tonnes of carbon dioxide a year would be excluded where other measures, such as taxation, are in place to reduce their emissions of greenhouse gases.

### *Emission limits*

In order to meet the targets set, the level of emissions from the installations covered by the Scheme in 2020 would be set on a Community-wide basis, and would be 21% below verified emissions in 2005, equivalent to around 1,720 million tonnes of carbon dioxide equivalent: and this would be achieved by means of an annual linear decrease between 2013 and 2020 of 1.74% of the average allocation in 2008–13.

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17 (29401) 5849/08: see chapter 3 of this Report.

### *Allocation of allowances*

So that the revised Scheme should operate on the highest possible degree of economic efficiency, and on the basis of fully harmonised conditions within the Community, there would be full auctioning of licences from 2013 onwards for the power sector (taking into account its ability to pass on the increased cost). For the remaining sectors, there would be transitional arrangements, with the amount of free allocation decreasing over time from 80% in 2013 to zero in 2020. Any free allocations would be based on harmonised Community-wide rules (“benchmarks”) in order to minimise competitive distortions.

90% of the total quantity of allowances to be auctioned would be distributed between individual Member States according to their relative share of emissions in the Scheme in 2005, with the remaining 10% taking account of per capita income in that year. As a result, some Member States will receive more than 100% of their share of the allocations to be auctioned, whilst others (including the UK) will receive less. In addition, at least 20% of the proceeds from auctioning would have to be used for the purpose of combating climate change, for example, reducing emissions, adapting to climate change, funding research, developing renewable energies, investing in carbon capture and storage, and reducing deforestation.

In order to ensure that allowances can be transferred within the Community without any restriction, and to enable the Community Scheme to be linked to similar schemes in third countries, all allowances from January 2013 would be held on a Community registry (although national registries would still deal with emissions not covered by the Community Scheme).

### *“Carbon leakage”*

Insofar as other developed countries do not participate in an international agreement to limit greenhouse gas emissions, this could lead to an increase in emissions from the industries in those countries (“carbon leakage”), and certain energy-intensive sectors within the Community which are subject to international competition could be put at an economic disadvantage. The sectors in question, which would be determined by the Commission by 30 June 2010 (and reviewed every three years thereafter) would receive all their allocation free of charge. The Commission will, however, submit a separate report by June 2011 assessing the risks of carbon leakage in the light of whether there has been an international climate agreement, and may adjust then the proportion of allowances allocated free to affected sectors, as well as propose the inclusion within the Scheme of importers of products produced by the sectors in question.

### *Treatment of project credits*

The Kyoto Protocol provides for Certified Emission Reductions and Emission Reduction Units from Clean Development Mechanism and Joint Implementation projects in developing countries to be used by developed countries to meet part of their targets, but, until a new international agreement is reached, only any unused

credits from the current phase of the Scheme could be used, and would be restricted to those starting before 2013. Once such an agreement is reached, 50% of the difference in the absolute emission reductions in the Community central cap before and after the agreement could be met by Clean Development Mechanism and Joint Implementation, or other approved projects from countries which are parties to that agreement.

## The Government's view

4.5 In his Explanatory Memorandum of 14 February 2008, the Minister of State for the Environment at the Department for Environment, Food and Rural Affairs (Mr Phil Woolas) says that this proposal provides the best opportunity to map out a long term policy framework to put the Community on track to become a low-carbon economy. He adds that the Government particularly welcomes the Commission's intention to strengthen the Scheme by introducing a central Community-wide emissions cap, aimed at delivering real reductions in greenhouse gases; the much greater predictability arising from the proposed long-term trajectory for the cap to 2020 and beyond; and the fact that it provides a building block towards a global carbon market through developing links with the emissions trading schemes being developed by other countries. He adds that the UK supports the greater use of auctioning generally to simplify the Scheme, ensure that carbon is priced into decisions, and avoid windfall profits, but says that the Government will need to assess the proposals for specific sectors before responding to them.

4.6 On the other hand, the Minister says that the Government is disappointed that the proposal would redistribute auctioning from the UK to other parts of the Community, and at the hypothecation or earmarking of auctioning revenues. It also believes that Member States should not be constrained by fixed levels of auctioning, and should be allowed to auction more allowances than specified. Finally, he comments that the purpose of the Scheme is to drive emission reductions, not to drive production outside the Community, and that the UK will therefore look carefully at those sectors at risk of "carbon leakage".

4.7 The Minister says that an Impact Assessment is currently being prepared, which will form the basis of the public consultation document and the UK position, and is due to be published in the spring.

## Conclusion

**4.8 By all accounts, the Emissions Trading Scheme has made a useful contribution towards achieving the Community's climate change objectives through the use of market-based mechanisms, and any proposal to amend it — such as the one set out in this document — is in principle a matter of interest. In addition, the current proposal would introduce a number of significant changes, notably in the way in which emission limits would be determined and allowances allocated (including the introduction of a Community-wide emissions cap and auctioning). We note that, although the Government has in general welcomed the proposals, it does have a number of concerns, and we therefore believe that it would be right for this document to be debated in European Committee. We also consider that it would be logical if that debate were to be combined with the one we have recommended on the draft Decision setting out the**

**emissions reduction targets for individual Member States to achieve by 2020 in areas not covered by the Scheme.**

## 5 Use of Passenger Name Record for law enforcement purposes

(29109) Draft Framework Decision on the use of Passenger Name Record  
14922/07 (PNR) for law enforcement purposes  
+ ADDs 1–2  
COM(07) 654

<i>Legal base</i>	Articles 29, 30(1)(b) and 34(2)(b) EU; consultation; unanimity
<i>Department</i>	Home Office
<i>Basis of consideration</i>	Minister’s letter of 28 January 2008
<i>Previous Committee Report</i>	HC 16–vii (2007–08) chapter 7 (9 January 2008)
<i>To be discussed in Council</i>	No date set
<i>Committee’s assessment</i>	Legally and politically important
<i>Committee’s decision</i>	Not cleared; further information requested

### Background

5.1 In the operation of their computerised reservation and ticketing systems, major airlines collect data on their passengers for their commercial purposes. Such data is known as the Passenger Name Record<sup>18</sup> and is to be distinguished from information held on an Advanced Passenger Information System (APIS).<sup>19</sup> At EU level, Council Directive 2004/82/EC<sup>20</sup> requires Member States to ensure that air carriers bringing passengers to the Community’s external borders with third States provide advanced passenger information on the passengers they will convey.

5.2 We considered the draft Framework Decision on 9 January 2008. We noted that, for the purposes of preventing and combating terrorist offences and organised crime rather than crime in general, it prescribed obligations relating to the handling of PNR data which were to be undertaken by the Member States in relation to air carriers operating flights to

18 The Passenger Name Record (PNR) consists of all that information which is necessary to enable reservations to be processed and controlled by the booking and participating air carriers for each journey booked by or on behalf of any person. Such information includes such matters as the name, address and telephone number of the passenger, information relating to payment, travel itinerary, seat numbers and baggage information, and the travel status of the passenger (including any “no show” information i.e. history of not turning up for a flight).

19 This is information derived principally from the machine-readable section of national passports and which allows the country of destination access to information about the identities of passengers before they reach the territory of that country. Such data serves to confirm the identity of the passenger, such as nationality, passport number, given names and date of birth, but does not otherwise convey any information about the history of the person.

20 OJ No. L 261, 6.8.04, p.24.

or from the territory of one or more of the Member States. The measure would not apply to flights which were internal to the EU, unless the flight connecting two EU airports was part of an international flight. A key provision (in Article 3) required each Member State to designate a “Passenger Information Unit” which would be responsible for collecting PNR data from carriers and their intermediaries and for transmitting the PNR data on any relevant individuals to the competent authorities of that Member State. The Unit and the competent authority would be permitted to process the data for the purposes of preventing or combating terrorism or organised crime but only in order to identify persons or their associates who might be involved in such offences or to update risk indicators for such persons, or to provide intelligence on travel patterns and other trends relating to such offences, or for the purpose of criminal investigations and prosecutions.

5.3 Air carriers would be required, under measures to be adopted by the Member States to provide PNR data (by the “push method”)<sup>21</sup> to the national Passenger Information Unit of the territory of entry, departure or transit 24 hours before the scheduled flight departure and immediately after flight closure. Provision was also made for the exchange of information between Passenger Information Units but only where this was necessary for the prevention and fight against terrorist offences and organised crime. Data provided by carriers to a Passenger Information Unit would be held for a period of 5 years, and also for a further 8 years, but at that stage the data would only be processed with the approval of the competent authority and then only in “exceptional circumstances in response to a specific and actual threat or risk” related to terrorist offences and organised crime. A type of comitology procedure was provided to enable the Commission to adopt common protocols and common encryption standards for the transmission of PNR data.

5.4 We considered this to be a significant proposal on a controversial subject. We agreed with the Minister that an appropriate balance needed to be struck between the right to privacy of the individual and the need to ensure safety and security, but we noted with some concern the Minister’s apparent intention to broaden the scope of the proposal beyond the prevention of terrorism and organised crime. The limited scope of the proposal appeared to us to be a key feature of its acceptability to the Member States, and we asked the Minister for her assessment of the extent to which any broadening of scope would be negotiable.

5.5 We noted that the Minister had commented that the proposal required that PNR data might only be transferred to the law enforcement authorities of a third state where this was for the purpose of preventing and combating terrorism or organised crime and that such data could not be transferred except with the consent of the Member State providing the data. We asked the Minister to explain in more detail her concerns over the maintenance of the current legal powers over the exchange and the means of ensuring that the proposal achieved this objective.

5.6 We noted the Minister’s somewhat qualified acceptance of the data protection safeguards contained in the proposal and asked her to give an account, in due course, of the Government’s further analysis of this issue, and of any views of the Information

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21 I.e. a system whereby the carrier provides the data from its database, rather than allowing the third party to extract such data, this latter being known as the “pull method”.

Commissioner on this issue and on the transfer of data to third countries. We also raised three technical points, the first being to confirm that the proposal would not impose any obligation directly on a carrier but that in all cases any obligation would be a matter for national implementing laws. Secondly, we asked if the provisions of Article 8 contemplated any limit of time for the keeping of data by the third country which has received PNR data and, finally, if it was appropriate for the Commission to be given the power to adopt rules on such sensitive matters as common protocols and common encryption standards.

### The Minister's reply

5.7 In her letter of 28 January 2008 the Parliamentary Under-Secretary of State at the Home Office (Meg Hillier) addresses these points as well as providing further information on the context in which the proposal has been made. The Minister states that current border security structures of EU Member States are “rapidly becoming outdated or obsolete” and considers that it is essential to legislate in a proportionate manner to achieve the objectives of promptly processing legitimate passengers whilst improving the security of the public and ensuring that fundamental rights, including the right to privacy, are respected.

5.8 The Minister describes an “e-Borders”<sup>22</sup> pilot project, Project Semaphore, which has been run for three years to assess the value of using Advanced Passenger Information (API) and PNR data. The Minister states that the project has “enjoyed many significant successes” and that it has “demonstrated the value of PNR data for border control, law enforcement purposes and in protecting the vulnerable”.

5.9 The Minister provides the following further account of the operation of Project Semaphore:

“Since the project began, it has covered 45 million passenger movements and issued over 18,000 alerts. The system only flagged a very small proportion of travellers (1 in 2200) for further intervention, but of those nearly 1 in 12 were arrested. This shows the extent to which the use of API and PNR data, supported by the correct data protection safeguards, enhances the experience of legitimate travellers who do not need to be subjected to detailed scrutiny. Meanwhile, the more than 1,400 arrests made using API and PNR data included crimes of murder, rape and assault, the offloading of passengers who would not qualify for entry to the UK, and seizure of many false documents, tobacco, and drugs. Thus by using API and PNR data proportionally, we have been able to reduce interventions with legitimate travellers, whilst also protecting the public from those who may cause harm.”

5.10 The Minister notes our concern over the Government's wish to broaden the scope of the Framework Decision beyond the prevention of terrorism and organised crime. In reply, the Minister refers to the experience with Project Semaphore which, in the Minister's words “has allowed us to assess the value of using passenger information in conjunction with other information in order to identify individuals who may present a risk to the UK;

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22 The “E-borders” or electronic borders programme is coordinated by the Home Office. The system identifies people who have boarded transport destined for the UK, checks them automatically against databases of people who pose a security risk and keeps an electronic record of entry into the country. Home Office press release 28.09.2004.

to spot emerging trends in criminal activity; and to trace missing and other vulnerable subjects”. The Minister adds that a key factor in the project has been the use of PNR data in combination with API and other information and intelligence, which has enabled the detection of crime that would not have been achieved using other data sets alone.

5.11 The Minister also explains that the Government’s experience with Project Semaphore “has shown how the use of PNR data for broader law enforcement purposes can be successful in helping to protect the UK from harm, for example, to arrest violent criminals whose offences do not fall within the current draft Framework Decision’s scope of counter terrorism and organised crime”. The Minister adds that her department is preparing a series of declassified case studies on this matter which could be shown to us.

5.12 On the question of data protection, the Minister explains that the Government fully supports data protection safeguards and regards them as fundamental to its objectives, commenting that “it is only by putting in place the appropriate safeguards that we can ensure our systems comply with our obligations under the European Convention on Human Rights and the Data Protection Act 1998, and provide reassurance to the travelling public that data will be used only where proportionate and necessary”. The Minister adds that the UK will press for appropriate safeguards during the course of the negotiations.

5.13 The Minister also provides a further explanation of the statement in her Explanatory Memorandum that the UK would not wish to “withhold its right” to process sensitive data under the conditions of the Data Protection Act 1998. The Minister explains that the passenger and crew information gathered and shared under the e-Borders system may include sensitive personal data as defined in the Data Protection Act 1998,<sup>23</sup> and that such information can be instrumental in identifying individuals against whom action needs to be taken to prevent harm to the UK and its citizens or, conversely, in deciding that individuals are not of interest to the border agencies thus expediting passenger’s travel into and out of the UK.

5.14 The Minister also describes the safeguards which have been adopted for data processed under Project Semaphore and e-Borders, including limitations of use and restrictions on access, reviews of data retention periods, and the fact that alerts and interventions do not result solely from automated processing, but must first be analysed by border agency staff. The Minister adds that the Government has developed a code of practice on the processing of personal data and that it will provide us with further details of the Government’s analysis of the data protection safeguards under the draft PNR proposal, including the views of the Information Commissioner.

5.15 In reply to our question asking the Minister for more details on her concerns over the effect of the proposal on the transfer of data to third countries, the Minister comments that the Government does not wish the proposal to “unduly restrict” the UK’s ability to share data with third countries. The Minister adds that a “growing number of countries are looking at introducing similar systems and we would wish to ensure that we can benefit

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23 “Sensitive personal data” is defined in s.2 of the Data Protection Act 1998 as information as to a person’s racial or ethnic origin, political opinions, religious or other similar beliefs, membership of a trade union, physical or mental health or condition, sexual life, the commission or alleged commission of any offence, or any proceedings for any offence committed or alleged to have been committed.

from cooperation with these systems in order to strengthen the security of Member States”, but also that any sharing of personal information with third countries would need to be proportionate and conform with the obligations under the ECHR and the Data Protection Act 1998.

5.16 On our three technical points, the Minister comments first that any obligations on carriers would need to be implemented by means of national law, secondly that, in relation to time limits for the retention of data by third countries, the Government would expect similar time limits to those in the draft Framework Decision, where the transfer is governed by an agreement with the EU. Thirdly, on the question of whether it was appropriate for the Commission to be given power (by means of a ‘comitology’ procedure) to determine common protocols and common encryption standards, the Minister states that the Government believes it is right that common standards are agreed among Member States but that it will need to give further consideration as to whether ‘comitology’ is the correct procedure or whether Member States should make use of the work of other experts such as those within the International Air Transport Association.

## Conclusion

5.17 **We thank the Minister for her letter, although we note that many of the answers to our questions (such as on the data protection safeguards and the propriety of conferring a power on the Commission to determine common protocols and encryption standards) are still provisional. We look forward to receiving a fuller account in due course.**

5.18 **On the scope of the instrument, we note the Minister’s comments. These set out a persuasive case for extending the scope of the instrument, which we would be inclined to support but they give no indication of the possibilities of negotiating a widening of its scope. It appears from the Commission’s staff working document accompanying the proposal that of those countries (namely the UK, France and Denmark) which have legislated for the use of PNR data, only the UK permits the use of such data for all crimes and illegal immigration. Although we can see the force of the Minister’s arguments, we nevertheless repeat our request for an assessment of the extent to which a widening of the scope of the instrument will be negotiable.**

5.19 **We also note the Minister’s comments on the processing of sensitive data, but we ask the Minister if any of the data referred to in Article 2 of the proposal would in fact constitute ‘sensitive personal data’ within the meaning of the Data Protection Act 1998, and to explain how the proposal would impede (or permit) the processing of such data.**

5.20 **We shall hold the document under scrutiny pending the Minister’s reply.**

## 6 Eurojust

(29306)	Draft Council Decision on the strengthening of Eurojust amending
5037/08	Council Decision 2002/187/JHA as amended by Council Decision
—	2003/659/JHA setting up Eurojust with a view to reinforcing the fight
	against serious crime

<i>Legal base</i>	Articles 31 and 34(2)(c) EU; consultation; unanimity
<i>Department</i>	Home Office
<i>Basis of consideration</i>	Minister's letter of 14 February 2008
<i>Previous Committee Report</i>	HC 16–xi (2007–08), chapter 5 (30 January 2008) and see (29028) 14253/07: HC 16–iv (2007–08), chapter 33 (28 November 2007)
<i>To be discussed in Council</i>	No date set
<i>Committee's assessment</i>	Legally and politically important
<i>Committee's decision</i>	Not cleared; further information requested

### Background

6.1 Eurojust is a European Union body established by Council Decision 2002/187/JHA to improve coordination between competent authorities in the Member States in relation to investigations and prosecutions, to facilitate the execution of requests for international mutual legal assistance and for extradition, and otherwise to provide support in order to render investigations and prosecutions more effective. It is composed of one member from each Member State, who is to be a prosecutor, judge or police officer.

6.2 We considered this proposal to amend Council Decision 2002/187/JHA on 30 January. We noted that the principal amendments were to provide (in Article 9) for a national member with increased powers to be appointed on a full-time basis, with a fixed term of at least four years, to provide that a national member may not be removed without prior information being given to the Council, to provide for an “emergency cell for coordination” and for access by national members to national databases.

6.3 We noted that, although the Government considered there were some good ideas in the proposal which would need to be explored further to ensure that Eurojust could operate to its full potential, there were other elements which might impinge on areas where the Government considered that national governments should maintain sovereignty. In this regard we supported the Government's view that Eurojust members should not be given the power to force national contacts to take action. We noted the Government's concerns over giving access to national databases, particularly gateways for information exchange between competent authorities and Eurojust.

6.4 We firmly endorsed the Government's ongoing opposition to the creation of a European Public Prosecutor. It seemed to us that to grant the national Member of Eurojust the power to order search and seizure would be a step towards the creation of a European Public Prosecutor's Office within Eurojust, and we saw no case for vesting such powers in

the national Member of Eurojust. We agreed with the Minister that the provisions of Article 9a(6) (which allowed Member States not to confer search and seizure powers on their national Eurojust Member when “constitutional rules” regarding the division of powers between prosecutors and judges made this “impossible”) were an inadequate safeguard. We note that in the absence of a written constitution, there could well be argument over what constituted a “constitutional rule” and, moreover, that the provision would not cover the case where a Member State considered it undesirable to confer such powers.

6.5 We asked the Minister if it was necessary to define such key terms as “controlled deliveries” or “undercover investigations”, and expressed concern that the provision for a “non-binding opinion” by Eurojust under Article 7 might be no more than a step in the process of giving Eurojust powers of direction over Member States. We were also concerned at the removal of the provision in Article 8 which presently allows Member States not to disclose their reasons for not following a Eurojust request if to do so would harm “essential national security interests” or would jeopardise the conduct of investigations under way or would harm the safety of individuals, as this seemed to us to be an essential minimum safeguard.

### The Minister’s reply

6.6 In her letter of 14 February 2008 the Parliamentary Under-Secretary of State at the Home Office (Meg Hillier) replies to these concerns and reports on the Government’s further analysis of the proposal. The Minister explains that Article 7(2) (which provides for non-binding opinions to be given by Eurojust where there is a conflict of jurisdiction) “formalises what already takes place in practice” and that, as such opinions are not binding, “Eurojust would not have the power to dictate what approach the UK took in a case involving a conflict of jurisdiction”.

6.7 The Minister further explains that consultation and analysis of the proposal has also “flagged up some potentially difficult provisions”. As far as the proposal in Article 5a for an “Emergency Coordination Cell” is concerned, the Minister informs us that initial discussions in the Council working group seem to suggest that the thinking behind the provision is that Eurojust should be able to respond quickly in urgent cases. The Minister notes that the UK delegation at Eurojust is contactable at all times and does not consider that a new structure is required. The Minister also notes that Article 5a(3) seeks to give the national member the power to execute a request for judicial cooperation and comments that this would require the UK to confer on its national member powers which exceed those held by domestic prosecutors and is unacceptable.

6.8 In relation to the provisions of Article 9 on access to databases, the Minister expresses concern over the requirement, in Article 9(4), to give “full access” to national databases, including national criminal records, registers of arrested persons and investigations and DNA registers, pointing out that UK prosecutors and judges do not have such access. The Minister adds that consultation suggests that the UK should seek an amendment limiting this access to such access as is available under national law to the domestic equivalents of the national Eurojust member.

6.9 The Minister explains that Article 9a seeks to increase the powers of national members by conferring on them, for example, the power to execute requests for judicial cooperation, whereas, within the UK, a prosecutor could not execute such a request. The Minister repeats the point that Eurojust’s prime purpose should remain that of strengthening coordination and cooperation so that such extended powers should not be necessary. The Minister agrees with us that Article 9a(6) needs redrafting in order to clarify that the powers mentioned need only be granted to Eurojust members if this is in accordance with national law.

6.10 On the definition of “controlled deliveries” and “undercover investigations”, the Minister comments that these terms are not defined in UK law so that, in her view, it would be counterproductive to try to define them in the Framework Decision. The Minister also notes that terms such as “controlled deliveries” have been used in other EU instruments without being specifically defined, as in Article 12 of the 2000 MLA Convention.<sup>24</sup>

6.11 Finally, the Minister agrees with our concern about the removal of the provision in Article 8 which allows a Member State not to disclose its reason for refusing a request from Eurojust where this would harm essential national interests. The Minister states that the Government will seek to retain the ability to refuse to give reasons in exceptional cases.

## Conclusion

**6.12 We thank the Minister for her prompt and informative reply. We support the Government’s resistance to the proposals to confer powers on the national Eurojust member beyond those which are held by their domestic equivalents, and we look to the Minister not to give way on this central point.**

**6.13 We shall look forward to a further account in due course, on the progress of the negotiations and shall hold the document under scrutiny in the meanwhile.**

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<sup>24</sup> The 2000 Convention on Mutual Legal Assistance in Criminal matters. Article 12(1) of the Convention provides that “Each Member State shall undertake to ensure that, at the request of another Member State, controlled deliveries may be permitted on its territory in the framework of criminal investigations into extraditable offences”.

## 7 Demonstration of sustainable power generation from fossil fuels

(29399) Commission Communication: *Supporting early demonstration of sustainable power generation from fossil fuels*  
 5780/08  
 + ADDs 1–2  
 COM(08) 13

<i>Legal base</i>	—
<i>Document originated</i>	23 January 2008
<i>Deposited in Parliament</i>	31 January 2008
<i>Department</i>	Business, Enterprise & Regulatory Reform
<i>Basis of consideration</i>	EM of 18 February 2008
<i>Previous Committee Report</i>	None, but see footnotes 25, 26 and 28
<i>To be discussed in Council</i>	28 February 2008 (poss)
<i>Committee’s assessment</i>	Politically important
<i>Committee’s decision</i>	Cleared; but tagged to the debate recommended on EU document no. 5835/08

### Background

7.1 According to the Commission, fossil fuels are an important element in the energy mix of the Community, particularly in the generation of electricity, and it says that total energy production world-wide is expected to rely increasingly on them at least until 2050. At the same time, however, it notes that all fossil fuels produce emissions of carbon dioxide, and that this is particularly true of coal, which is a key contributor to the Community’s security of supply, as well as being of increasing importance in a number of large emerging economies. It has therefore concluded that this use of coal and other fossil fuels (notably gas) can continue only if drastic reductions can be achieved in its carbon footprint, and in January 2007, it set out in a Communication “*Sustainable power generation from fossil fuels: aiming for near-zero emissions after 2020*”<sup>25</sup> — which formed part of the wider package of measures contained in the Strategic Energy Review<sup>26</sup> — ways in which this can be achieved.

7.2 These included two steps which it was suggested could be taken in the short term. The first was to build on previous research and development into clean coal and carbon capture and storage technologies by the development and industrial demonstration of integrated technological solutions. It therefore intended to increase substantially the funding for relevant research and development, making the demonstration of sustainable fossil fuels technologies one of the priorities for the period 2007–13. Secondly, as more than one-third of the existing capacity in the Community was expected to reach the end of its technical life in the next 10 to 15 years, and the Commission said that “capture readiness” should be an integral part of the modernisation of coal-fired power plants, enabling them to be fitted

25 (28291) 5239/07: see HC 41–x (2006–07), chapter 18 (21 February 2007).

26 (28276) 5282/07: see HC 41–x (2006–07), chapter 2 (21 February 2007).

with a carbon capture and storage facility from 2020, the technology should be incorporated in all new coal-fired plants at that point.

7.3 In March 2007, the Commission was urged by the European Council to develop the necessary technical, economic and regulatory framework to bring environmentally safe carbon capture and storage into deployment, and it has now put forward a legislative proposal<sup>27</sup> to that effect. However, it also believes that carbon capture and storage will not take place unless an immediate start is made with the necessary preparatory steps, and it has therefore set out in this Communication ways in which construction and operation by 2015 of demonstration plants of sustainable fossil fuel technologies in commercial power generation can be supported.

### The current document

7.4 The Commission notes that the investments needed to bring carbon capture and storage to market are substantial, and that around €1 billion will have to be spent between now and 2020 on research and development activities to bring the relevant technologies to a state where they can be widely deployed commercially. It also says that the early demonstration of carbon capture and storage in industrial-scale plants will require further spending in the order of billions of euros, both in up-front investment and higher operating costs (as compared with conventional coal-fired plants). However, it adds that the European Technology Platform for Zero Emission Fossil Fuel Power Plant has estimated that, with a focussed R & D and demonstration effort, the costs in question can be brought down by 50% in the period to 2020, thereby facilitating commercial deployment, and that the incremental costs thereafter are expected to drop through learning curve effects and economies of scale.

7.5 At the same time, the Commission says that the development and deployment of carbon capture and storage technologies will bring major benefits, not least in contributing around a quarter of the achievable reduction in carbon dioxide emissions, complementing those from efficiency and renewables. In particular, it suggests that, if new coal-fired plants within the Community are built without carbon capture and storage or retrofitting features, this would risk locking carbon-intensive features for several decades into as much as 70GW of capacity installed in the next 10–15 years, representing over one third of the current coal-fired capacity.

7.6 In addressing the ways in which obstacles to carbon capture and storage can be overcome, the Commission says that the first steps can be taken without substantial additional costs, by tackling all the major carbon capture and storage-related legislative issues and providing a comprehensive regulatory framework to ensure the safety of carbon capture and storage deployment. It also points to the changes which, with the active involvement of the Community, have recently taken place in the relevant international regimes, opening up the prospect of large storage capacities under the North Sea seabed. In addition, it says that it is putting forward a proposal to include carbon capture and storage as a recognised and legitimate emission-reduction technology under the Emissions Trading Scheme. On the other hand, the Commission believes that the economic hurdles

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27 (29406) 5835/08: see chapter 2 of this report.

will take more time to overcome, due to the increased costs which will arise, even with the cost reduction expected from research and demonstration.

7.7 The remainder of the Communication addresses two main issues arising in this area. First, it notes the Community's Strategic Energy Technology Plan<sup>28</sup> creates a *framework within which carbon capture and storage development can be brought forward*, and sets 2020 as the time horizon for making its use in power generation a realistic option. It also suggests that there is a need for the demonstration of these technologies in large-scale power generation, and that this should be the subject a European initiative under the Strategic Energy Technology Plan. With this in mind, the Commission says that it intends, by setting up a Support Action under the Seventh Research Framework Programme, to launch a European Industrial Initiative on carbon dioxide capture, transport and storage commencing in 2008, which will aim to stimulate demonstration and to address in an integrated manner the need for continuous research and increasing public awareness and acceptance. It suggests that, in return for sharing information on progress and experience, participating projects will gain visibility and marketability, and that this could facilitate their access to financial support at national, Community and international levels. The further development of this initiative will also involve the European Community Steering Group on Strategic Energy Technologies, in close cooperation with the European Technology Platform for Zero Emission Fossil Fuel Power Plant.

7.8 The Communication also considers *how finance for carbon capture and storage development can be arranged*. It points out that any businesses involved will gain an important means of enabling them to remain important players in European energy as well as new business opportunities, and can thus rightly be expected to make significant commitments of their own. However, it recognises that public funds may be needed as well for some projects, albeit for a limited period and at levels depending on the future development of the price set under the Emissions Trading Scheme. At the same time, it cautions that it can itself provide only a minimum part of the support necessary to ensure that sustainable power generation from fossil fuels is brought to the market, though it says that the European Investment Bank (EIB) is currently analysing the possibility of developing new products for financing carbon capture and storage, and that other instruments<sup>29</sup> may also be available.

7.9 The Commission also discusses the potential role of Member States in funding work in this area. It says that each Member State will need to decide how it will support carbon capture and storage demonstration, but suggests that, as fossil fuels represent in many cases a dominant part of the energy mix, and are expected to play a long-term role in security of supply and competitiveness, a number of them have an interest in ensuring the development of carbon capture and storage. It also suggests that revenues from auctioning allowances under the Emissions Trading Scheme would be one source of funds, as would the Structural and Cohesion Funds. It also says that, to the extent national measures to support projects are liable to entail state aid, it will review its guidelines to set out ways in which aid for carbon capture and storage demonstration power plants would be compatible.

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28 (29194) 15458/07: see HC 16–vii (2007–08), chapter 12 (9 January 2008).

29 Such as projects under the Trans-European Energy Networks (TEN) and the EIB's Climate Change Financing Facility.

## The Government's view

7.10 In his Explanatory Memorandum of 18 February 2008, the Minister of State for Energy at the Department for Business, Enterprise & Regulatory Reform (Mr Malcolm Wicks) says that the Government welcomes this Communication, which is broadly in line with its view of, and policy objectives for, carbon capture and storage. In particular, it supports the Community's aspiration that carbon capture and storage should be available for commercial deployment, if possible, by 2020, and agrees that the lack of large scale commercial demonstration is one of the major hurdles which it is important to address as soon as possible. It also agrees that such projects should be coordinated internationally in order to ensure that the maximum value is obtained from them.

7.11 The Minister says that the actions identified in the Communication are mainly sensible, but he points out that one of the main barriers standing in the way of carbon capture and storage demonstration is the economics involved which mean that earlier and riskier demonstration projects are not commercially viable. He notes that, since the Community itself does not have the large amounts of money required, the Commission leaves it to Member States to set up national support schemes. It also notes that the UK is the only Member State to have made a firm commitment to supporting large scale carbon capture and storage demonstration projects, and that a strong political push is needed to achieve the goals set out, whereas the Commission has instead concentrated on enabling Member States and industry to get up and running themselves.

7.12 As regards particular aspects of the proposal, the Minister comments that the Commission's use of the European industrial initiative is welcome recognition of the importance of using the network to engage key third countries; that its statement on state aid will help the UK and other Member States as approval is sought for aid for national projects; and that the support which the Commission proposes to provide for smaller scale aspects of carbon capture and storage demonstration will come from existing budgets. He also notes that the Communication leaves open the door for action to be taken by the Commission in future which might have more direct policy impacts, including a Community level financing mechanism for carbon capture and storage demonstration, and the possibility of this becoming a mandatory requirement in the future.

## Conclusion

**7.13 As the Minister points out, this Communication is broadly in line with the Government's own view of, and policy objectives for, carbon capture and storage, and aims to address the need for the large-scale commercial demonstration of the technology involved, albeit in terms which the Government suggests may not take full account of the economic problems facing projects at this stage or of the way in which the necessary funding can be secured. Having said that, we are reporting separately on a draft Directive setting out the framework needed to bring environmentally safe carbon capture and storage into deployment, and are recommending it for debate in European Committee. We are therefore content to clear this Communication, on the basis that it is relevant to that debate.**

## 8 Europe's climate change opportunity

(29403) 5866/08 COM(08) 30	Commission Communication: <i>20 20 by 2020: Europe's climate change opportunity</i>
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<i>Legal base</i>	—
<i>Document originated</i>	23 January 2008
<i>Deposited in Parliament</i>	31 January 2008
<i>Department</i>	Environment, Food and Rural Affairs
<i>Basis of consideration</i>	EM of 14 February 2008
<i>Previous Committee Report</i>	None, but see footnotes 30,31 and 33
<i>To be discussed in Council</i>	See para 8.19 below
<i>Committee's assessment</i>	Politically important
<i>Committee's decision</i>	Cleared; but tagged to the debates recommended on EU documents nos. 5421/08, 5835/08, 5849/08 and 5862/08

### Background

8.1 In February 2007, we reported on a number of documents relating to climate change and energy — notably two Commission Communications “*Limiting global climate change to 2 degrees Celsius — The way ahead for 2020 and beyond*”<sup>30</sup> and “*An energy policy for Europe*”.<sup>31</sup> Each of these identified the crucial need, on both climate change and energy grounds, to reduce atmospheric concentrations of greenhouse gases, and suggested that the Community should propose a 30% reduction in such emissions by developed countries by 2020, making in the meantime a firm independent commitment to achieve by then at least a 20% reduction through its Emissions Trading Scheme and other climate change policies. It also proposed, among other things, that the contribution of renewable sources to overall energy consumption should be increased from less than 7% at present to 20% by 2020.

8.2 The European Council in March 2007 agreed that these aims should be achieved by Member States being given precise, legally binding targets, and the Commission has now set out in this Communication, and a number of other related documents, how this might be achieved.

### The current document

8.3 According to the Commission, 2007 represented a turning point, in which public opinion shifted decisively towards addressing climate change, adapting Europe to the new realities of cutting greenhouse gas emissions, and developing renewable sustainable energy resources. It also says that the Council's decisions reflected both the analysis in the Stern report that the costs of inaction would be “crippling”, and a recognition of the increasing

30 (28275) 5422/07: see HC 41-x (2006–07), chapter 1 (21 February 2007).

31 (28276) 5282/07: see HC 41-x (2006–07), chapter 2 (21 February 2007).

economic benefits of developing renewable energy sources at a time when there is ever increasing competition for oil and gas reserves, whilst sending a signal internationally that the Community is ready to turn words into deeds. In particular, it suggests that this last factor was instrumental in securing agreement at the United Nations Climate Change Conference at Bali in December 2007 on a roadmap towards a new comprehensive agreement on cutting emissions.

8.4 In the meantime, the Commission says that there is a “compelling” case for the Community to act now, since the longer the delay, the higher the cost of adaptation, whereas early action would provide an opportunity to exploit “first mover” advantage in developing new technologies. It adds that this would also help to reduce dependence on imports of oil and gas (and hence exposure to rising and volatile energy prices); that the development of renewable energy technologies would create a significant number of new jobs, not least among small and medium-sized enterprises; and that encouraging the use of low-carbon technologies would offer particular growth potential.

8.5 The Commission goes on to say that its proposals for giving effect to the European Council’s decisions rest on five principles:

- the *need to meet the targets set*, so as to give assurance to investors and demonstrate the Community’s seriousness of intent to its international partners: the proposals must therefore be effective and strong enough to be credible, with mechanisms for monitoring and compliance;
- the *effort required by different Member States must be fair*, reflecting their different starting points and circumstances, including their ability to finance the necessary investments;
- the *costs* must be kept to a minimum;
- because of the *need for the Community to look beyond 2020* and to make even deeper cuts in greenhouse gases by 2050, there is a need to stimulate technological development, and ensure that new technology can be used when it comes on stream; and
- the Community must do everything possible to promote a *comprehensive international agreement*, so the proposals should demonstrate its willingness to achieve the more ambitious 30% reduction which would form part of such an agreement.

8.6 The Commission then identifies the following tools which would be used to deliver the targets set.

### *Updating the Emissions Trading Scheme*

8.7 The Commission suggests that the Scheme (which covers some 10,000 industrial plants<sup>32</sup> across the Community, accounting for almost half of its emissions of carbon

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32 Including power plants, oil refineries and steel mills.

dioxide) has been a pioneering instrument in finding a market-based incentive to cut greenhouse gas emissions, but that it needs to be strengthened and updated, since its impact has been reduced by its limited coverage and the generous allowances handed out during the first phase (2005–07). It also considers that the use of National Allocation Plans risks distorting the internal market.

8.8 It therefore says that:

- the Scheme should extend to greenhouse gases other than carbon dioxide and to all major industrial undertakings (though those emitting less than 10,000 tonnes of carbon dioxide would be exempted, provided they have equivalent measures in place);
- there should be a harmonised Scheme, with National Allocation Plans being replaced by auctioning or free allocation through single Community-wide rules, with the allocations put on the market being reduced year-on-year to achieve the fall in emissions required by 2020;
- the power sector should be subject to full auctioning from the start of the next phase of the Scheme in 2013, with most other sectors, including aviation, reaching that position by 2020;
- auctioning would be handled by Member States, which would receive the resulting revenues (subject to their giving a commitment to use 20% of the sums in question to help adjustment towards low carbon technology, to support innovation in areas like renewables and carbon capture and storage, to help developing countries, and to help the less well-off to invest in energy efficiency): any Community operator would be able to buy allowances in any Member State; and
- at present, countries can achieve part of their emissions reduction target by investing in projects overseas through the Clean Development Mechanism (CDM), but, although this enables the targets to be met at a lower cost and promotes the transfer of low-carbon technologies to developing countries, it can dilute the effectiveness of the Scheme by reducing the incentive to promote emissions reductions at home: the use of the CDM should therefore be limited to the level in the current period (2008–12), leaving room for an increase once an international agreement is signed.

### *Greenhouse gas reductions beyond the Emissions Trading Scheme*

8.9 The Commission says that, since the revised Emissions Trading Scheme will still cover less than half of greenhouse gas emissions, a Community framework is needed for national commitments to address the remaining emissions, covering buildings, transport, agriculture, waste and industrial plants falling below the Scheme's threshold. It says that the target for these sectors should be a 10% reduction in emissions from 2005 levels, with specific targets for each Member State. It adds that some of this reduction would be driven by Community measures, such as tougher standards for carbon dioxide emissions from cars and rules to promote energy efficiency, but that otherwise Member States would be free to determine where to concentrate their efforts, and what measures to deploy.

### *Renewable energy*

8.10 The Commission notes that the European Council in March 2007 put particular emphasis on renewable energy, recognising the special contribution which this can make to the twin goals of reducing emissions and improving energy security. It also points out that, on average, an 11.5% increase will be needed to meet the target of 20% in 2020, requiring a major investment across the Community. It adds that Member States have differing abilities to deploy renewable energy, and that the European Council recognised that the effort required to meet the target will therefore differ according to the Member State involved. In view of this, it is proposing that half of the additional effort required should be shared equally between the Member States, with the other half being modulated according to per capita GDP, and taking into account as well the efforts already made by those which have achieved a certain increase in their share of renewable energy in recent years.

8.11 Recognising that the options for developing renewable energy vary from one Member State to another, the Commission says that each Member State is best placed to choose where to put the emphasis, but that, in view of the long lead times involved, it is important that they should have a clear vision. It therefore proposes that Member States should each put forward a National Action Plan, setting out how they intend to achieve their target and allowing progress to be monitored. It also says that a Member State's contribution towards supporting the overall target need not necessarily be within its own borders, and that it can reach its target by helping to develop renewable energy in another Member State (which, from a Community perspective, would shift investment to where renewables can be produced most efficiently). At the same time, it suggests that an investment of this kind in another Member State does not require a physical transfer of resources, but could be achieved by means of transferable guarantees of origin.

8.12 Finally, the Commission says that an expansion of renewable energy requires that the regulatory framework for conventional energy should be adapted, so as to provide the right environment for renewables to flourish, and that, because of the specific effort required to achieve emissions reductions in the transport sector, the European Council has set a separate 10% target for the share of sustainable biofuels in this area, subject to minimum criteria being set for their greenhouse gas performance (and to constraints being placed on certain types of land use changes).

### *Energy efficiency*

8.13 The Commission says that reducing energy consumption by 20% by 2020 through energy efficiency would save the Community some €100 billion and cut emissions by almost 800 million tonnes a year, this being one of the key ways in which emission savings can be realised. It notes that transport, building, and more efficient power generation, transmission and distribution all offer opportunities which need to be stimulated through a mixture of legislation and information; and it suggests that this can be achieved by improved product standards, and better labelling, coupled with a major commitment at all levels from public authorities, economic operators and citizens alike.

### *Looking beyond 2020*

8.14 The Commission says that, although renewable technologies have been developing rapidly over the past ten years, this process must be accelerated if the Community's goals are to be met. It suggests that the Strategic Energy Technology Plan<sup>33</sup> will play an important part, with climate change and energy likely to be the first areas for the European Institute of Technology. In particular, it stresses the importance of carbon capture and storage, pointing out that, although fossil fuels (notably coal), will be needed to provide energy within Europe and to meet the rise in demand in many developing countries, it will not be possible to meet the target of halving 1990 global greenhouse gas emissions by 2050, unless emissions from coal are contained. It adds that Community legislation is needed to provide the right framework for carbon capture and storage, and is the reason why the European Council backed early action to make this the technology of choice for new power plants, including the establishment of up to 12 demonstration plants by 2015. At the same time, it notes that this will require significant investment (in the order of tens of billions of euros), and that, since there is no question of this being available from the Community budget, the only possible sources are public-private partnerships fed predominantly by national budgets and private sector investment. It adds that the obvious source of revenue for governments would be the income generated by the auctioning of allowances under the Emissions Trading Scheme, whereas in the private sector there would be a real commercial benefit for those power generators prepared to move early into the carbon capture and storage market. (However, it also notes that, the later this process begins, the more it will be necessary to look at the compulsory application of carbon capture and storage technology.)

### *Bringing about change*

8.15 The Commission says that its guiding principle has been the need to develop an approach which limits the costs arising from the changes required, but that it considers that, with the right design, these can be kept to under 0.5% of GDP a year by 2020. It says that this involves building upon the experience of the Emissions Trading Scheme, whilst retaining as much flexibility for national decision as possible within the constraint of specific national targets. In particular, it suggests that the high price set by the future Emissions Trading Scheme will provide a strong incentive for companies to avoid the cost of allowances, and that auctioning of allowances will favour more efficient installations. It also says that state aid can legitimately be used to pursue the policy goal of cutting emissions and promoting renewable energy, provided this strikes the right balance between environmental protection and preserving effective competition. It adds that new state aid guidelines in this area will recognise that such aid may be justified where higher production costs create obstacles to market entry for renewable energies, and also allow state aid for carbon capture and storage.

### *The particular needs of energy-intensive industries*

8.16 The Commission says that, although such industries are an important part of the Community's economic fabric, they face a particular challenge; for example, their

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33 (29194) 15458/07: see HC 16–vii (2007–08), chapter 12 (9 January 2008).

participation in the Emissions Trading Scheme would give rise to a cost not faced by their competitors in countries failing to take low-carbon measures, whilst increased electricity prices would impact on certain sectors. It says that these problems would be addressed by a comprehensive international agreement, but that, in the meantime, the Community must take action to ensure a level playing field. It is therefore proposing that criteria should be established to show that, where extra costs could not be passed on without a significant loss of market share to less carbon-efficient competitors outside the Community, the sectors concerned would be given some or all of their allowances free under the Emissions Trading Scheme.

### *The capacity to invest*

8.17 The Commission notes that the European Council recognised that these proposals will make real demands on all Member States, and it says that it has therefore assessed carefully their economic impact against the capacity of each Member State to make the investment required. It suggests that, with the overall cost to the European economy estimated at just under 0.5% of GDP by 2020, no Member State should be asked to make an investment which diverges too far from this figure, and that the specific requirements for each Member State have been modulated in three areas to allow for a realistic level of investment from lower-income Member States — the national targets set for reducing greenhouse gases outside the framework of the Emissions Trading Scheme, the targets relating to the share of energy consumption to be taken by renewables, and auctioning rights under the Emissions Trading Scheme. As a result, it believes that all Member States will face realistic and viable targets.

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

8.18 In his Explanatory Memorandum of 14 February 2008, the Minister of State for the Environment at the Department for Environment, Food and Rural Affairs (Mr Phil Woolas) says that the UK has publicly welcomed the ambition of the Commission's package, and that the proposals, taken together, represent strong Community leadership in tackling climate change and putting the Community on track to become a low-carbon economy. However, he also observes that delivering on these "ambitious" proposals will require major social, political and economic effort across the Community.

8.19 The Minister says that detailed policy implications on the various aspects of the package, including any Regulatory Impact Assessments, will be provided in the various Explanatory Memoranda. Likewise, the different elements of the package will be discussed in various fora and according to different timetables.

### **Conclusion**

**8.20 This Communication provides a wide-ranging overview of the legislative action being proposed to meet the targets set by the European Council last year in relation to climate change and energy. As such, it is evidently an important document, covering subjects of obvious topical and political interest, and, were we considering it on a "stand alone" basis, we would have had no hesitation in recommending it for debate. However, we are also considering separately a number of other documents, dealing**

with issues covered in the Communication — notably the future development of the Emissions Trading Scheme;<sup>34</sup> the establishment of national targets for reducing emissions outside that Scheme<sup>35</sup> and for increasing the contribution which renewable energy makes to overall energy consumption,<sup>36</sup> and the need to develop carbon capture and storage<sup>37</sup> — each of which we are recommending for debate in its own right. In view of this, we do not think it necessary to have a separate debate on this Communication, but we do regard it as relevant to the other debates which we are recommending, not least in putting these individual areas into a more general context.

## 9 Management of EC development assistance

(26738) 11422/05 SEC(05) 1002	Commission Staff Working Paper: <i>Progress report on the mid-term review of the first generation of Country Strategy Papers</i>
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<i>Legal base</i>	—
<i>Department</i>	International Development
<i>Basis of consideration</i>	Minister's letter of 4 February 2008
<i>Previous Committee Report</i>	HC 34–v (2005–06), chapter 32 (12 October 2005); also see (26737) 11413/05: HC 34–v (2005–06), chapter 3 (12 October 2005)
<i>To be discussed in Council</i>	To be determined
<i>Committee's assessment</i>	Politically important
<i>Committee's decision</i>	Cleared (reported to the House on 12 October 2005)

### Background

9.1 The multi-annual programming system introduced as part of the 2000 reform of the management of EC external assistance aimed to ensure that external assistance reflected the EU's policy objectives and achieved greater complementarity in development assistance between the Community and Member States, pursuant to Articles 177, 180 and 181 (a) of the EC Treaty. Central to the system were Regional and Country Strategy Papers (RSPs and CSPs), setting out the objectives for partner countries receiving external assistance for the period 2000–2006/7, which in turn lead on to National Indicative Programmes (NIPs).

9.2 The 2000 Development Policy Statement (DPS) selected six areas upon which funds should be concentrated and called for increased recourse to budgetary support (rather than projects) where appropriate.

34 (29402) 5862/08: see chapter 4 of this report.

35 (29401) 5849/08: see chapter 3 of this report.

36 (29405) 5421/08: see chapter 1 of this report.

37 (29406) 5835/08: see chapter 2 of this report.

9.3 Community cooperation with different regions during this period was governed by a plethora of individual Regulations and Agreements: e.g., PHARE, ISPA and SAPARD for the then pre-accession countries, ALA for Asia and Latin America, MEDA for the Mediterranean region, CARDS for the countries of the Western Balkans, TACIS for Central Asia and the Cotonou Agreement for the Africa, Caribbean and Pacific countries.

9.4 In its 18 March 2003 Conclusions on the Commission's report on the "first generation" CSPs, the Council called on the Commission to carry out a Mid-Term Review (MTR). The Council requested that the MTR should serve to update the CSPs in line with developments in the partner country; incorporate new EU policy initiatives and priorities into cooperation programmes; assess results and performance and draw lessons; and improve quality and correct any weaknesses. In its Conclusions on the 23 November 2004 Orientation Debate,<sup>38</sup> the Council invited the Commission "to consider what conclusions might be drawn on the effectiveness of EC aid based on the outcome of the MTR Reviews from all regions, and to carry out an assessment of the MTR process itself to draw lessons for future performance based reviews of the CSPs and their harmonization across different regions".

### The Commission Staff Working Paper

9.5 This Staff Working Paper — which we considered on 12 October 2005 — sought to fulfil the Council's request. It assessed the extent to which MTRs of the first generation of CSPs took into account developments in partner countries and new EC/EU policy initiatives, the results and performance, and made recommendations for improvements and adjustments of any weaknesses. The Council further required that the Commission assess the overall effectiveness of the MTR process in evaluating the role of performance-based CSP reviews and their harmonisation across different regions. In total, eight country strategies were changed and CSPs rewritten following MTRs, and a slightly greater number had their allocations rebalanced across sectors, based on an assessment of needs and performance (though, overall, the rebalancing of funds between sectors was marginal).

9.6 The Commission concluded that its programmes continued to be relevant, efficient and effective: in all but a few cases the original country strategies continued to be valid; MTRs were fairly successful in taking into account new policies and initiatives, needs and performance when rebalancing resources, though in-built tension between "concentration" and new initiatives and commitments could not be avoided. Further improving performance assessment, donor coordination and the programming and analytical tools available to country offices would be addressed when developing the next generation of CSPs from 2005/06. Although valuable in terms of redirecting resources to good performers, validating the broad direction of its assistance programmes and strengthening the predictability of aid flows, the MTR process was both labour and resource intensive, and the next round of reviews needed to be lighter in touch and more flexibly timed.

9.7 The Parliamentary Under-Secretary of State at the Department for International Development (Mr Gareth Thomas) said at the time that Member States credited the

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<sup>38</sup> Each Presidency is able to initiate (via a paper drafted by it) an Orientation Debate, which since the Irish Presidency (January to June 2004) has focussed on aid effectiveness.

CSP/MTR process with significant improvements in the quality of EC development assistance programmes, and that the UK would use its then Presidency of the Council of Ministers to encourage the Commission to incorporate the lessons in the revised programming framework that was due to appear later in 2005 and the subsequent “second generation” CSPs. He noted that account would also need to be taken of any changes emanating from the proposed new instruments for external assistance under the 2007–13 Financial Perspective, and that the revised DPS would provide further opportunities to promote the effectiveness of EC external assistance.

9.8 Although only a Commission Staff Working Paper, we considered that it warranted reporting to the House because the multi-annual planning process is central to the effective coordination of EC development assistance both with Member States and other donors, and to the effective expenditure of very large sums of money to deal with very pressing problems. Although the story thus far was encouraging, we felt that it was plain that some major problems had yet to be solved, in particular what the Commission described as “the tension between incorporating new initiatives and focusing on a few areas for efficiency reasons”— one of those questions of “balance” that the then Secretary of State for International Development (Mr Hilary Benn) said would have to be resolved in the context of the discussions on the revised Development Policy Statement referred to in his Explanatory Memorandum on that document (which we considered elsewhere in that same previous Report and recommended for debate).<sup>39</sup> Furthermore, we considered it important that lessons learned so far and the other considerations to which the Minister referred were indeed incorporated in the “second generation” Country Strategy Papers (CSPs). So, in clearing the document, we asked the Minister to write in due course to let us know what success was achieved.<sup>40</sup>

### The Minister’s letter of 4 February 2007

9.9 In his letter, the Parliamentary Under-Secretary of State at the Department for International Development (Mr Gareth Thomas) says that “the tension between incorporating new initiatives and focusing on fewer areas remains, though the Commission has further developed its policies and guidelines to help address it”. He continues as follows:

“The Commission Development Policy Statement (DPS), agreed in 2005, provides a vision for its assistance programmes with all developing countries, setting out clear objectives, principles and commitments to be followed. These include making the eradication of poverty, including the pursuit of the MDGs, the overarching objective of Community assistance. The DPS also highlights twelve areas where the Commission is deemed to have a comparative advantage, including trade, health, transport, environment and natural resources, and governance. The DPS also requires the Commission to focus its assistance in a limited number of these areas, agreed with partner countries and aligned to their poverty reduction strategies or equivalent; and to strengthen the mainstreaming of a number of key cross-cutting issues including human rights, gender, governance and combatting HIV/AIDS.”

39 (26737) 11413/05: see HC 34–v (2005–06), chapter 3 (12 October 2005).

40 See headnote: HC 34–v (2005–06), chapter 32 (12 October 2005).

9.10 Turning to the principles of comparative advantage and concentration, the Minister says that these were elaborated in the “Guidelines for a Joint Programming Framework” adopted by the Council in April 2006; these included a Common Framework for Country Strategy Papers<sup>41</sup> which the Minister says the Commission has followed for the CSPs for the 10th European Development Fund: “The CSPs reviewed to date are consistent with these core documents, and are broadly in line with best practice and the principles of a country-led approach.”

9.11 The Minister then says that “this impetus towards joint programming and common frameworks was further strengthened in May 2007 when the Council adopted a Code of Conduct for the Division of Labour.” This, he recalls, calls on each Member State and the Commission to focus their assistance on fewer countries and sectors, and for each to assess their strengths and weaknesses as donors when considering where and how to provide assistance — the aim being “to avoid the creation of aid ‘orphans’ (countries that receive little or no aid), and to reduce the costs for developing country governments of dealing with many different donors”.<sup>42</sup>

9.12 The Minister also notes that “important changes have also been made to the legislative framework for the Commission’s assistance programmes, with the new Development Cooperation (DCI) and European Neighbourhood (ENPI) Instruments enshrining the DPS principles”. Although the CSPs for countries covered by these Instruments were, he says, largely prepared before this framework was adopted, they will be brought into line with the Common Framework at the mid-term review.

9.13 Next, the Minister says that there is “broad consensus that, for the EDF CSPs in particular, mainstreaming has improved” but that “challenges remain and we will continue to stress the importance of mainstreaming not only within CSPs but also in all implementation plans and projects themselves”.

9.14 As for those CSPs, the Minister says that most CSPs for countries covered by the DCI, the ENPI and 10<sup>th</sup> EDF have now been approved and that:

“on the evidence so far, I believe that much has improved in relation to the frameworks and process for the preparation of CSPs and that the lessons of the Mid Term Review have been adequately reflected. We will continue to work with the Commission and other Member States to improve programming processes, and in particular ensure that the CSPs for the DCI and ENPI are reviewed at the Mid Term Review and updated in accordance with the Common Framework.”

## Conclusion

**9.15 On 16 January 2008, we considered a number of development-related documents, including the Commission Communication on Aid for Trade, the Commission’s Annual Report on the European Community’s Development Policy and the**

41 Commission Communication 7068/06: “Increasing the impact of EU aid: a common framework for drafting country strategy papers and joint multi-annual programme planning”, a copy of which the Minister includes with his letter.

42 Also see (28383) 7124/07: HC 41–xviii (2006–07), chapter 1 (25 April 2007): we considered the relevant Commission Communication on 25 April 2007, which was also debated in the European Standing Committee on 8 May 2007.

Implementation of External Assistance in 2006 and the Commission Communication “*From Cairo to Lisbon — The EU-Africa Strategic Partnership*.”<sup>43</sup> As we noted then, one clear message to which the Minister referred in commenting on the first of those documents — living up to commitments — was common to a number of documents that we considered in the past year, and will be crucial in particular with regard to the new EU Strategy for Africa.

9.16 These and the other documents considered in our 16 January 2008 report were the latest in a large number considered by the Committee in 2005–07 concerning the EU’s external assistance, encompassing: a major rationalisation of the relevant financial instruments; a new European Consensus on Development; Member State commitments to significant increases in resources; a growing focus on poverty alleviation; an ever more challenging operating environment; enhanced activity not only by the Commission, but also by Member States individually, and collectively, via European Security and Defence Policy; a particular emphasis on the continent of Africa; a new, bigger EDF for 2007–13, amounting to some €23 billion; and new arrangements for the LDCs via the Economic Partnership Agreements.

9.17 It is now eight years since the Commission began a process of major management reform. During recent years, the Committee’s recurring concerns have been delivery and effectiveness. Given the Committee’s document-driven basis, effective consideration by us of all the complex issues involved is bound to be reactive, which is why we felt that it would be helpful were we not only to report to the House in the usual way, but also to draw these matters to the attention of the International Development Committee in order to inform its work when it next examines issues relating to EU development assistance. We were also conscious that, if not of one mind, then our two Committees were at least thinking on not dissimilar lines, viz., the International Development Committee’s recently-announced new inquiry into coordination for aid effectiveness.

9.18 It is with this in mind that, as well as reporting this further information from the Minister to the House, we are drawing it to the attention of the International Development Committee.

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43 (28544) 8390/07, (28734) 11141/07 and (28780) 11326/07: see HC 16–viii (2007–08), chapters 14,15 and 16 (16 January 2008).

## 10 Financing short-term fluctuations in export earnings of ACP countries

(28731) 10967/07 COM(07) 337	Council Decision on the position to be adopted by the Community within the ACP-EC Council of Ministers regarding the revision of the terms and conditions of financing for short-term fluctuations in export earnings
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<i>Legal base</i>	Article 300 (2) and 310 EC, and the ACP-EC Partnership Agreement; unanimity
<i>Document originated</i>	19 June 2007
<i>Deposited in Parliament</i>	26 June 2007
<i>Department</i>	International Development
<i>Basis of consideration</i>	Minister's letter of 11 February 2008
<i>Previous Committee Report</i>	HC 41–xxx (2006–07), chapter 3 (18 July 2007)
<i>To be discussed in Council</i>	To be determined
<i>Committee's assessment</i>	Politically important
<i>Committee's decision</i>	Cleared

### Background

10.1 The ACP-EC Partnership Agreement, known as the Cotonou Agreement, provides for a system of financial support — FLEX — to mitigate the negative effects on the African Caribbean and Pacific (ACP) countries which are party to that Agreement of short-term fluctuations in export earnings, particularly in the agricultural and mining sectors. It is not designed to compensate directly for losses of export earnings but to mitigate their adverse impact on economic potential and to protect expenditure in social sectors.<sup>44</sup> The support is financed from the B-allocation of the financial envelope for support to long-term development, which covers unforeseen needs.<sup>45</sup>

10.2 In May 2004, EU and ACP states agreed to amend FLEX's original eligibility criteria to improve its operation and effectiveness.<sup>46</sup> These changes were subsequently incorporated into the amended Cotonou Agreement agreed in 2005. In January 2005, the ACP states submitted a proposal to amend the FLEX mechanism further but, in order not to delay agreement on the revision of Cotonou, it was agreed that these would be examined at a later date.

44 Article 68.2 of the Agreement says that the purpose of this support is "to safeguard macroeconomic and sectoral reforms and policies that are at risk as a result of a drop in revenue and remedy the adverse effects of instability of export earnings".

45 Article 3.2(b) of Annex IV of the Cotonou Agreement.

46 (25393) 6370/04: see HC 42–xxi (2003–04), chapter 10 (26 May 2004) for the Committee's consideration of this Council Decision.

## The proposed Council Decision

10.3 In his 10 July 2007 Explanatory Memorandum, the Parliamentary Under-Secretary of State at the Department for International Development (Mr Gareth Thomas) explained that the Commission had reviewed the ACP proposals and believed that “further substantial revision was required in order to improve problems identified during the initial years of implementation”. He explained that the revisions would apply to:

- the eligibility criteria;
- the method of calculating and mobilising funds; and
- the source of financing,

and aimed to address the problems of slow disbursement and of “funds not being available to all countries which should be receiving support”.

### *Proposed changes to eligibility criteria:*

- countries facing post-conflict or post-natural disaster situations benefit from the more favourable treatment currently offered to least-developed, landlocked and island states;
- the reference period will now be for the four years preceding the application, excluding the year with the most extreme figures, in order to identify more accurately whether there is a short-term fluctuation in export earnings;
- fluctuations in export earnings will be calculated in the local currency rather than euros;
- the second eligibility criterion which measures the impact on programmed public deficit will be removed;
- a new eligibility criterion aimed at restricting the proliferation of small awards will be added;
- the number of successive years for which countries can access FLEX will be reduced from four to three.

### *Proposed changes to the method of calculating and mobilising FLEX:*

- FLEX assistance to be further concentrated on countries less able to withstand fluctuations in export earnings, by the limiting of support to countries that have suffered a reduction of at least 0.7% of GDP;
- countries eligible for budget support will be automatically eligible to receive up to 100% of the payment in advance;
- countries ineligible for budget support will be offered assistance to help develop market based insurance schemes;

- eligibility to receive FLEX assistance is considered as part of the EU’s political evaluation of countries where the EU has imposed appropriate measures or has not agreed a Country Strategy Paper (CSP).

***Proposed changes to the allocation of funding:***

- a maximum annual FLEX allocation of between €80–€100 million be established for all ACP states;
- if the potential amount of FLEX support exceeded the annual allocation, countries would receive FLEX financial support in proportion to their potential eligibility.

10.4 Finally, the Minister explained that in accordance with Article 100 of the Cotonou Agreement, Annex II may be revised by a Decision of the ACP-EC Council of Ministers; that the proposal recommends that the Council and the Member States authorise the Commission to negotiate the revision of the FLEX cooperation instrument with the ACP Group on the basis of the changes outlined; that the ACP-EC Council of Ministers has mandated the ACP-EC Committee of Ambassadors to take the final Decision on this matter; and that the Portuguese Presidency is hoping to secure Council agreement to a Community position by the end of September.

10.5 Commenting on the proposals, the Minister said that compensatory financing facilities such as FLEX can potentially play a positive developmental role, “provided lessons learnt from the past are applied”, welcomed the Commission’s objective of improving the working of the FLEX mechanism, and said that, in principle, the proposed changes appeared to be helpful. There were, however, a number of points upon which he would be seeking clarification from the Commission, which are set out in our previous report.

10.6 Finally, the Minister noted that there were no direct financial implications for the UK, as FLEX assistance will come from the country B envelope within the overall funding ceiling for the EDF.

10.7 For our part, we said that we had no quarrel with the purposes of the FLEX scheme or the wish to improve it: on the contrary. However, while it was clear how the proposals could tackle one of the two problems identified — “funds not being available to all countries which should be receiving support” — it was not apparent how they would speed up disbursement, so we asked if the Minister would explain how the proposed changes would achieve this and in the meantime retained the proposal under scrutiny, pending the clarifications that both he and we were seeking.

10.8 However, noting the Presidency’s hope to secure Council agreement to a Community position by the end of September, i.e., during the summer recess, we also said that, were the Minister to be able during this period to clarify the matters that he himself had identified to his satisfaction, and was also able to demonstrate that the proposal did indeed tackle the problem of slow disbursement as well as eligibility, we would not object to his joining a consensus in September.





















































