



House of Commons

European Scrutiny Committee

Nineteenth Report of Session 2007–08

**Documents considered by the Committee on 26 March 2008,
including the following recommendations for debate:**

Diplomatic and consular protection of Union citizens in third
countries

Financial management



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Report, together with formal minutes

*Ordered by The House of Commons
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Notes

Numbering of documents

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

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

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

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

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

Abbreviations used in the headnotes and footnotes

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

Euros

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

Further information

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

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

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1 Diplomatic and consular protection of Union citizens in third countries

(29353) 5947/08 + ADDs 1-2 COM(07) 767	Commission Communication: <i>Effective consular protection in third countries: The contribution of the European Union Action Plan 2007–2009</i>
	Commission Staff Working Documents: <i>Impact Assessment and Summary of Impact Assessment</i>

<i>Legal base</i>	—
<i>Department</i>	Foreign and Commonwealth Office
<i>Basis of consideration</i>	Minister’s letter of 17 March 2008
<i>Previous Committee Report</i>	HC 16–xiv (2007–08), chapter 2 (20 February 2008); also see (28304) 6192/07: HC 41–xvi (2006–07), chapter 2 (28 March 2007) and HC 41–x (2006–07), chapter 5 (21 February 2007)
<i>To be discussed in Council</i>	To be determined
<i>Committee’s assessment</i>	Legally and politically important
<i>Committee’s decision</i>	For debate in European Committee

Background

1.1 Article 20 EC provides that “every citizen of the Union shall, in the territory of a third country in which the Member State of which he is a national is not represented, be entitled to protection by the diplomatic and consular authorities of any Member State, on the same conditions as the nationals of that State. Member States shall establish the necessary rules among themselves and start the international negotiations required to secure this protection”. The same right is also embodied in Article 46 of the Charter of Fundamental Rights of the European Union.

1.2 During the past 2–3 years, the Commission has taken up what it sees as a need to improve the consular support given to EU citizens in third countries, particularly in crisis situations. Having previously made some informal suggestions, its 2007 Green Paper 6192/07 was its most formal contribution to date in this area.

1.3 Decision 95/553/EC¹ makes provision for action by the Member States in cases such as, for example, arrest and detention, accident or serious illness, acts of violence, death and repatriation and for advances of money for citizens in difficulty. Since not all Member States are represented in all non-European countries, the “Lead Country” mechanism was created by Member States as the main vehicle for implementing the Article 20 EC

¹ Decision of the representatives of the Governments meeting within the Council of 19 December 1995 regarding protection for citizens of the European Union by diplomatic and consular representations. OJ No. L 314, 28.12.95, p.73.

obligations.² The Green Paper also noted the creation by the Council of a working party on consular cooperation (COCON) to organise exchanges of information on national best practices and draw up guidelines on the consular protection of EU citizens in third countries. The Commission nonetheless argued further measures would fulfil more effectively the rights enshrined in Article 20 EC and Article 46 of the EU Charter of Fundamental Rights and put forward a number of proposals covering the full range of consular services:

- improving the information available to EU citizens on consular matters, both on their rights, and on seeking advice and assistance;
- improving the links with third countries to ensure that all EU citizens have access to consular assistance, including seeking agreement from third countries for Commission delegations to exercise a duty of protection in appropriate cases;
- broadening the entitlement to consular assistance, to include non-EU family members of EU citizens;
- establishing EU procedures to identify and repatriate remains of EU citizens who die abroad;
- simplifying procedures for providing financial advances to citizens of other EU Member States;
- establishing common consular offices, to provide assistance to all EU citizens in third countries; and
- the Commission becoming involved in organising joint consular training for officials.

1.4 As our previous Reports have noted, the Government has, from the outset, regarded the paper's contention that these articles mean that every EU citizen had a right to consular assistance as problematic. It has been noted that the Government, in common with the majority of other EU Member States, provided consular assistance as a matter of policy, rather than of obligation, and the exercise of that policy was discretionary; while Article 20 EC places an obligation on Member States to exercise their consular assistance policies in a non-discriminatory way as among EU citizens, this was not the same as creating a right to consular assistance; and that, under existing international law, consular relations were between States, which meant that the active role the Green Paper envisaged for the EU institutions in the delivery of consular assistance to EU citizens was likely to involve legal difficulties.

1.5 The preference instead has been for building on existing national capacities and continuing to improve coordination between Member States, rather than creating new systems which might complicate or duplicate effort. The Commission's lack of expertise in

2 The "Lead State" framework is designed to strengthen consular cooperation and improve protection for EU nationals in times of crisis in third countries where few Member States are represented: one or more Member States are designated as a "Lead State" in the third country to ensure the protection of unrepresented Union citizens on behalf of the other Member States; in case of evacuation, the "Lead State" is responsible for the evacuation of all Union citizens to a safe place.

providing consular assistance produced concern over the idea of the Commission becoming involved in consular service delivery (e.g. the provision of training for consular staff). There was concern, too, over the resource implications, the possible duplication of existing structures and/or the creation of an unsustainable financial burden. All of these concerns were expressed in the Government’s response to the public consultation that the Green Paper launched, which was annexed to our earlier report of 28 March 2007.³

1.6 For our part, we have noted that:

- consular services are the responsibility of Member States;
- the provision of consular services is the area in which diplomatic missions interface with members of the public most often and most critically, with matters of great sensitivity often at issue, in the most challenging circumstances and when the individuals concerned are at their most distressed and vulnerable;
- consular services are, unsurprisingly and quite rightly, at the top of Ministers and officials’ agenda, at home and abroad;
- a good level of cooperation between Member States already existed, and work was underway to improve it further, whereas it was difficult, if not impossible, to envisage circumstances in which missions staffed by officials responsible to the Commission could begin to provide a service of the same standard, with the level of immediate accountability that ensured that it remains thus; and
- while there might be scope for practical support in specific circumstances, we hoped that the Government would resist the expansionist elements in these proposals with vigour and determination.

1.7 We also noted that in its own report on the Green Paper, our counterpart committee in the French Sénat had noted that the Commission had not demonstrated that the aim of its initiative would be better achieved by action at EU or Community level rather than by pragmatic cooperation between the Member States, and considered that the Member States were best placed to advise their citizens of those third countries where they may be at risk and that the EU would bring no real “added value” if it assumed responsibility for informing citizens on this question. We respectfully shared these doubts and supported those observations.

1.8 All of these considerations were explored when the Green Paper was debated in the European Standing Committee on 15 May 2007, at the conclusion of which it was resolved:

“That the Committee takes note of European Union Document No. 6192/07 and the UK response to the European Commission’s Green Paper on *Diplomatic and consular protection of Union citizens in third countries* submitted to the Commission on 26th March 2007; joins the Government in welcoming the Commission’s contribution to the ongoing debate on how to improve the efficiency and effectiveness of the consular assistance provided by Member States to one another’s nationals; but notes the legal, political and practical difficulties to many of the

3 See headnote: (28304) 6192/07: HC 41–xvi (2006–07), chapter 2 (28 March 2007).

proposals; and agrees with the Government’s approach as laid out in its written response to the Commission.”⁴

1.9 Last December, the Commission produced its follow-up — The “European Union Action Plan 2007–2009” — which was accompanied by an Impact Assessment and a summary thereof. The Commission says that protection by diplomatic and consular authorities of Union citizens in third countries is one of its 2007 strategic policy objectives. It describes its Action Plan as “a non-exhaustive roadmap for measures that the Commission intends to propose in 2007–2009”. It is fully summarised in our most recent Report on this subject.⁵ In brief, the Commission says that its public consultation identified four shortcomings:

- poor awareness of EU citizens about their right to diplomatic and consular protection in third countries;
- unclear scope of protection under Article 20 EC;
- limited representation of Member States in third countries and lack of clear burden-sharing between Member States; and
- lack of consent of third countries to secure protection under Article 20 EC.

1.10 The Commission rejects its Option 1 (“a status quo policy option involving no new actions”) and instead puts forward an Action Plan based on its Option 3,⁶ with “eleven additional non-legislative and legislative actions which seek to address the four identified problems”, that relate to:

- greater efforts to inform the public of their rights under Article 20 TEC, including by printing the article in passports, and the establishment of a Commission website on consular protection;
- efforts to harmonise and simplify Member States’ consular practices, including in the areas of protection to family members who are third country nationals, procedures for the repatriation of remains, and procedures for financial advances;
- establishment of common EU consular offices in third countries;
- exchange of best practice and training; and
- obtaining the consent of third countries for the provision of consular assistance by EU Missions to the nationals of non-represented Member States.

1.11 Our most recent report showed that the Government’s basic views remained unchanged. The Minister for Europe at the Foreign and Commonwealth Office (Mr Jim Murphy) continued to emphasise the importance of respecting the correct division both of formal responsibility and of practical expertise between the Commission and Member States, and that British citizens abroad should continue to expect high quality consular

4 *Stg Co Deb*, European Standing Committee, 15 May 2007, cols. 3-16.

5 See headnote: (29353) 5947/08 + ADDs 1-2: HC 16–xiv (2007–08), chapter 2 (20 February 2008).

6 Which is reproduced at the Annex to our most recent Report.

assistance and services when they require them from British Embassies, Consulates and High Commissions across the world. He again noted that Member States have long held the unanimous view that the provision of consular assistance to their citizens is primarily a matter for national authorities, and that some of the proposals in this Action Plan, as with the original Green Paper, “involve a greater role for the Commission and Council Secretariat that sit uneasily with this position”. It was still not clear whether costs would be met from EU budgets or Member States’ budgets; nor, until proposals were fully developed and decisions made on what suggestions to take forward, was it possible to say what the cost may be. All in all, there were difficulties with the approach taken in the Action Plan; while some actions might be useful in improving cooperation and coordination, others raised legal difficulties and “some imply changes to our own practices that would be impracticable or unacceptable”.

1.12 The Minister nonetheless continued to agree with his predecessor that there was scope for further improvement in consular cooperation at EU level and Member States’ consular assistance through joint work and coordination, and said that he would continue to work to these ends, through the EU’s COCON (Consular Working Group), who were due to meet in early February; “at that discussion it will be for Member States to indicate how they would like to take forward the content of the Commission Communication”.

1.13 We looked forward to hearing a full account from the Minister about the outcome of this meeting and his views thereon. Depending upon what proposals were then still in play, we asked to know which ones the Minister supported, and why, and which ones he would continue to oppose, and to be given some indication of which Member States shared his position and which did not.

1.14 For our part, we hoped that Member States would insist that the Commission should think again. We explained why we considered the Commission’s case for its greater involvement as specious. Noting that the COCON group was presumably established to effect the “improved cooperation, coordination and burden-sharing” for which the Commission called, we said that, beyond sensible measures to raise awareness and improve access to information, we saw no basis for the implication that development of the “Lead Country” mechanism would not suffice. Rather than continuing to make unclear and uncosted proposals of dubious legal and practical validity, we felt that the Commission should return in due course with a revised Action Plan that respected Member States’ decades-long experience of providing effective consular services and their responsibilities in both Community and international law, and which instead put forward appropriately modest and properly-costed proposals that were both consistent with its proper role and demonstrate added value.

1.15 We also asked that, when the Minister responded to us, he let us have his view on the Commission’s assertion that the entry into force of the Reform Treaty “will provide a clear legal basis for EU law in this area”, and that the modified wording of Article 20 TEC enables the Council to adopt directives “establishing the coordination and cooperation measures necessary to facilitate such protection”.

1.16 We also asked to know if the Minister shared the Commission’s view that the existing practice, of notification under Article 8 of the Vienna Convention on Consular Relations, was inadequate, and that Member States should negotiate a “consent clause” with third

countries. Also, was the Minister content with the notion of the Commission seeking third country authorisation for its delegations to exercise protection “in matters of Community competence”? And could he explain what such matters might be?

1.17 In the meantime, we retained the document under scrutiny, and said that we would expect that no Conclusions, or other action based upon this Action Plan, would be agreed without further reference to us.⁷

The Minister’s letter of 17 March 2008

1.18 The Minister for Europe says that at the COCON Working Group meeting in Brussels on 1 February, the Commission introduced their Action Plan, focussing on a few specific proposals:

- “inclusion in passports of the first sentence of Article 20 of the Treaty establishing the European Community (TEC) (making clear that unrepresented EU nationals in a third country may seek assistance from other Member States’ representations);
- “establishment of a pilot joint consular office in a third country;
- “a comparative study of consular legislation and practice in Member States;
- “establishment of an EU consular website;
- “further seminars on specific aspects of consular policy;
- “negotiation of a clause in future mixed agreements with third countries formalising the arrangements under Article 20 TEC;
- “preparation of a paper on repatriation of remains.”

1.19 The Minister says that a number of Member States, including the UK, made preliminary comments, which “reflected a concern that the Commission was proposing to take a lead on issues — joint consular offices and the proposed study in particular — where it should be for Member States to decide what actions, if any, are necessary or useful.”

1.20 He says that there were “mixed views” on the insertion of wording from Article 20 in future passports, but “a general dislike of the Commission’s idea of printing stickers for interim use”. Member States, however, had no objection to the idea of an EU Consular website provided it did not duplicate existing (national and EU) resources. No objections were expressed to the idea of Commission support for seminars on aspects of consular policy: “The next such seminar proposed, at the Presidency’s initiative, will look at lessons learned following the Indian Ocean Tsunami.”

1.21 The Minister says that he agrees fully with our judgement “that Member States’ cooperation mechanisms are the right ones for the implementation of Article 20 TEC”, and says that we “may be sure that in our comments on the Action Plan we will make this point strongly, as we did in discussion at the COCON Working Group”.

⁷ See headnote: (29353) 5947/08 + ADDs 1-2: HC 16–xiv (2007–08), chapter 2 (20 February 2008).

1.22 Turning to the Commission’s assertion that the entry into force of the Lisbon Treaty “will provide a clear legal basis for EU law in this area” and that the modified wording of Article 20 enables the Council to adopt directives “establishing the co-ordination and cooperation measures necessary to facilitate such protection”, the Minister responds as follows:

“The Lisbon Treaty does not change Member States’ responsibilities in this area. It maintains the arrangements established by Maastricht under which it is Member States who provide consular assistance (or ‘protection’) to each other’s nationals on the same terms as their own nationals. It equally remains the case that it is for Member States to decide amongst themselves the necessary arrangements to secure this protection. Under the Lisbon Treaty the Council may adopt directives by QMV necessary to facilitate any arrangements which are decided by Member States.”

1.23 Turning to the Commission’s proposal on agreements with third countries, the Minister says that “objections were expressed”, on the basis that this is already covered by the Vienna Convention on Consular Relations (VCCR), and that, as regards the issue of notification under Article 8 of the VCCR, he has not changed from the view expressed in the UK response to the Green Paper, which he reiterates as follows:

“The UK understands the importance of obtaining the consent or acquiescence of the receiving state in providing consular assistance to Member States’ unrepresented nationals. However, whether this requires Member States to negotiate bilateral agreements with third states depends on the agreements and arrangements already in place with the receiving states. For example, Article 8 of the Vienna Convention on Consular Relations allows consular assistance to be provided to non-nationals where the receiving state has been notified and been given an opportunity to object. In our experience, receiving states are generally content for assistance to be provided by other Member States. Consequently, the need for consent clauses in bilateral agreements is unproven in many circumstances.

“However, the UK recognises the value of these provisions in facilitating such assistance. Consequently, we would welcome discussing the possibility of ‘consular provisions’ in the context of any consultations held with the Commission pursuant to Decision 88/384/EC. Of course, it would be inappropriate for any Member State to commit in advance to the inclusion of such provisions. The negotiation of agreements with third states is complex and difficult. Whilst the inclusion of a ‘consular provision’ may be uncontroversial in some instances, its benefits are unlikely to justify efforts to negotiate it in many others. Moreover, any such provision would be without prejudice to the division of responsibility amongst Member States’ missions for unrepresented nationals.

“It remains our view that this is an issue that can be looked at on a case by case basis, and that there should be no presumption of the inclusion of such ‘consent clauses’ in future agreements.”

1.24 The Minister then says that, as “it is not clear what is intended by the reference in para 5.5 of the Action Plan to the Commission exercising protection ‘in cases falling under

Community competence”, he will raise this with the Commission, and in the meantime again notes that “the provision of consular assistance remains a matter for Member States”.

1.25 Summing up, the Minister says:

“I hope that this clarifies the issues raised in the Committee’s draft response. I share your view that it would be preferable for the Commission to focus on modest proposals that are consistent with its proper role and that add value. In discussion within COCON we will continue to make this clear. I believe that this view is shared by most Member States.”

1.26 Looking ahead, the Minister says that it was agreed that Member States would provide their comments on the Action Plan in writing as a basis for further discussion.

Conclusions

1.27 **We are grateful to the Minister for this comprehensive update on developments. It is reassuring up to a point, since there is a large measure of agreement between us and the Minister, and at least some Member States, against most of the Commission’s proposals.**

1.28 **We also note what the Minister says about the effect of the Lisbon Treaty on Member States’ responsibilities in this area. However, even though, he says, it maintains the arrangements established by Maastricht under which it is Member States who provide consular assistance to each other’s nationals on the same terms as their own nationals, and that it equally remains the case that it is for Member States to decide amongst themselves the necessary arrangements to secure this protection, it is not clear to us that the introduction of the “special legislative procedure” (i.e. a form of qualified majority voting) regarding the adoption of directives concerning arrangements that are presently decided by Member States intergovernmentally will not undermine the nature, and effectiveness, of those present arrangements, and would value a fuller explanation of this issue by the Minister.**

1.29 **It is clear that discussions with the Commission on its Action Plan have only just begun, and there is no indication yet of the Commission’s response. We accordingly look forward to further such updates — including the Government’s written comments on the Action Plan as and when they are available — and remind the Minister of our expectation that no Conclusions, or other action based upon this Action Plan, shall be agreed without further reference to us.**

1.30 **In the meantime, we consider that the issues raised — which concern who is best placed to organise and provide consular services to UK nationals living, working and travelling overseas — are of sufficient importance to warrant giving the House a further opportunity to question the Minister, and to debate these issues, and accordingly recommend the Communication for debate in the European Committee.**

Annex: Commission's preferred option

Policy Option 2	<p>Legislative action: INFORMATION:</p> <p>(1) A recommendation to Member States to print Article 20 EC in new passports and to affix a sticker on the outside rear cover of existing passports</p> <p>Non-legislative action:</p> <p>(2) Publish guidelines and other measures connected with the implementation of Article 20</p> <p>(3) Set up an EU web-site on "Europa" on consular protection</p> <p>(4) Put posters explaining the rights of EU citizens to consular protection in airports, ports, railway stations etc.</p> <p>(5) Assess the extent and nature of discrepancies in Member States' legislations and practices in the field of consular protection</p> <p>(6) Publish updated contact details of embassies and consulates of the Member States represented in each third country</p> <p>(7) Explore the possibility of a coordinated presentation of travel advice</p> <p>(8) Explore the need for sharing best practices and provide training for key actors</p>
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Policy Option 3	<p>All measures mentioned under Policy option 2 plus:</p> <p>Legislative action:</p> <p>SCOPE:</p> <p>(9) Examine the possibility of ensuring that citizens receive a similar level of protection irrespective of their nationality</p> <p>(10) Ensuring consular protection for the identification and repatriation of remains</p> <p>(11) Simplify the procedures for repatriating remains</p> <p>(12) Examine the possibility of ensuring protection to EU citizens' family members who are not EU nationals</p> <p>(13) Explore the need to simplify procedures for financial advances required under Decision 95/553</p> <p>Non-legislative action:</p> <p>INFORMATION:</p> <p>(14) Examine the possibility of setting up an EU telephone number on consular protection</p> <p>SCOPE:</p> <p>(15) Recommend to Member States, which have not yet ratified the 1973 Council of Europe Convention on transfer of corpses, to accede to it</p>
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	<p>STRUCTURES:</p> <p>(16) Examine the possibility of setting up a compensation system between Member States</p> <p>(17) Set up a “common office” in one area as a pilot project to be evaluated.</p> <p>(18) Publish arrangements on burden-sharing between Member States in third countries (guidelines, the idea of “lead State” etc).</p> <p>CONSENT:</p> <p>(19) Propose to insert a “consent clause” in “mixed” agreements concluded with third countries and recommend Member States to insert “consent clauses” in their bilateral agreements concluded with third countries</p> <p>(20) Consider the possibility of obtaining the consent of third countries to allow the Union to exercise protection through the Commission delegations in cases falling under Community competence</p>
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2 Financial management

(29511) 7210/08 + ADD1 COM(08) 112	Commission Report : <i>Member States' replies to the Court of Auditors' 2006 Annual Report:</i>
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<i>Legal base</i>	—
<i>Document originated</i>	28 February 2008
<i>Deposited in Parliament</i>	4 March 2008
<i>Department</i>	HM Treasury
<i>Basis of consideration</i>	EM of 18 March 2008
<i>Previous Committee Report</i>	None
<i>To be discussed in Council</i>	No discussion planned
<i>Committee's assessment</i>	Politically important
<i>Committee's decision</i>	For debate in European Committee

Background

2.1 The Commission is obliged to inform Member States of the references to them in the annual reports of the European Court of Auditors and to invite them to respond. The Commission publishes annually a report on those responses.

The document

2.2 In this document the Commission reports on the responses of Member States to the references to them made in the European Court of Auditors' 2006 Annual Report.⁸ The Commission gives examples of general comments that Member States made on the overall audit approach, reports responses to questions on common errors in relation to structural policies, provides a summary of Member States' responses to specific observations of the Court and presents the Commission's conclusions. The staff working document accompanying the report summarises all the general and specific responses from Member States.

2.3 The Commission asked Member States to:

- answer a series of questions on the most common substantial errors in relation to structural policies;
- make general remarks on the 2006 report or on general issues relating to the discharge procedure; and
- for each observation or error identified in the report, for a Member State to indicate if action had been or would be taken, the timing of any action taken and the content of action taken or, if no action, the reason for not taking action.

2.4 In relation to the questions on structural policies the Commission summarises responses thus:

The main underlying reasons for common errors highlighted by Member States

- legislation — the complexity of Community legislation led to differences in interpretation and application between Member States and the Commission, for example in the case of the rules on how long documents should be kept;
- staffing — lack of expertise among staff in implementing organisations resulted in negligence and careless mistakes;
- documentation — lack of filing, inconsistent filing and loss of documents, especially in cases of a reorganisation or liquidation of a project management unit;

Most common actions taken to prevent the common errors from recurring

- information — improved level of knowledge of rules and procedures among staff involved in day-to-day management of projects;
- controls — new checklists to be used in control procedures have been introduced;
- legislation — some Member States introduced new national legislation in order to clarify or to simplify procedures;

8 (29232): see HC 16–viii (2007–08), chapter 3 (16 January 2008) and *Stg Co Deb*, European Standing Committee, 28 January 2008, cols. 3–26.

- Member States were unable to report on any concrete results from the actions taken, but as a rule, they expected fewer (and smaller) errors in the future;
- the Commission found the feedback from Spain and the UK particularly important, as it estimates these two Member States accounted for over half of total quantifiable errors identified for 2006 by the European Court of Auditors in structural policies; and
- action taken to address criticisms with which the Government agreed included several actions to strengthen controls carried out by managing authorities and new guidance issued to project managers on the need to keep documentation and of the type of documentation required for audit purposes. The level of error was expected to be initially high as more issues were identified and then to start decreasing as actions were taken to address them.

2.5 In relation to Member States' follow-up of errors in relation to agricultural policy and structural policies the Commission notes that:

- Member States replied in respect of about 60% of the European Court of Auditors' Statement of Assurance errors within agricultural policy and about three quarters of the errors within structural policies;
- slightly more than half of the errors for which no reply was received concerned Spain, about one quarter concerned Italy and Portugal, with the remainder being split between five other Member States — for which reminders have been sent;
- in cases where Member States disagreed with the court they did not take actions on errors identified. The rate of disagreement varied somewhat between the different categories of errors;
- with substantive errors, the rates of disagreement were higher (five out of ten) in structural policies but much lower (two out of ten) in agricultural policy. For formal errors, the disagreement rate was four out of ten in agricultural policy (particularly due to cases concerning Greece) and slightly lower in structural policies (three out of ten), but more evenly spread between several Member States;
- for errors accepted by Member States, actions already taken or about to be taken are stated. In agricultural policy typical actions included the making of late payments, improving recording of various data or carrying out checks in cases where the court had found control procedures not to be fully observed. In structural policies, the range of actions also included ensuring correct publicity for Community funding and changing procedures in relation to tendering and time recording; and
- for substantive errors concerning agricultural policy, Member States generally professed to have recovered, or to be in the process of recovering, payments. In structural policies, Member States claimed to have withdrawn ineligible expenditure from claims or initiated recovery in around half of all cases. Other actions included improving audit trails, repeating checks or improving information to beneficiaries about the rules.

2.6 In its conclusion to its Report the Commission welcomes the many completed replies received from Member States, noting that the annual feedback provides a valuable opportunity to pick up on horizontal issues linked to the European Court of Auditors' annual report. Based on the replies to the 2006 exercise, the Commission's report identifies several issues in need of further consideration:

- on structural policies, in the light of the view that Community legislation is complex, so leading to staff involved in day to day management of projects lacking sufficient knowledge of the rules involved, the Commission holds that, if Member States address these key issues in an effective and efficient manner, the level of error in structural policies will be reduced;
- given some Member States found it unsatisfactory that their replies were not reflected in the European Court of Auditors' report, the Commission comments that this is partly due to the tight deadline to be respected in the preparation of the report. Currently, the court informs Member States of its findings by sending a letter to the relevant national supreme audit institution, which then collects information from the auditee. The Commission believes that Member States might be able to provide replies faster if the court also sent letters directly to the authority or body audited and extended its use of electronic communication;
- given that Member States do not always agree with the errors identified by the European Court of Auditors, a particular problem for errors with a financial impact in structural policies, the Commission and the Court are currently discussing how to minimise disagreements on interpretation of rules in the future; and
- where Member States accept the errors identified by the European Court of Auditors, they appeared to take appropriate action — often by recovering the funds concerned or withdrawing ineligible expenditure when errors have a financial impact. Nevertheless, the Commission believes that the prevention of errors must be improved by ensuring that those involved in day-to-day management are aware of the rules and procedures to be followed and have the appropriate resources.

The Government's view

2.7 The Financial Secretary to the Treasury (Jane Kennedy) says:

- the Government welcomes this report and the opportunity it provides for Member States to respond to comments from the European Court of Auditors;
- it takes this process seriously and fully responded to the Commission's questionnaire;
- it is useful to consider Member States' responses along with the Court findings and this informs the Government's understanding of the problems encountered by other Member States and the Commission in the management of the Community budget;

- in the UK areas of concern raised by the European Court of Auditors are being investigated by the relevant Department or devolved administration and, where appropriate, action is being taken to address criticisms and to continue to strengthen management and control systems;
- recent improvements to management systems for structural funds include improved management information systems for data collection (including the handling of irregularities), increased number of checks, strengthened management procedures and re-verification work by independent auditors; and
- the Government will also be fully cooperating with the European Court of Auditors in any follow up audits it chooses to undertake.

Conclusion

2.8 This report gives useful background to the preparation and conclusions of the European Court of Auditors' 2006 annual report. However, we are concerned that this document shows matters which need further examination, for example, that Spain and the UK accounted for over half of quantifiable errors in structural policies or that Spain gave no response in relation to more than half of errors identified. And we are conscious that the next debate on audit and financial matters which we recommend annually will not take place until early in 2009. Therefore we recommend that this document be debated in European Committee.

3 Communicating Europe

(28969) 13829/07 + ADDs 1–2 COM(07) 568	Commission Communication: <i>Communicating Europe in Partnership</i>
(28970) — ADDs 1–2 COM(07) 569	Commission Working Document: <i>Proposal for an Inter-Institutional Agreement on Communicating Europe in Partnership</i>

<i>Legal base</i>	—
<i>Department</i>	Foreign and Commonwealth Office
<i>Basis of consideration</i>	Minister’s letter of 17 March 2008
<i>Previous Committee Reports</i>	HC 16–vii (2007–08), chapter 5 (9 January 2008), HC16–i (2007–08), chapter 5 (7 November 2007); also see (27265) 5922/06: HC 41–xvii (2006–07), chapter 4 (18 April 2007), HC 41–v (2006–07), chapter 4 (10 January 2007), HC 34–xl (2005–06), chapter 5 (1 November 2006) and HC 34–xxii (2005–06), chapter 4 (15 March 2006)
<i>To be discussed in Council</i>	To be determined
<i>Committee’s assessment</i>	Legally and politically important
<i>Committee’s decision</i>	Not cleared; further information requested

Background

3.1 Starting from what it saw as a widely recognised gap between the European Union and its citizens, the Commission first produced an Action Plan with a detailed list of specific measures “to improve the way it communicates with citizens” and then “Plan-D for democracy, dialogue and debate”, which was “intended to involve citizens in a wide-ranging discussion on the European Union — what it is for, where it is going and what it should be doing”.⁹ But these initiatives, the Commission said, would only succeed if all “the key players” were involved — the other EU institutions and bodies; the national, regional and local authorities in the Member States; European political parties; civil society. Hence the Commission’s February 2006 White Paper, which put forward a number of ideas under five main headings:

- Defining common principles of an EU Communications Policy, possibly in a framework document or charter;
- Developing tools and facilities for improved public access to information;

⁹ Which we considered on 15 March 2006, (27265) 5992/06: see HC 34–xxii (2005–06) chapter 4, and was debated in the European Standing Committee, 23 May 2006, cols. 3–36.

- More effective involvement of the media and use of new technology in communicating EU issues in the public domain;
- Improving measures to gauge public opinion; and
- Greater engagement between Member States, EU institutions and Civil Society Organisations.

3.2 In his accompanying Explanatory Memorandum, the then Minister for Europe (Douglas Alexander) said that the Government welcomed the White Paper's underlying approach but believed that an EU communications policy must be formulated and implemented in cooperation with Member States, respecting national circumstances; that further discussion was needed on the detail and framework of the initiatives outlined; and that he would respond "in due course".

3.3 The Committee retained it under scrutiny since March 2006, with successive Ministers providing limited responses while awaiting the Commission's follow up to its White Paper before commenting further.

3.4 After some delay, that follow-up emerged in the form of a Communication on "Communicating Europe", which discusses possible improvements under four broad headings: *Coherent and Integrated Communication*; *Empowering Citizens*; *Developing a European Public Sphere*; and *Reinforcing the Partnership Approach*; and a proposal for "an Inter-Institutional Agreement on Communicating Europe in Partnership"; and a Commission Staff Working Document that proposes using the existing structure of the Inter-Institutional Group on Information¹⁰ (IGI) to produce a formal Inter-Institutional Agreement (IIA). The Commission's approach and proposals are outlined fully in the relevant chapter of our 27 November 2007 Report.¹¹ Beyond that and various detailed suggestions about its own activities, the other main proposal is for voluntary management partnerships with Member States as the main instrument of joint communication initiatives. The overall objective is "to strengthen coherence and synergies between the activities undertaken by the different EU institutions and by Member States". The three areas proposed as communications priorities for 2008 are: Energy and Climate Change; Institutional Settlement; and Intercultural Dialogue. The cost would be c. €88 million, which would be met from existing funds.

3.5 Once again, a definitive UK position had yet to be established. More importantly, there was uncertainty about the legal basis of the Commission's proposed IIA — the Commission saying that this could be put into place by administrative means, and the Council Legal Service taking the view that "the proposed IIA is not a matter of administrative cooperation between the institutions (and possibly the Member States), but a matter of political choice which requires a legal framework, adopted in accordance with Treaty procedures". So we retained these further documents under scrutiny too.

10 The Inter-institutional Group on Information (IGI) is the existing policy structure for agreeing EU communication strategy and selecting common communication priorities for the EU institutions and Member States. It is chaired jointly by the European Parliament, the Commission and the Presidency.

11 See headnote: HC16-i (2007–08), chapter 5 (7 November 2007).

3.6 In his 6 December 2007 letter, the Minister for Europe made it clear that he shared the Council Legal Service’s position, but explained that the Commission\Council Legal Services impasse continued. He also included the FCO’s detailed response to the Communication and Commission Staff Working Document, which we included as Annex 1 of the relevant chapter of the Report of our 9 January 2008 meeting.¹²

3.7 It having now been overtaken, and the Minister having finally provided satisfactory answers to the outstanding questions thereon (c.f. Annex 2 of the relevant chapter of the Report of our 9 January 2008 meeting), we cleared the 2006 White Paper.¹³

3.8 However, in addition to the continuing Commission/Council Legal Services tussle, the FCO’s detailed response to the Communication and Commission Staff Working Document raised a number of questions.

3.9 The Minister referred to a proposed review of the *Europe Direct Centre Network*, which he says “provides objective, factual information to the public”, and asks for further information about the idea of “*European Public Spaces*”, as “one stop” shops that would host “a wide range of European activities”. We said that we, too, would be interested in such information, since it was by no means apparent how they would differ from, or complement, the Europe Direct Centre Network.

3.10 We said that, like him, we too would welcome further detail on the Commission’s notion of *multi-annual contracts for networks of broadcasters across Europe*, so as to enhance its existing policy of encouraging audio-visual channels to develop EU programmes.

3.11 We noted that the Minister did not seem to rate *the Commission’s existing “Eurobarometer” opinion polling system* very highly, saying only that he regarded it as “potentially a very useful tool”, and was keen to work closely with the Commission representative in the UK on “the planning, content, execution and release of EU-wide and UK-specific polling”, and asked him to explain in more detail his present reservations and what he had in mind instead.

3.12 We also noted that he did not seem keen on shining a light on this and wider EU communication activities, and asked why he disagreed with the Commission proposals that each Member State’s National Communications Director (a position yet to be identified in the UK) should produce an annual report, preferring instead the closed confines of the Information Working Group; while agreeing with him that “communications activities and resources allocated by individual member states are internal matters”, we felt that they should nonetheless be open to public scrutiny.

3.13 The Minister referred to a forthcoming Commission paper on EU communications in third countries and a stock-taking of the results of Plan D, with proposals “to widen the democratic debate throughout Europe”. We asked the Minister for a summary of these documents when he receives them.

12 Ditto: see HC 16–vii (2007–08), chapter 5 (9 January 2008).

13 Ditto: see HC 16–vii (2007–08), chapter 5 (9 January 2008).

3.14 We also shared his interest in knowing more about the Commission’s Management Partnership with Germany, as and when he has more information.

3.15 We also agreed with him that the UK Government should “continue to determine our national education policy on EU matters”.

3.16 More generally, we felt that there was plainly nothing remiss with the notion of integrating the communication activities of the various Commission departments as effectively and coherently as possible; nor with the notion of Member States pursuing their own communication policies, or cooperating with the Commission as they see fit. But the implied notion of some sort of collective “vision” being pursued, with European taxpayers’ funds, to the exclusion of alternative “visions”, was altogether more questionable — so, too, the notion that this could be put into place by administrative means. We accordingly looked to the Minister to address these fundamental questions in his response.

3.17 In the meantime, we continued to retain the Commission Communication and the Commission Staff Working Document under scrutiny.¹⁴

The Minister’s letter of 17 March 2008

3.18 The Minister (Jim Murphy) encloses a memorandum setting out responses to our questions,¹⁵ which he says is based on information gathered through consultation with the European Commission and the other Member States.

3.19 He says that he:

“recognises the concerns of Parliament about ensuring that the Commission’s proposals on Communicating Europe in Partnership offer good value for money. At the same time, we support the underlying principle of the Commission’s document COM (2007) 568 and the Commission’s efforts to improve co-ordination of communications to citizens. We see this as an important factor in improving the EU’s delivery for its citizens.

“Therefore we welcome the Commission’s confirmation that all of the proposals in Communicating Europe in Partnership will be met through existing funding and will continue to work closely with the Commission, and our European partners, to ensure the financial efficiency of the proposals.”

3.20 On the various promised Commission papers, the memorandum makes it clear that the Commission paper on Communication in third countries is “still only in the planning stage”, and that a new Communication on the follow-up to Plan D will be available “in the coming weeks”. In the meantime, although, as the Commission puts it, “the leading vehicle of Plan D for ‘Dialogue, Debate and Democracy’ — the six civil society projects co-funded by the Commission in 2006 and 2007 — have yet to be thoroughly evaluated by an external contractor”, the Commission feels that it can “already state that, by and large, Plan D has been an interesting experiment in transnational ‘participatory democracy’” (sic).

¹⁴ Ditto: see HC 16–vii (2007–08), chapter 5 (9 January 2008).

¹⁵ Which we reproduce at the Annex of this chapter of our Report.

3.21 The Minister also encloses a document setting out the scope and terms of the Commission’s proposed Management Partnerships; says that the one with Germany is being discussed in the Information Working Group, and offers to provide more information in due course; confirms that the UK has not currently negotiated a Management Partnership with the Commission; and supports the notion that any decision to enter into these arrangements should be on a voluntary basis.

3.22 Regarding the *European Public and Spaces Europe Direct Centre Network*, the Commission says that the former are:

“joint communication initiatives of the European Commission and European Parliament, which could be set up in the locations where EP information office and Commission Representation are sharing the same building and have big enough premises for the public in order to serve as meeting points for Europeans. These spaces can offer multiple opportunities: providing information and documentation, hosting exhibitions, films, debates, forums and lectures as well as training and seminars on European issues. Using web-based multilingual conferencing facilities, they are also able to host transnational debates.

“Their added value mainly relates to the capacity of reaching new target audiences, not always interested in EU affairs, through innovative actions made possible by these ‘common spaces’ : film broadcasting, art exhibitions, quizzes or competitions for children, events linked to European thematic weeks or days.”

The Commission says that it has drafted an intermediate report on three pilot projects in Tallinn, Dublin and Madrid, and that the concept could be extended, there currently being 32 EU cities where both the EP and Commission are represented. The Commission says that, “in the framework of the EPS concept”, Commission representations and EP information offices will try to reach widest possible audience through cooperation with networks at local and regional level, in particular with *Europe Direct Centre Networks*, with NGOs and civil society, cultural networks and institutes, and by using the media and Internet. The Commission notes that there are currently 478 Europe Direct Information Centres in the EU (30 in the UK), which it envisages rising to 500 by 2013, and that “Europe Direct host structures are selected through an open call for proposals, mostly from among local authorities, NGOs, universities or libraries.”

3.23 The Minister “welcomes the Commission’s efforts to use innovative methods to reach a broad number of audiences” and its “efforts to ensure that European Public Spaces should be co-ordinated with, and complement, the existing Europe Direct Centre network”. He says that he will consider the Commission’s intermediate report on European Public Spaces when it becomes available.

3.24 The Minister also encloses a Commission document explaining “their notion of multi-annual contracts for networks of broadcasters across Europe”, and says that he “agrees with the Commission’s analysis of the benefits of multi-annual contracts — particularly reduced costs. Multi-annual contracts also provide a long-term commitment to Communications on EU issues.” He “ suggests that the Commission should maintain a regular review of all its broadcasting contracts to ensure that programmes continue to complement the EU’s communications priorities: for example, Climate Change.”

3.25 The Minister notes the Committee’s point that communications activities and resources allocated by Member States are internal matters “but should be open to public scrutiny”. He says that his initial reservations about the proposal for Member States to present an annual report detailing their communications activities and financial commitments was based on a lack of understanding as to the added value or purpose of such a report, but is now “happy to produce a short annual report for our EU partners, setting out resources allocated and the activities undertaken”. He also confirms that the Director of Communications at the Foreign and Commonwealth Office is currently the UK’s National Communications Director.

3.26 He goes on to say that “the UK has no reservations about the value of the Eurobarometer polling system, which we see as a helpful and informative source of pan-European Public opinion”, and welcomes the Commission’s ongoing work on Eurobarometer polling. He would nonetheless like:

“to improve the co-ordination and planning of the Commission’s UK-specific polls by working with the European Commission Office in the UK. Whilst respecting the autonomy of the Commission’s work, we hope to strengthen Eurobarometer polling in the UK by identifying areas where the public feel the EU can and should deliver, thus making it a tool to help identify priorities as well as gauge public opinion.”

3.27 Finally, the Minister says that the Information Working Group has concluded that the proposal for *an Inter-Institutional Agreement on Communicating Europe in Partnership* was “not a viable way forward and that we would need to propose an alternative solution”. The Council Secretariat has, he says, accordingly drafted “a set of non-legally binding ‘Joint Conclusions’ in place of the IIA and as an annex to the Council Conclusions, which suggest the means by which the Council, Commission and Parliament should take forward their communication activities”. The Information Working Party has now been asked to analyse the language for the Council Conclusions and the Joint Conclusions: “Given that the IIA matter is now resolved, the Government will now proceed with these discussions.”

Conclusion

3.28 We are grateful to the Minister for this comprehensive response. Given its interim nature, we look forward to further information in due course.

3.29 We note that the proposal for an Inter-Institutional Agreement has been dropped. But it is not at all clear what the proposed arrangements now are. We accordingly look to the Minister to deposit the documents to which he refers — the Council Conclusions and the Joint Conclusions — before they are adopted by the Council, with a clear explanation of how they provide a proper legal base for the Commission’s proposals.

3.30 We shall also be interested in his views on the assessment of the three *European Public Space* pilot projects, particularly if widespread implementation is recommended.

3.31 We also look forward to his Explanatory Memorandum on the forthcoming Communication on the follow-up to Plan D (and, when it is forthcoming, on the Commission paper on information and communication in third countries). We should like to know how, and from whom, the six civil society projects co-funded by the

Commission in 2006 and 2007 were selected and whether he agrees that it has been “an interesting experiment in transnational ‘participatory democracy’”; indeed, we should like to know what he understands by this notion, and what future he sees for it.

3.32 We note the Minister’s clarification of his views on, and support for, the “Eurobarometer” polling system. We presume that he has seen the interesting comments on it by the Economist’s “Charlemagne” column, which notes that some Commission officials regard “Eurobarometer” findings as “a form of quasi-democratic mandate” and as providing a device with which “to browbeat reluctant governments, in private and in public”. It gives as an example a Commission poll that was used to claim 80% support for a controversial project, and 63% support for its large budget, despite 60% of respondents never having heard of the project before they were telephoned.¹⁶

3.33 This links back to a basic question that the Minister has yet to address: of an implied, and more questionable notion going beyond improved coordination, and voluntary Member State cooperation with the Commission, towards some sort of collective “vision” being pursued, with European taxpayers’ funds, to the exclusion of alternative “visions” (c.f paragraph 3.16 above). We continue to look to him to address this at some stage.

3.34 In the meantime, we shall continue to retain the documents under scrutiny.

Annex: Outstanding questions from the European Scrutiny Committee: Government response

Outstanding questions from the European Scrutiny Committee on Commission documents COM (568) 2007 and COM (569) 2007 — Communicating Europe in Partnership: Government response

European Scrutiny Committee Conclusions, paragraph 2: “The Minister refers to a forthcoming Commission paper on EU communications in third countries and a stock-taking of the results of Plan D, with proposals ‘to widen the democratic debate throughout Europe’. We should be grateful if the Minister would let us have a summary of these documents when he receives them.”

The European Commission has provided the following information on EU communications in third countries:

The Commission manages a programme of information & communication in third countries via its Delegations. The Commission is interested in gaining added value in its communication on the EU, particularly through co-operation with the Embassies of the member states accredited in third countries. The recent activities regarding the 50th Anniversary of the Treaty of Rome (more detail available at:

¹⁶ For full text of article, see <http://206.252.133.22/hoc/Headlines.aspx>.

http://europa.eu/50/around_world/index_en.htm) indicate the gains to be made from this co-operation. In order to follow up, the Commission will in future propose a paper on this subject. However, it is still only in the planning stage.

The European Commission has also provided the following information on the Plan D stocktake:

In June 2007, the period of reflection called for by the Heads of State and Government after the French and Dutch “No” to the Constitutional Treaty came to an end when European leaders agreed that the Constitutional Concept had been abandoned and reached agreement on the Reform Treaty (now known as the Lisbon Treaty). At this time, the European Council underlined the crucial importance of reinforcing communication with the citizens, providing full and comprehensive information on the European Union and involving them in a permanent dialogue. This will be particularly important during the ratification process of the Treaty of Lisbon and in the run-up to the 2009 European Parliamentary elections.

Although the leading vehicle of Plan D for “Dialogue, Debate and Democracy” — the six civil society projects co-funded by the Commission in 2006 and 2007 — have yet to be thoroughly evaluated by an external contractor, one can already state that, by and large, Plan D has been an interesting experiment in transnational “participatory democracy”. If the necessary and relevant information is provided and if the language barrier is overcome, citizens chosen at random are prepared to engage in substantial cross-border discussions and make relevant suggestions for the future of the EU.

The civil society projects experimented different ways of combining virtual and face to face communication as well as deliberative consultation and polling at national and European level. Overall, approximately 40,000 people participated physically in the six trans-national projects and about 1.5 million people did so virtually via the Internet. For many of the participants, Plan D was both a human and a political experience. Not only did they sense that they were becoming active European citizens but they also rediscovered their own national citizenship, in as far as the debates helped them distinguish between those issues that are best dealt with at national level and those which can best be addressed at European level. They also experimented for themselves the political process of reaching agreement with other people on European issues, including in some cases with people from other Member States.

Now that a series of pilot participatory democracy projects have been carried out in this framework, the challenge is to ensure that the output they generated feeds into the political decision-making process. This is why the Commission is preparing a follow-up to Plan D for the period leading up to the European elections of June 2009. The aim of this new phase will be to progress from “Dialogue and Debate” to “Democracy” and ensure that, in the spirit of the Communication on “Communicating Europe in partnership” adopted by the Commission in October 2007, debate between citizens on EU-related issues at local, regional, national and European level leads to a more visible and focused dialogue between civil society and elected political representatives at all levels of governance. Beyond 2009, transnational and multicultural “dialogue, democracy and debate” should become a permanent feature of European democracy at all levels of governance. A new Communication on the follow-up to Plan D will be adopted by the Commission in the coming weeks.

We welcome the Commission’s informative update. We are currently awaiting the publication of the paper on third countries and the Plan D Stocktake, which we will consider in due course.

Conclusions, paragraph 3: “We, too, would also like to know more about the Commission’s Management Partnership with Germany, as and when he has more information.”

Increased cooperation and coordination on bilateral Management Partnerships, between the national communication directors, the Commission Representations and the European Parliament Offices has been discussed by delegates of the Information Working Group. Delegates have suggested that any further feedback from the German example would be useful at a future meeting of the Information Working Group.

We are happy to provide any further information from the German delegation to the Scrutiny Committee, on this point.

We also attach a document setting out the scope and terms for Management Partnerships, which we hope the Scrutiny Committee will find useful.

The UK has not currently negotiated a Management Partnership with the Commission, and supports the notion that any decision to enter into these arrangements should be on a voluntary basis.

Conclusions, paragraph 4: “The Minister also refers to a proposed review of the Europe Direct Centre Network, which he says ‘provides objective, factual information to the public’, and asks for further information about the idea of ‘European Public Spaces’, as ‘one stop’ shops that would host ‘a wide range of European activities’. We too would be interested in such information, since it is by no means apparent how they would differ from, or complement, the Europe Direct Centre Network.”

The European Commission has provided the following information on the proposed review of the Europe Direct Centre Network and European Public Spaces:

European Public Spaces are joint communication initiatives of the European Commission and European Parliament, which could be set up in the locations where EP information office and Commission Representation are sharing the same building and have big enough premises for the public in order to serve as meeting points for Europeans. These spaces can offer multiple opportunities: providing information and documentation, hosting exhibitions, films, debates, forums and lectures as well as training and seminars on European issues. Using web-based multilingual conferencing facilities, they are also able to host transnational debates.

Their added value mainly relates to the capacity of reaching new target audiences, not always interested in EU affairs, through innovative actions made possible by these “common spaces” : film broadcasting, art exhibitions, quizzes or competitions for children, events linked to European thematic weeks or days.

In the Summer of 2007, European Public Spaces were set up as a pilot project in three locations: Tallinn, Dublin and Madrid. An intermediate report has been drafted by the

Commission on the first experiences from those three locations. Pending on the consent of the European Parliament and arrangement of appropriate premises, the European Public Spaces concept could be extended (there are currently 32 cities across the EU where the both the EP and Commission are represented).

In the framework of the EPS concept, Commission representations and EP information offices will try to reach widest possible audience through cooperation with networks at local and regional level, in particular with Europe Direct Centre Networks, with NGOs and civil society, cultural networks and institutes, and by using the media and Internet.

There are currently 478 Europe Direct Information Centres in the EU (30 in the UK), the number can be expanded to 500 during the new term (2009–2013) of the network. Europe Direct host structures are selected through an open call for proposals, mostly from among local authorities, NGOs, universities or libraries.

When preparing for the new term of the Europe Direct network, the key principle has been to build on previous experience, keeping the good elements and when possible seeking possibilities for simplification in the grant management procedures. The intention is to provide for a small increase to the level of grants, the new maximum ceiling will be 25.000 € (compared to the current ceiling of 24.000 €). The grant is foreseen to contribute to basic services, i.e. keeping open an information office, as well as to more specific services/activities to be delivered to the citizens.

For the time being more detailed procedures are still being developed and are under discussion.

We are grateful to the Commission for this informative update. On European Public Spaces we welcome the Commission's efforts to use innovative methods to reach a broad number of audiences. We also welcome the Commission's efforts to ensure that European Public Spaces should be co-ordinated with, and complement, the existing Europe Direct Centre network.

We will consider the Commission's intermediate report on European Public Spaces when it becomes available.

Conclusions, paragraph 5: “We would also, like him, welcome further detail on the Commission's notion of multi-annual contracts for networks of broadcasters across Europe, so as to enhance the its existing policy of encouraging audio-visual channels to develop EU programmes.”

The European Commission has provided the attached document to explain their notion of multi-annual contracts for networks of broadcasters across Europe.

The UK is grateful to the Commission for this explanatory document. We agree with the Commission's analysis of the benefits of multi-annual contracts — particularly reduced costs. Multi-annual contracts also provide a long-term commitment to Communications on EU issues.

The UK suggests that the Commission should maintain a regular review of all its broadcasting contracts to ensure that programmes continue to complement the EU's communications priorities: for example, Climate Change.

Conclusions, paragraph 6: “We note that the Minister does not seem to rate the Commission’s existing ‘Eurobarometer’ opinion polling system very highly, saying only that he regards it as ‘potentially a very useful tool’, and is keen to work closely with the Commission representative in the UK on ‘the planning, content, execution and release of EU-wide and UK-specific polling’. He seems less keen, however, on shining a light on this and wider EU communication activities, since he disagrees with the Commission proposals that each Member State’s National Communications Director (a position yet to be identified in the UK) should produce an annual report, preferring instead the closed confines of the Information Working Group. We should be grateful if he would explain in more detail his present reservations about the ‘Eurobarometer’ and what he has in mind instead, and why he does not favour the publication of an annual national report on EU communications activities. We agree with him that ‘communications activities and resources allocated by individual Member States are internal matters’: but they should nonetheless be open to public scrutiny.”

We can confirm that Lucian Hudson, Director of Communications at the Foreign and Commonwealth Office, is currently the UK’s National Communications Director.

We should like to clarify that the UK has no reservations about the value of the Eurobarometer polling system, which we see as a helpful and informative source of pan-European Public opinion. We welcome the Commission’s ongoing work on Eurobarometer polling.

We would like to improve the co-ordination and planning of the Commission’s UK-specific polls by working with the European Commission Office in the UK. Whilst respecting the autonomy of the Commission’s work, we hope to strengthen Eurobarometer polling in the UK by identifying areas where the public feel the EU can and should deliver, thus making it a tool to help identify priorities as well as gauge public opinion.

We also note the European Scrutiny Committee’s point that communications activities and resources allocated by Member States are internal matters “but should be open to public scrutiny”.

Initially, the UK had some reservations about the proposal for Member States to present an annual report detailing their communications activities and financial commitments, since we were not clear about the added value or purpose of such a report.

However, the UK’s EU Communications activities are already a matter of public record. We maintain a number of high profile communications tools in the public domain, such as our website at www.europe.gov.uk and our Guide to the EU, which is used by the public and in schools and libraries across the country.

Given the Scrutiny Committee’s views, we are happy to produce a short annual report for our EU partners, setting out resources allocated and the activities undertaken.

Conclusions, paragraph 8: “Finally, as he makes clear, a key issue concerning the whole concept of an ‘Inter-Institutional Agreement on Communicating Europe in Partnership’ is still to be resolved between the Council and Commission Legal Services. We should be grateful if he would let us know the outcome as soon as it is known. Until then, we shall continue to retain these other documents under scrutiny, and would not expect him to enter into any Conclusions thereon while this is so.”

At the meeting of the Information Working Group in Brussels on 21 February 2008, Member States discussed the proposal for an Inter-Institutional Agreement on Communicating Europe in Partnership. The Group concluded that the IIA proposal was not a viable way forward and that we would need to propose an alternative solution. The Council Secretariat has drafted a set of non-legally binding “Joint Conclusions” in place of the IIA and as an annex to the Council Conclusions, which suggest the means by which the Council, Commission and Parliament should take forward their communication activities.

The Information Working Party has been asked to analyse the language for the Council Conclusions and the Joint Conclusions. Given that the IIA matter is now resolved, the Government will now proceed with these discussions.

Foreign and Commonwealth Office,

March 2008.

4 Defence and security procurement

(29267) 16488/07 + ADDs 1–2 COM(07) 766	Draft Directive on the coordination of procedures for the award of certain public works contracts, public supply contracts and public service contracts in the fields of defence and security
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<i>Legal base</i>	Articles 47(2), 55 and 95 EC; co-decision; QMV
<i>Department</i>	Ministry of Defence
<i>Basis of consideration</i>	Minister’s letter of 18 March 2008
<i>Previous Committee Report</i>	HC 16–xiv (2007–08) chapter 4 (5 March 2008); HC 16–xiii (2007–08) chapter 6 (6 February 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

4.1 The proposed draft Directive on procurement in the fields of defence and security closely follows the terms of Directive 2004/18/EC (which applies generally to the procurement of goods, services and works by public authorities) but makes a number of

adaptations to that regime for the purpose of applying it to the award of contracts in the fields of defence and security.

4.2 We considered the draft Directive on 6 February and 5 March. We shared the Minister’s concern over the proposed rules concerning the secrecy of information, which appeared to make no provision for Member States to take special measures where information is, for example, too sensitive to release to non-national companies. We agreed with the Minister that words should be included to make it clear that it is for the Member State to determine whether particular information is sensitive.

4.3 We also shared the Government’s concern that legitimate reliance on Articles 30, 39, 46 and 55 (public security in respect of the free movement provisions of the EC Treaty) and Article 296(1)(b) EC (the national security exemption) might be more difficult over time if the proposal were to be adopted.

4.4 When we considered the proposal on 5 March we raised three questions of detail. The first was the attempt to define “terrorism” and “criminal organisation” in an EC instrument, when the definition of these matters is within the scope of the EU Treaty. It seemed to us that to re-state these definitions in such a detailed manner on the face of the Directive made them a matter of EC law (and therefore subject to the Commission’s powers to bring infraction proceedings and the compulsory interpretative jurisdiction of the ECJ) and was also unnecessary. We also questioned whether there was any competence under the EC Treaty to adopt these definitions.

4.5 The second point concerned the extra-territorial effect of the proposal. We noted the Minister’s comment that the Directive would apply to the letting of contracts by a contracting authority in the EU for goods, works or services wherever in the world these were to be provided, but we questioned whether the proposed Directive should have any application where the contract is awarded in a country outside the European Union. We asked the Minister if it was intended that suppliers anywhere in the world should be given rights under the proposed Directive, in circumstances where there is no reciprocal right of access by UK suppliers to those suppliers’ home markets.

4.6 Thirdly, we noted that the exception in Article 9 (b) for contracts awarded in a third country refers to contracts with local economic operators “for” the deployment of military forces. We assumed that the intended exception concerns contracts relating to the deployment of such forces, such as for their support or maintenance, rather than for their deployment, but asked for the Minister’s comments.

The Minister’s reply

4.7 In her letter of 27 February 2008 the Minister for Defence Equipment and Support (Baroness Ann Taylor) addresses these three issues. On the adoption of definitions of “terrorism” and “criminal organisation” the Minister explains that the definition of “terrorism” comes from Framework Decision 2002/475/JHA and “criminal organisation” from Article 1 of Joint Action 98/733/JHA. The Minister states that “by adopting these definitions the Commission has actually recognised them as Pillar 3 issues¹⁷ and therefore

17 I.e. a matter under Title VI of the EU Treaty.

not within their competence to define”. The Minister further states that the inclusion of the definitions “is academic since it will not fundamentally affect whether the Directive is within the jurisdiction of the European Court of Justice and subject to infraction proceedings” and that even if the terms were undefined, the ECJ could still seek to define them by reference back to the JHA definitions if this were relevant to the outcome of a case brought before them on the interpretation of the Directive.

4.8 On the question of the territorial scope of the proposal, and in reply to our question of whether it was intended that suppliers anywhere in the world should be given rights under the proposed Directive, even if the UK had no reciprocal right of access to those suppliers’ home markets, the Minister states that the position on the rights of suppliers from third countries does not differ from that under Directive 2004/18/EC. The Minister further explains that the Directive does not give rights to suppliers anywhere in the world, but it does require contracting authorities to advertise in the Official Journal of the European Union “when they are letting contracts for goods works and services wherever those services are to be performed in order to open the performance of that contract up to EU contractors and those contractors that are in States to which the public procurement rules are extended”. The Minister adds that it is open to a contracting authority to permit third country suppliers to bid for such work as well but there would not be a legal requirement to do so under the Directive.

4.9 Finally, the Minister confirms that the exemption under Article 9(c) is intended to apply to contracts relating to the deployment of military forces, such as for their support and maintenance and agrees with us that there may be a need to amend the existing wording so as better to reflect the intention. The Minister emphasises that the exemption concerns only those procurements in third countries which are carried out in support of operations and is not a blanket exemption for procurements in third countries.

Conclusion

4.10 **We thank the Minister for her prompt reply to our report. On the question of using powers under the EC Treaty to define the concepts of “terrorism” and “criminal organisation”, we have some difficulty in following the Minister’s argument. If the Commission has indeed recognised these matters as falling under the EU Treaty, and not within its competence to define under the EC Treaty, then on this basis it must follow that these crime-related definitions may not be adopted in an EC Treaty measure. Even though the provisions are descriptive of the scope of the Directive, it remains the case that every part of it must be based on powers conferred by the EC Treaty (in this case, Article 47(2), 55 and 95 EC).**

4.11 **We accept that the Directive, as such, would fall within the interpretative and enforcement jurisdiction of the ECJ but it is for that very reason that we express concern about including provisions within it which may only lawfully be adopted under the EU Treaty. We have serious doubts over the existence of any EC competence to adopt these provisions. Accordingly, we invite the Minister to consider whether the issue of defining the scope of the Directive might be dealt with in some other way which does not involve defining crimes such as, for example, by reference to the nature of the**

goods or services to be supplied. We observe, in this context, that if the Directive did not extend to security, any need for these definitions would fall away.

4.12 On the territorial scope of the proposal, we note that it is to be inferred from the Minister's comments on the scope of Article 9(c) that the Directive is capable of applying to procurements in third countries. From this it would seem to follow that suppliers in those countries (notably those in countries which are party to the WTO Government Procurement Agreement) are potentially persons "having or having had an interest in obtaining a particular contract" for the purposes of Directive 2007/66/EC and to that extent would have rights to challenge the validity of the award process. However, it is also true that the Directive does not provide for the open procedure (i.e. distribution of specifications to anyone who wishes to see them) so the opportunity for challenge by a potential supplier in a third country may well be limited.

4.13 We welcome the Minister's acceptance that Article 9(c) may need redrafting and we look forward to an account in due course of how this question is being addressed.

4.14 We also recall that the Government indicated in its Explanatory Memorandum of 21 January 2008 that it would re-assess whether the benefits of the proposal were outweighed by the risks if certain changes were not made. We therefore ask the Minister to keep us informed of any progress on eliminating or amending the provisions in question.

5 Recognition and enforcement of judgments given *in absentia*

(29358) 5213/08 + COR 1 —	Draft Council Framework Decision on the enforcement of judgments <i>in absentia</i>
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<i>Legal base</i>	Articles 31(a) and 34(2)(b) EU; consultation; unanimity
<i>Department</i>	Office for Criminal Justice Reform
<i>Basis of consideration</i>	Minister's letter of 10 March 2008
<i>Previous Committee Report</i>	HC 16–xii (2007–08), chapter 5 (20 February 2008); and see (22876) 13425/01: HC 152–viii (2001–02), chapter 1 (28 November 2001), HC 152–xvii (2001–02) (30 January 2002); (24754) 11447/03: HC 63–xxxiv (2002–03), chapter 8 (22 October 2003); (24350) 7231/03: HC 42–ix (2003–04), chapter 37 (4 February 2004); (24921) 13052/03: HC-63–xxxvii (2002–03), chapter 8 (12 November 2003); (25335) 5738/04, (25540) 8225/04, (25667) 9465/04: HC 42–xxi (2003–04), chapter 6 (26 May 2004); HC 42–xxvi (2003–04), chapter 7 (7 July 2004)
<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 We considered this draft Framework Decision on 20 February when we noted that it amended a number of Framework Decisions providing for the recognition and enforcement of decisions in criminal matter (namely the European Arrest Warrant (Framework Decision 2002/584/JHA), Framework Decision 2005/214/JHA on the application of the principle of mutual recognition to financial penalties, Framework Decision 2006/783/JHA on the application of the principle of mutual recognition to confiscation orders and the draft Framework Decision on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty).

5.2 We noted that the amendments would go some way towards addressing the inadequacies of these Framework Decisions identified by us and our predecessors in cases where a person has been tried or otherwise dealt with in his absence.

5.3 The proposal sought to amend the European Arrest Warrant (EAW) by inserting a new Article 4a conferring a right not to execute any warrant if the judgment is given *in absentia*

unless it is shown that that the person was summoned in person or informed by a competent representative and in due time of the date and place of the hearing and did not contest the *in absentia* decision and did not request a retrial. The certificate would include confirmation that the person was summoned in person, including the time and place of the summons and a description given of how the person was informed, or, in the case where a person does not contest the decision, the certificate will require a statement as to when and how the person expressly stated this fact. Framework Decision 2005/214/JHA (on the mutual recognition of financial penalties) would be similarly amended as would Framework Decision 2006/783/JHA on confiscation orders and the draft Framework Decision on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty.

5.4 Given the consistent criticism by us and our predecessors of the adequacy of the safeguards under the Framework Decisions in question, we welcomed these steps in the direction of better compliance with the requirements of Article 6 ECHR. We repeated the point made by our predecessors that the certificates in all cases where there has been a conviction *in absentia* should contain a statement by a person holding judicial office setting out the grounds for that person's belief that the requirements of Article 6(3) ECHR have been met in the case in question. Although the forms of certificate now proposed were clearly an improvement, we invited the Attorney General to consider this further improvement which would give more secure grounds for mutual trust and confidence.

5.5 We also noted that, in relation to the European Arrest Warrant, the new Article 4a, and the certificate did not appear to be consistent as to when personal service was required of the judgment. We invited the Attorney General's comments on our view that personal service should be required in all cases. We also asked the Attorney General why no provision was made for factual descriptions of how and when a person was informed of his rights in the circumstances of paragraphs 2.3 and b.3 of the certificates (rights to retrial and requests for retrial) and why the period within which a request for retrial may be made had been left blank. We also asked the Attorney General to explain the extent to which the Devolved Administrations in Scotland and Northern Ireland had been involved in the sponsorship of this proposal by the UK.

The Attorney General's reply

5.6 In her letter of 10 March the Attorney General (Baroness Scotland of Asthal) agrees with us that a statement by a judicial authority showing that there has been compliance with the requirements of the ECHR "could have a certain symbolic force". However, the Attorney General also explains that all EU Member States are bound by the ECHR, and Article 1(2) of the proposal is a reminder of that fact, so that, in the Attorney General's view any such statement would be unnecessary and would risk creating operational problems by increasing the risk of executing Member States' judicial authorities looking behind the certificate or warrant issued in accordance with the relevant Framework Decision "in a way that would run counter to the principle of mutual recognition". The Attorney General does not consider this is a point which the UK should press in negotiations.

5.7 The Attorney General agrees with us that personal service should be a standard requirement. The Attorney General adds that there is some doubt over the meaning of the phrase “summoned in person” which in the UK generally conveys the idea of direct oral information, but is interpreted differently by most Member States which see this concept as including written information. The Attorney General adds that the Government has nothing against giving effect to obligations following a trial *in absentia* where the person has been informed of the hearing in writing, so long as this notification can be shown to have been received by that person. The Attorney General points out that trials in the absence of the defendant are relatively common in the Magistrates’ Court where a plea of guilty has been received by letter and that the receipt of such a letter demonstrates that the defendant received the summons.

5.8 The Attorney General also agrees with us that there are inconsistencies in the wording between the text of the draft Framework Decision and the forms. The Attorney General also explains that the deadline for retrial requests has been deliberately left blank as there was no agreement as to whether a specific period should be specified or, if so, what that period should be and adds that both points are expected to be dealt with in later versions.

5.9 Finally, the Attorney General informs us that the Northern Ireland Office and the Scottish Executive “have been fully involved in the policy on this dossier” and recalls that the consultation exercise launched on 28 February will be UK-wide.

Conclusion

5.10 We thank the Attorney General for her helpful letter. We are disappointed that the Attorney General has decided not to pursue the idea that the certificate should contain a statement by a judicial authority that the requirements of Article 6(3) ECHR have been met in the issuing Member State. In our view, there must be a strong argument that this would make it less, rather than more, likely that the executing State will look behind the certificate, since reliance can then be placed on a judicial assessment rather than on a form which can be completed by the administrative staff of a court.

5.11 We welcome the clarifications provided by the Attorney General on the question of personal service of a summons and the inconsistencies between the text of the proposal and the forms.

5.12 We shall hold the current document under scrutiny but shall look forward to further information on the negotiation of this proposal.

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

Department for Environment, Food and Rural Affairs

(29513)
7232/08
COM(08) 120

Draft Council Directive simplifying procedures of listing and publishing information in the veterinary and zootechnical fields and amending Directives 64/432/EEC, 77/504/EEC, 88/407/EEC, 88/661/EEC, 89/361/EEC, 89/556/EEC, 90/427/EEC, 90/428/EEC, 90/429/EEC, 90/539/EEC, 91/68/EEC, 92/35/EEC, 92/65/EEC, 92/66/EEC, 92/119/EEC, 94/28/EC, 2000/75/EC, Decision 2000/258/EC and Directives 2001/89/EC, 2002/60/EC, and 2005/94/EC.

Foreign and Commonwealth Office

(29554)
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Draft Council Joint Action amending and extending Joint Action 2005/190/CFSP on the European Union Integrated Rule of Law Mission for Iraq, EUJUST LEX.

Department for Transport

(29533)
7032/08
COM(08) 92

Draft Council Decision on the signature and provisional application of the Agreement between the European Community and the Republic of Kazakhstan on certain aspects of air services.
Draft Council Decision on the conclusion of the Agreement between the European Community and the Republic of Kazakhstan on certain aspects of air services.

HM Treasury

(29516)
16441/07
SEC(07) 1695

Commission Staff Working Paper: Mid-term review of the European Action for Growth — stocktaking on the progress on the implementation of the European Action for Growth.

(29536)
16276/07
SEC(07) 1689

Commission Staff Working Document on spillovers and complementarities in the context of the Lisbon Growth and Jobs Strategy including economic effects of the Community Lisbon Programme.

Formal minutes

Wednesday 26 March 2008

Members present:

Michael Connarty, in the Chair

Mr Adrian Bailey

Mr David S Borrow

Mr William Cash

Mr James Clappison

Jim Dobbin

Mr Greg Hands

Mr David Heathcoat-Amory

Mr Anthony Steen

2. The Committee met in public for the scrutiny of documents

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

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

Paragraphs 1.1 to 1.29 read and agreed to.

Paragraph 1.30 read, amended and agreed to.

Paragraphs 2.1 to 2.7 read and agreed to.

Paragraph 2.8 read, amended and agreed to.

Paragraphs 3.1 to 6 read and agreed to.

Resolved, That the Report, as amended, be the Nineteenth Report of the Committee to the House.

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

[Adjourned till Wednesday 2 April at 2.30 p.m.]

Standing order and membership

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

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

The expression “European Union document” covers —

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

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

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

Current membership

Michael Connarty MP (*Labour, Linlithgow and East Falkirk*) (Chairman)
 Mr Adrian Bailey MP (*Labour/Co-op, West Bromwich West*)
 Mr David S. Borrow MP (*Labour, South Ribble*)
 Mr William Cash MP (*Conservative, Stone*)
 Mr James Clappison MP (*Conservative, Hertsmere*)
 Ms Katy Clark MP (*Labour, North Ayrshire and Arran*)
 Jim Dobbin MP (*Labour, Heywood and Middleton*)
 Mr Greg Hands MP (*Conservative, Hammersmith and Fulham*)
 Mr David Heathcoat-Amory MP (*Conservative, Wells*)
 Keith Hill MP (*Labour, Streatham*)
 Kelvin Hopkins MP (*Labour, Luton North*)
 Mr Lindsay Hoyle MP (*Labour, Chorley*)
 Mr Bob Laxton MP (*Labour, Derby North*)
 Angus Robertson MP (*SNP, Moray*)
 Mr Anthony Steen MP (*Conservative, Totnes*)
 Richard Younger-Ross MP (*Liberal Democrat, Teignbridge*)