



House of Commons  
European Scrutiny Committee

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**Thirty-fifth Report of  
Session 2007–08**

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Documents considered by the Committee on 15 October 2008,  
including the following recommendations for debate:

Debate Europe

Communicating Europe

*Report, together with formal minutes*

*Ordered by The House of Commons  
to be printed 15 October 2008*

## 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](http://www.parliament.uk/escom). The website also contains the Committee's Reports.

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

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# 1 Debate Europe

(29601) Commission Communication: *Debate Europe — building on the*  
 8163/08 *experience of Plan D for Democracy, Dialogue and Debate*  
 COM(08) 158

<i>Legal base</i>	—
<i>Department</i>	Foreign and Commonwealth Office
<i>Basis of consideration</i>	Minister’s letter of 30 September 2008
<i>Previous Committee Report</i>	HC 16–xxiv (2007–08), chapter 4 (18 June 2008); also see (28969) and (28970) 13829/07: HC 16–xxii (2007–08), chapter 4 (21 May 2008), HC 16–xvii (2007–08), chapter 3 (26 March 2008), HC 16–vii (2007–08), chapter 5 (9 January 2008) and HC16–i (2007–08), chapter 5 (7 November 2007); also see (27265) 5992/06: 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); and (27041) 14775/05: HC34–xxii (2005–06), chapter 1 (15 March 2006)
<i>To be discussed in Council</i>	To be determined
<i>Committee’s assessment</i>	Politically important
<i>Committee’s decision</i>	Do not clear; for debate in European Committee B together with document 13829/07 <sup>1</sup>

## Background

1.1 Starting from what it saw as a widely recognised gap between the European Union and its citizens, the Commission produced “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”. Plan D would concentrate on “listening better”, “explaining better” and “going local” to engage European citizens.<sup>2</sup>

1.2 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 on an EU Communications Policy, which proposed “a fundamentally new approach” — from one-way communication to reinforced dialogue; from institution-centred to citizen-centred; from Brussels-based to a more

1 See chapter 2 of this Report.

2 Which we considered on 15 March 2006 (see HC 34–xxii (2005–06), chapter 1 (2005–06)) and was debated in the European Standing Committee, 23 May 2006, cols. 3–36.

decentralised approach; “genuine dialogue between the people and the policymakers and lively political discussion among citizens themselves”; people having “fair and full information about the European Union” and confidence that their views and concerns “are heard by the EU institutions”.

1.3 It put forward 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; 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.*<sup>3</sup>

1.4 More recently, a Commission Communication on “Communicating Europe in Partnership” discussed 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”, drawing on the existing structure of the Inter-Institutional Group on Information<sup>4</sup> (IGI) to produce a formal Inter-Institutional Agreement (IIA). 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 cost would be c €88 million, drawn from existing budgets.<sup>5</sup>

## The Commission Communication

1.5 This further Communication reviews the results and experiences of Plan D and sets out how the Commission intends to build on these experiences via “Debate Europe”. The Commission proposes to take the process of citizen dialogue one step further, focussing on “D for democracy”, further enabling citizens to articulate their wishes directly to decision-makers and making better use of the media in the process: hence the new phase will be named “Debate Europe”, after the Commission’s dedicated Plan D website. The Commission says that Debate Europe will:

- articulate citizens’ consultations held by civil society with political decision-makers, taking “advantage of the new European political and institutional context, including the new Regulation governing political parties and foundations at European level”;
- involve close cooperation and, wherever possible, joint action between EU institutions and bodies in order to maximise the impact of their endeavour to promote active European citizenship;

3 (27265) 5992/06: see 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), for the Committee’s full consideration of this Communication.

4 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.

5 (28969) and (28970) 13829/07: see HC 16–xxii (2007–08), chapter 4 (21 May 2008), HC 16–xvii (2007–08), chapter 3 (26 March 2008), HC 16–vii (2007–08), chapter 5 (9 January 2008) and HC16–i (2007–08), chapter 5 (7 November 2007), and chapter 2 of this Report, for the Committee’s consideration of this Communication thus far.

- add leverage to existing EU initiatives, including Commission programmes promoting active citizenship — e.g. the “Europe for Citizens” programme, the European Fund for Integration of Third-Country Nationals — and one-off initiatives to mark, e.g., the 2008 European Year of Intercultural Dialogue. In so doing, Debate Europe will “reinforce the Commission’s efforts to explain the added value of EU policies to citizens (e.g. internal market related success stories — roaming mobile charges, low cost flights, closing the gap in regional development, environmental protection and the fight against climate change).”
- pursue other successful Plan D actions (internet debates, bringing EU officials and citizens closer together; cooperation between Commission and European Parliament information offices and using EU information relays to “go local”).

Other proposals encompass “*Enhancing cooperation with the European Parliament*” and “*Creating synergies between Commission programmes*”. All in all, the “distinctive feature of the Debate Europe projects will be their inter-institutional, political and media dimension”, with the outcome of the consultation events organised at regional, national and pan-European level being “an informed, public debate between citizens and decision-makers from Member States and from all the EU institutions.” The further development of Plan D initiatives will include:

- *Pilot Information Networks (PINs)* — the networks will use the Internet, other online tools and meetings to develop “idea networks” among European, national and regional parliamentarians, journalists and other European opinion-makers to share information, knowledge and ideas on the EU;
- *European Public Spaces* — pilot projects, in which Commission Representations and European Parliament Information Offices in Madrid, Tallinn and Dublin have worked together to create European Public Spaces accommodating exhibitions, debates, seminars and training sessions on EU matters, will be extended to Rome, London, Copenhagen and Berlin;
- *Citizens’ fora* — to be organised in the Member States by the European Parliament, the European Economic and Social Committee and the Committee of the Regions;
- *Visits to the Member States*: Debate Europe will further develop “face to face” contacts, such as Commissioners’ “Plan D” outreach visits to national parliaments, regional and local authorities, the media and civil society, by encouraging its staff and members and officials of the other EU institutions and bodies to be ambassadors of the Institution, e.g. in the “Back to School” operation and the Enterprise Europe Network;
- “*Going even more local*”: together with the Commission Representations, the Europe Direct centres<sup>6</sup> will organise more debates, events and seminars in towns and cities

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6 25 Europe Direct centres, offering a range of services and information on the EU, and the opportunity for feedback directly to the European Commission, opened across the UK from 1st July 2006. Typically located in chambers of commerce, libraries or local authorities (and funded equally by the host and the Commission), the centres also give free-phone access to a Europe Direct phone line on 00800 67891011. Many also feature the televised Europe by Satellite news service. For the full list of UK Europe Direct Centres, see <http://www.europe.org.uk>

beyond Member States' capital cities, taking advantage of a "second generation" of Europe Direct centres to be launched in 2009.

- *Refining the Eurobarometer opinion polls*: taking into account experiences from the first phase of Plan D projects, "which experimented with deliberative polling techniques on the future of the EU on a pan-European scale"; and
- *Internet debates*: after its recent revamping, the "Debate Europe" website's increased potential for interactive debate with Internet users on topical EU issues, with the participation of the Commission Representations, will be developed in 2008 and 2009.

1.6 On the financial side, the Commission suggests "a twin-track strategy" with a €7.2 million budget:

- at the pan-European level, a centralised call for proposals to co-finance a comprehensive 27-Member-State transnational project with a budget of €2 million, to include holding citizens' consultations in each Member State with elected representatives and European political organisations and establishing "a common set of conclusions at European level"; and
- at a national and regional level, decentralised calls and actions supporting local projects with a budget of €5.2 million, to include "approximately 140 actions in 2008 to stimulate public debate about the EU".

1.7 The Communication is outlined in further detail, and commented upon fully by the then Minister for Europe (Mr Jim Murphy), in our previous Report.<sup>7</sup>

1.8 For our part, while having no quarrel with the Commission's professed aims, we noted and endorsed the emphasis that the then Minister placed upon the retention by Member States "in full the autonomy to pursue their individual Communication policies on the European Union".

1.9 We also agreed with him that public support for the EU was not solely dependent on dialogue, debate and improved co-ordination on EU Communications, but also on being shown that the EU was focussed on delivery and adding value for its citizens.

1.10 The Minister also touched upon a number of important issues regarding which he would be seeking further information, particularly regarding how the proposed new Europe Direct Centres were to be selected and how they would add further value; whether the Commission had undertaken to ensure that adequate records were kept and made available for activities, including projects undertaken, resources devoted, and facilitators used; the Plan D projects co-funded by the Commission in the UK; and how the "Debate Europe" proposals would be funded. We said that we, too, were interested in the Commission's response, as well as in the further information that the Minister promised in the light of continuing discussion in the relevant Working Group.

1.11 In considering the Commission's Communication on "Communicating Europe in Partnership", we have been concerned that the playing field be level, so that funding is

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7 See headnote: HC 16–xxiv (2007–08), chapter 4 (18 June 2008).

available to enable the discussion of competing “visions” of how the EU should develop, and not just those endorsed by the Commission. We felt that this should apply equally to the “Debate Europe” project, and asked the then Minister how this was to be guaranteed.

1.12 In the meantime, we retained the document under scrutiny.

### The Minister’s letter of 30 September 2008

1.13 In his letter, the then the Minister for Europe at the Foreign and Commonwealth Office (Mr Jim Murphy) notes that the Commission Communication reported that “*Debate Europe will... take advantage of the fact that a second generation of Europe Direct Centres would be launched in 2009*”. He says that since his Explanatory Memorandum of 15 May 2008 he has asked the Commission about the proposed expansion — how the new sites were selected and how they would add further value — and that they have responded as follows:

“The call was published on the DG Communication website on Europa on 10 September 2008. It is an open call and at this stage, we can have no idea as to which new sites will be selected. The maximum envelope allocation for the UK is €825,000, with a maximum individual grant of €25,000. If all successful bidders were awarded the grant, this would result in 32 centres. At present, we have 27 centres in the UK. Three have closed in this funding period for reasons to do largely with the withdrawal of matchfunding and/or premises. The added value of the new centres stems from the fact that the grant in the new funding round is an action grant, not an operating grant. This will change the focus and put more emphasis on the delivery of specific, tangible and pre-announced actions than perhaps was the case previously.

“There is currently a big gap in Europe Direct provision in London, and no Europe Direct centres at all in the East Midlands..... Their operating criteria make very clear that they must not be politically motivated. They are invited to engage with as many stakeholders as possible. The networks Europe Direct centres build and of which they are members are vital communications multipliers.”

The then Minister says that the Europe Direct Centres are a useful source of public information on the European Union. He regards the transfer from operating grants to action grants as a positive development, which should allow greater focus on outputs for customers, and supports the work of the Commission to address the shortfall of Europe Direct Centres in London and the East Midlands.

1.14 The Minister then says that the Commission have responded as follows to his questions regarding the seven Plan D projects co-funded by the Commission in the UK and how they contributed to Plan D objectives; how the figure of £150,000 was decided for “decentralised actions by the Commission Representative in the UK in 2008”; and how they proposed *to divide this allocation*:

“We take this opportunity to inform you that the Commission will ask an external contractor to assess to what extent Plan D/Debate Europe initiatives have contributed jointly to the development of good practices in favour of increased debate, reinforced participative democracy and a better knowledge of EU issues

amongst citizens. In particular, the evaluation will assess the manner in which these initiatives have encouraged the development of sustainable and/or potentially transferable good practices to stimulate dialogue between the EU citizens and the EU institutions and decision makers at all levels of governance, both in terms of knowledge and communication. Good practices must be understood in the sense of innovative projects which enable people to connect with each other as European citizens, and debate the future of the EU.

“This assessment will be carried out both at pan European level and at national and regional level. We expect to have the results by September 2009. Additionally, the evaluation will look at issues of complementarity and synergy between Plan D/Debate Europe and other EU-level activities and programmes, such as the Europe for Citizens programme, the European Year of Intercultural dialogue, the European Fund for the Integration of Third-Country Nationals, the e-Participation Preparatory Action as well as research and accompanying initiatives funded by the Seventh Research Framework Programme in the fields of governance and citizenship and public engagement in science. The evaluators will focus not so much on the overall impact of actions but on the relevance, utility and capacity-building potential of these actions.”

1.15 The then Minister says that, on the issue of the £150,000 allocation, the Commission reported:

“This is a call for proposals launched by the Commission’s UK representations in January 2008 to select universities and think tanks active in England to stage events on the Commission’s communications themes for 2008, in return for project grants of between €5,000 and €50,000. Projects were eligible for a maximum of 70% grant-funding from the Commission. The deadline for proposals was 9 May 2008. All applicants were assessed against the criteria laid down in the call and ranked. A shortlist was drawn up on 23 June 2008, which sets out the basis on which applicants were chosen and on which the amount of the grant was decided. As with any call for proposals, the allocation was divided according to the selection, evaluation and award criteria laid down by the call. The figure was chosen on the basis of local knowledge as to how much it costs to organise debates and the desire for the debates to be held as widely as possible across the country.”

1.16 The then Minister welcomes the Commission’s confirmation that an external contractor will review the current Plan D/Debate Europe initiatives and assess their contribution to increased public debate and knowledge about EU issues. He agrees that this review should analyse the success of the project so far and identify areas where ongoing work is recommended.

1.17 Regarding the UK’s £150,000, he expresses his gratitude to the Commission for their explanation that these funds will be used with third parties to stage events across the UK on the Commission’s Communication priorities, and agrees with the principle that the applicants and the allocation of funds should be assessed against objective criteria. He also believes that this initiative underlines the importance of discussions earlier this year which highlighted the need for a more systematic consultation of Member States on the EU’s Annual Communication priorities prior to their adoption. He regards this as “an

important step to ensure that the Communication priorities mentioned will be the agreed priorities of the European Union, and not just those of a single EU institution.”

1.18 The then Minister professes himself content that the £150,000 allocation sum was based on previous experience of the funds needed to stage such events; however, he suggests that the Commission keep this year’s activities under regular review, saying that if these joint events prove to be a success and meet their objectives, there may be a case for a higher level of funding and a more expansive programme of events in future years. In the meantime, he looks forward to the independent review in 2009 and will maintain contact with the Commission Office in the UK on these UK specific events.

1.19 The then Minister says that the Commission have confirmed that the €7.2 million allocated to Debate Europe was part of the wider €88 million budget for Communicating Europe in Partnership.

1.20 Turning to the Committee’s concern that there should be a level playing field, so that funding is available to enable the discussion of competing “visions” of how the EU should develop, and not just those endorsed by the Commission (c.f 1.11 above), the then Minister says that the Commission have observed:

“Debate Europe seeks to stimulate active EU citizenship through participatory democracy on EU-related issues by giving citizens a) better access to information on these issues and on how the EU functions; b) the opportunity to debate among themselves, at local, national and international level, on these issues; c) to come up with recommendations which they can put directly to the political decision makers at all levels of governance, including to the members of the European Commission, of the European Parliament, of the Committee of the Regions and of the European Economic and Social Committee. In no way is it designed to promote the Commission’s ‘vision’ of the EU. Only non profit organisations which are independent of public authorities can reply to the Debate Europe calls for proposals. Abiding to the Commission ‘vision’ of the EU is neither a selection nor an award criterion. On the contrary, the aim of Debate Europe is to promote interest, and therefore debate and controversy, on EU-related issues so that citizens may perceive the connection between EU and national politics and take ownership of the EU dimension of politics.”

1.21 The then Minister welcomes the Commission’s confirmation that all work and calls for tender on Debate Europe are to be assessed against objective criteria and that “abiding to the Commission’s vision of the EU is neither a selection nor award criterion”. He also welcomes the Commission’s confirmation that Debate Europe is a citizen focussed initiative aimed at promoting interest and stimulating debate and controversy, seeing this as consistent with the Commission’s Communication on “Communicating Europe in Partnership”, which “aims to create a ‘Public Sphere’ of interest for citizens, in order to foster public dialogue in areas of interest.”

1.22 Finally, the then Minister says that no further EU level discussion is planned with regard to the “Debate Europe” Communication: it was conceived as an update paper which has been sent to all Member States and Institutions for analysis and comment, and the Commission has, the then Minister says, “welcomed our views and questions on Debate

Europe and is responding to similar questions and observations from the other Member States.” He concludes by again looking forward to the Commission’s September 2009 evaluation.

## **Conclusion**

**1.23 As with the related Commission Communication on “Communicating Europe in Partnership” (13829/07), we are not convinced by what the Commission has to say that it is genuinely open-minded about the type of proposal that it is willing to support under the “Debate Europe” project.**

**1.24 We accordingly recommend that the “Debate Europe” Communication be debated (along with the related Commission Communication 13829/07) in European Committee B.**

## 2 Communicating Europe

(a) (28969) 13829/07 + ADDs 1–2 COM(07) 568	Commission Communication: <i>Communicating Europe in Partnership</i>
(b) (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 30 September 2008
<i>Previous Committee Reports</i>	HC 16–xxvii (2007–08), chapter 7 (16 July 2008), HC 16–xxii (2007–08), chapter 4 (21 May 2008), HC 16–xvii (2007–08), chapter 3 (26 March 2008), HC 16–vii (2007–08), chapter 5 (9 January 2008) and HC16–i (2007–08), chapter 5 (7 November 2007); also see (27265) 5992/06: 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>Discussed and to be discussed in Council</i>	29 April 2008 and 13 October 2008 General Affairs and External Relations Council
<i>Committee’s assessment</i>	Legally and politically important
<i>Committee’s decision</i>	Do not clear; for debate in European Committee B together with document 8136/08 <sup>8</sup>

### Background

2.1 A White Paper on European Communications Strategy from February 2006 complemented earlier, “post-referendum/enlargement fatigue” initiatives on improving the way “Europe” communicates with citizens. It proposed “a fundamentally new approach” — from one-way communication to reinforced dialogue; from institution-centred to citizen-centred; from Brussels-based to a more decentralised approach; “genuine dialogue between the people and the policymakers and lively political discussion among citizens themselves”; people having “fair and full information about the European Union” and confidence that their views and concerns “are heard by the EU institutions”. It put forward

8 See chapter 1 of this Report.

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; 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.* Having kept the White Paper 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, the Committee finally cleared it on 9 January 2008, since it had by then been overtaken by this follow-up Communication and supporting Commission Staff Working Document.

## Commission Communication: Communicating Europe in Partnership

2.2 The Communication discusses possible improvements under four broad headings — *Coherent and Integrated Communication; Empowering Citizens; Developing a European Public Sphere; and Reinforcing the Partnership Approach* — and also a proposal for “*an Inter-Institutional Agreement on Communicating Europe in Partnership*”; the Commission Staff Working Document proposes using the existing structure of the Inter-Institutional Group on Information<sup>9</sup> (IGI) to produce a formal Inter-Institutional Agreement (IIA). 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 cost would be c.€88 million, drawn from existing budgets.

2.3 The foregoing is outlined in greater detail and discussed in our earlier reports.<sup>10</sup> As with the earlier White Paper, a definitive UK position had yet to be established when the Committee considered the new Communication in January. 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 co-operation 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”. The Committee retained these documents under scrutiny, pending clarification of this point and a response to questions that it put to the Minister.

2.4 The questions that we put to the Minister and his responses, as set out in his letter of 28 April 2008, are set out in paragraphs 4.13 and 4.14 of, and the two annexes to, the fourth chapter of our 21 May 2008 Report.<sup>11</sup> Although they contained some reassuring elements, there were also still important issues to be pursued, particularly as to precisely what was agreed in the 29 April GAERC conclusions.

2.5 We thought it extraordinary that the Minister felt unable to say more about the alternative arrangement for inter-institutional cooperation, other than that it would not

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<sup>9</sup> 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.

<sup>10</sup> See headnote.

<sup>11</sup> See headnote: HC 16–xxii (2007–08), chapter 4 (21 May 2008).

have the same status as the original IIA, and that the set of Council Conclusions proposed by the Commission and Council Secretariat were “standard Council Conclusions which provide the legal base for us to adopt conclusions on the Communicating Europe in Partnership document [and] also satisfied that these Conclusions confirm that an Inter-Institutional Agreement will not be pursued”; and that he accordingly intended to agree the Conclusions at the GAERC the very next day.

2.6 We considered that this was, at the very least, contrary to the spirit of the Scrutiny Reserve Resolution, since the then Minister had agreed Conclusions about an important arrangement about which we knew nothing beyond his assurance that “these are standard Council Conclusions which provide the legal base for us to adopt conclusions on the Communicating Europe in Partnership document.”

2.7 We noted that we were thus none the wiser as to what, now, the arrangements were for “co-operation between the institutions”, and what their legal basis was. We therefore asked the Minister to tell us without delay what sort of arrangement, and what Conclusions, had been agreed by him, and to know where that now left the other proposals outlined in the Communication.

2.8 We also noted that the previous February 2006 White Paper on European Communications Strategy proposed “a fundamentally new approach”, which was to include “genuine dialogue between the people and the policymakers and lively political discussion among citizens themselves” and people having “fair and full information about the European Union”; and that this was to involve “Improving measures to gauge public opinion” and “Greater engagement between Member States, EU institutions and Civil Society Organisations.” We accordingly asked if, in addition to the other information we had requested, the Minister would let us know if, under the proposals outlined in this Communication, it would be possible for a private organisation to apply for and obtain funding to carry out their own assessment of public opinion, including via a national referendum on Treaty changes.

2.9 In the meantime, we continued to retain the Communication under scrutiny.

## The then Minister for Europe’s letter of 5 July

2.10 Regarding our concern about his having agreed Council Conclusions on the Communication without our being informed of their details, the then Minister for Europe at the Foreign and Commonwealth Office (Mr Jim Murphy) began his letter of 5 July by recalling the Foreign Secretary’s letter of 17 May to the Committee in which he explained why the Government considered itself unable to submit draft<sup>12</sup> Council Conclusions for Parliamentary Scrutiny. He enclosed a copy of the final Council Conclusions<sup>13</sup> and went on to recall the Council’s Legal Service and several other Member States’ reservations over the

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12 The Minister’s underlining.

13 The Council Conclusions note that “The Council adopted conclusions welcoming the Commission communication of 3 October 2007 entitled “Communicating Europe in Partnership” (COM(2007) 568 final) and taking note of the Commission working document containing a “Proposal for an Interinstitutional Agreement” (COM(2007) 569 final)”, and that “the text of the conclusions can be found in doc. 8528/08” (which is available at <http://register.consilium.europa.eu/pdf/en/08/st08/st08528.en08.pdf>).

legal base of the proposed IIA, following which the proposed Inter-Institutional Agreement had been dropped. He continued as follows:

“Since the obstacle of the IIA was removed, the Commission and the Council were able to draw up a set of standard Council Conclusions to summarise the views of Member States on the proposals outlined in document COM (2007) 568 on practical steps to improve coordination between Member States and the EU institutions in communicating on European issues. The UK was fully involved in this process, feeding in our views on both the initial draft of the *Communicating Europe in Partnership* document, and the final text of the Council Conclusions. Significantly, we maintained the central focus on Member States in the process of communicating on European issues. Furthermore, these conclusions are standard in format and content, and do not seek to address the broader legal basis of co-operation between the EU Institutions.

“We welcome the practical steps agreed in these conclusions, aimed at enhancing co-ordination, increasing transparency and democratic legitimacy, and communicating at a level closest to the citizen. The conclusions also suggest concrete improvements, such as better use of audiovisual instruments, the internet and public fora, and better promotion of multilingualism. We also welcome the agreement that there should be a more systematic discussion on the agreement of priority communication topics, and a consultation of Member States through the forum of the Information Working Party before the compilation of the Commission’s Annual Policy Strategy (APS).

“On the issue of defining a basis for cooperation between the Member States and the EU institutions, the Council Conclusions have only allowed for a mandate for the Presidency to explore possible solutions. It has been made clear to all parties that this will not allow the question of an IIA to be revisited. The Council proposed a revised set of ‘Joint Conclusions’, which seek to define the framework for enhanced cooperation. Following discussion of this document in the IWP, the Council and Presidency have entered into discussions with the Commission and Parliament, at the Inter-Institutional Group on Information (IGI) and in a series of joint technical meetings. The Presidency and the Council Secretariat will represent the position of Member States in these discussions and provide regular feedback to the IWP. We look forward to future opportunities for further input as these discussions develop, at which time we can also address any outstanding issues raised by the European Scrutiny Committee.”

2.11 The then Minister continued by noting that he had consulted the Commission’s polling Secretariat, who had confirmed that Eurobarometer surveys were carried out exclusively for the European Commission and that they did not fund private organisations to carry out their own assessments of public opinion; and that they planned “to arrange opinion polls in a more strategic manner so that polls are conducted on issues where they will have the most value for recipients and are published at the most appropriate time”. The Commission also planned to establish better links with opinion polling specialists in Member States to exchange views and improve polling techniques. He agreed with these steps “to further improve Eurobarometer’s opinion polling service”.

2.12 With regard to the first part of the Minister’s response, we noted that the question we asked was not whether the Commission did or did not fund private organisations to carry out their own assessments of public opinion, but whether, under the proposals outlined in this Communication, it would be possible for a private organisation to apply for and obtain funding to carry out their own assessment of public opinion, including via a national referendum on Treaty changes. We therefore asked to know whether or not there was any legal impediment to the Commission dealing with such an application; and, if not, whether he could see any reason why such an application should not be treated on the same basis as any other application for funding towards the cost of a communications-related project.

2.13 We also looked forward to hearing more about the revised set of “Joint Conclusions” to which the Minister referred. With this in mind, we recalled that on 4 June we produced our Follow-up report to our February report on our inquiry into the arrangements for the preparation, consideration and approval of the Conclusions of the European Council and the Council of Ministers.<sup>14</sup> In it, we made it clear why we continue to disagree with the justification that the Minister puts forward for not providing us with a copy of the draft Conclusions. In sum, we noted that:

- the then Foreign Secretary (Margaret Beckett) told us that, while Council Conclusions are not legally binding, they constitute a political commitment on the part of Member States;
- as such, they seemed to us analogous to Council Recommendations — politically but not legally binding, with the capacity to affect important matters — the drafts of which Ministers are currently required to deposit in Parliament; and
- being thus analogous, Ministers should either deposit draft Conclusions for scrutiny or, if time is short, write to us enclosing the draft and explaining the Government’s position on it.

2.14 Again, we could see no reason why the Minister could not have provided the information that he now did prior to, rather than after, the Council meeting. On the contrary; we felt that this would have been more in keeping with the letter from the Foreign Secretary to which the Minister referred, where the former said that; “I support Government Departments being as open as possible regarding the context of the Conclusions and the general position that the UK will be taking in the Council”.

2.15 We accordingly hoped that, henceforth, the Minister would embrace this approach more positively than he had done on this occasion, both with regard to the further “Joint Conclusions” to which he referred and more generally.

2.16 In the meantime, we continued to retain the document under scrutiny.

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<sup>14</sup> HC 606 of 4 June 2008: see <http://www.publications.parliament.uk/pa/cm200708/cmselect/cmeuleg/606/60602.htm>.

## The then Minister's letter of 30 September 2008

2.17 In responding to our first point, the then Minister notes “the Commission’s recent advice on the *Debate Europe* initiative, which is closely linked to the Commission’s work on *Communicating Europe in Partnership*”.<sup>15</sup> He continues thus:

“The Commission explained that the aim of Debate Europe was to ‘stimulate active EU citizenship through participatory democracy on EU-related issues’, and that the initiative ‘is not designed to promote the Commission’s ‘vision’ of the EU.’ The Commission added: ‘Only non profit organisations which are independent of public authorities can reply to the Debate Europe calls for proposals. Abiding to the Commission ‘vision’ of the EU is neither a selection nor an award criterion. On the contrary, the aim of Debate Europe is to promote interest, and therefore debate and controversy, on EU-related issues so that citizens may perceive the connection between EU and national politics and take ownership of the EU dimension of politics’”.

The then Minister says that he agrees with “the Commission’s point that ‘visions’ should not be an award criterion for project applications and that any project tenders should be assessed and awarded on their merits” and its view, “expressed in Debate Europe, that public interest is important to stimulate debate on European affairs”, which “should include a range of views to promote discussion and debate.” He concludes thus:

“In principle, therefore, any independent organisation should be able to make an application for funding under *Communicating Europe in Partnership*. We would expect the Commission to assess all applications against objective criteria, in line with their internal rules, before making a judgement on whether funding would be provided. But of course, we can not pre-empt the success or failure of individual bids. I hope this answers the Committee’s concerns on this point.”

2.18 Turning to the “key area” of “how define a basis for co-operation between the EU Institutions, given that the proposal for an Inter-Institutional Agreement (IIA) on Communications had been abandoned”, the then Minister recalls that the Council and Presidency had entered into discussions with the Commission and Parliament in the IGI to establish whether they were content with the Council’s proposed set of ‘Joint Conclusions’ to define a framework for enhanced co-operation. He continues thus:

“Since then, I am pleased to report that discussions have taken place over the summer in a series of meetings of the IGI. The result of these discussions was a short declaration in the form of a ‘guidelines document’, which was put to Member States for further discussion and amendments. I enclose a copy of the draft ‘guidelines document’ for your information.<sup>16</sup>

2.19 The Minister describes the declaration as “a simple statement of a shared commitment to improve EU communications among the institutions” which “explains the principles which underpin this co-operation”:

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15 See chapter 1 of this Report for our consideration of this related Commission Communication: (29601) 8163/08: “Debate Europe — building on the experience of Plan D for Democracy, Dialogue and Debate”

16 See the Annex to this chapter of our Report.

“Importantly, the declaration does not have the legal complications of the proposed IIA and the Member States and the Council Secretariat’s Legal Service agree that it is a political declaration which has no legal status. I am therefore pleased that it provides a satisfactory resolution to this important issue.”

2.20 The Minister says that the UK has been fully involved in these discussions; the declaration is due to be approved by the 13 October GAERC; and is then expected to be signed by Alejo Vidal-Quadras (Vice-President of the European Parliament), Margot Wallstrom (Vice-President of Commission and Commissioner for Inter-Institutional Communications) and Jean-Pierre Jouyet (French Europe Minister representing the French Presidency) on 15 October.

## Conclusion

2.21 **We have nothing to add to our earlier views on the contradiction between the way consideration of these documents has been handled hitherto and the Foreign Secretary’s support for the Government being “as open as possible regarding the context of the Conclusions and the general position that the UK will be taking in the Council”.**

2.22 **As with the related Commission Communication on “Debate Europe” (8163/08), neither the Commission, nor in this instance the Minister, has satisfied us that the Commission is genuinely open-minded about the type of proposal that it is willing to support under the “Communicating Europe in Partnership” project.**

2.23 **We accordingly recommend that the Communication “Communicating Europe in Partnership” be debated (along with the related Commission Communication 8163/08) in European Committee B.**

## Annex

### “Communicating Europe in Partnership

#### “Objectives and principles

“1. The European Parliament, Council and the European Commission attach the utmost importance to improving communication on EU issues in order to enable European citizens to exercise their right to participate in the democratic life of the Union, in which decisions are taken as openly as possible and as closely as possible to the citizens, observing the principles of pluralism, participation, openness and transparency.

“2. The three Institutions wish to encourage the convergence of views on the communication priorities of the European Union as a whole, to promote the added value of an EU approach to communication on European issues, to facilitate exchanges

of information and best practices and develop synergies between the Institutions when carrying out communication relating to these priorities, as well as to facilitate cooperation among the Institutions and Member States where appropriate.

“3. The three Institutions recognise that communicating on the European Union requires a political commitment of EU Institutions and Member States, and that Member States have their responsibility to communicate with citizens about the EU.

“4. The three Institutions believe that information and communication activities on European issues should give everyone access to fair and diverse information about the European Union and enable citizens to exercise their right to express their views and to participate actively in the public debate on European Union issues.

“5. The three Institutions promote the respect of multilingualism and cultural diversity when implementing information and communication actions.

“6. The three Institutions are politically committed to achieving the above objectives. They encourage the other EU institutions and bodies to support their efforts and to contribute, if they so wish, to this approach.

#### **“A partnership approach**

“7. The three Institutions recognise the importance of addressing the communication challenge on EU issues in partnership between Member States and the EU institutions to ensure effective communication with, and objective information to, the widest possible audience at the appropriate level.

“They wish to develop synergies with national, regional and local authorities as well as with representatives of civil society.

“They would like for that purpose to foster a pragmatic partnership approach.

8. “They recall in this respect the key role of the Inter-institutional Group on Information (IGI) serving as a high-level framework for the Institutions to encourage political debate on EU-related information and communication activities in order to foster synergy and complementarity. To that purpose, the IGI, co-chaired by representatives of the European Parliament, the Council and the European Commission, and with the participation of the Committee of the Regions and the European Economic and Social Committee as observers, meets in principle twice a year.

#### **“A framework for working together**

“The three Institutions intend to cooperate on the following basis:

9. Whilst respecting the individual responsibility of each EU institution and Member State for their own communication strategy and priorities, the three Institutions will, in

the framework of the IGI, identify yearly a limited number of common communication priorities.

“10. These priorities will be based on communication priorities identified by the EU Institutions and bodies following their internal procedures and complementing, where appropriate, Member States’ strategic views and efforts in this field, taking into account citizens’ expectations.

“11 The three Institutions and Member States will endeavour to promote appropriate support for communication on the priorities identified.

“12. The services responsible for communication in Member States and EU institutions should liaise with each other to ensure successful implementation of the common communication priorities, as well as other activities linked to EU communication, if need be on the basis of appropriate administrative arrangements.

“13. The Institutions and Member States are invited to exchange information on other EU related communication activities, in particular on sectoral communication activities envisaged by the Institutions and bodies, when they result in information campaigns in Member States.

“14. The Commission is invited to report back at the beginning of each year to the other EU Institutions on the main achievements of the implementation of the common communication priorities of the previous year.

“15. This political declaration has been signed on *[date]*.”

### 3 Trade in seal products

(29938) 12604/08 + ADDs 1–2 COM(08) 469	Draft Council Regulation concerning trade in seal products
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<i>Legal base</i>	Articles 95 and 133EC; co-decision; QMV
<i>Document originated</i>	23 July 2008
<i>Deposited in Parliament</i>	10 September 2008
<i>Department</i>	Environment, Food and Rural Affairs
<i>Basis of consideration</i>	EM of 8 October 2008
<i>Previous Committee Report</i>	None
<i>To be discussed in Council</i>	See para 3.8 below
<i>Committee’s assessment</i>	Legally and politically important
<i>Committee’s decision</i>	Not cleared; further information awaited

## Background

3.1 Although the Community has enacted a number of measures relating to seals, notably Council Directive 83/129/EC<sup>17</sup> (which prohibits the imports of certain seal skins, and products derived from them), these are in the main related to their conservation. They do not therefore address what the Commission says is now a major public concern — the extent to which the manner in which seals are killed and skinned may cause avoidable pain, distress and other forms of suffering, given that, even though some seal products originate within the Community, most come from third countries.<sup>18</sup> The Commission also points out that, in response to this concern, two Member States (Belgium and the Netherlands) have introduced national measures restricting trade in seal products; that another (Germany) is considering doing so; and that other Member States may well follow suit — steps which it considers could lead increasingly to a fragmentation of the internal market.

## The current proposal

3.2 The Commission has therefore put forward this proposal, which would ban the placing of seal products on the Community market, and, in view of the preponderance of such products originating from third countries, would also ban their import into, transit through, and export from the Community (though imports for the personal use of travellers would still be permitted). However, trade in seal products would still be possible where it can be demonstrated that humane killing conditions have been met and effectively enforced, and the proposal would also allow trade in products derived from hunts traditionally conducted by Inuit communities and which contribute to their subsistence. These derogations would be accompanied by appropriate certification and labelling or marking provisions to demonstrate compliance with the necessary conditions.

3.3 In putting forward its proposal, the Commission notes that the Treaty does not provide a specific legal basis for addressing the kind of essentially ethical issues which arise here, but that, where it is empowered to legislate in certain areas and the necessary conditions have been met, a reliance on ethical provisions does not prevent it from adopting legislative measures. In particular, it notes that the Treaty enables the Community to adopt measures establishing and maintaining an internal market, and that the case law of the European Court of Justice has established that, where different laws adopted by Member States may have a direct effect on the functioning of the internal market, Community measures are justified in order to prevent this. It adds that the Court has also recognised that the protection of animal welfare is a legitimate public interest, and it points out that, insofar as the measures proposed would apply to intra-Community trade as well as to imports and exports, they would be non-discriminatory, and hence compatible with the General Agreement on Trade and Tariffs (GATT).

## The Government's view

3.4 In their joint Explanatory Memorandum of 8 October 2008, the Minister for Food, Farming and Waste at the Department for Environment, Food & Rural Affairs (Jane

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17 OJ No. L 91, 9.4.83, p.30.

18 These include Canada, Greenland, Namibia, Norway and Russia.

Kennedy), the Parliamentary Under Secretary of State for Trade and Consumer Affairs at the Department for Business, Enterprise & Regulatory Reform (Mr Gareth Thomas) and the Minister of State at the Foreign and Commonwealth Office (Mr Bill Rammell) point out that, although fishermen are permitted to kill seals in the close season<sup>19</sup> in order to protect fish stocks, there is no commercial or recreational hunting of seals in the UK. However, they add that the UK does import and export seal products, and may also have some involvement in the preparation of processed products incorporating ingredients derived from seals — an involvement which they say will be considered in more detail in an Impact Assessment.

3.5 The Ministers note that the UK Government has been lobbied heavily in recent years to extend the current prohibition in Council Directive 83/129/EC on the importation of seal skin products from “whitecoat” harp and “blueback” hooded seal pups so as to include such products from seals of all ages because of the way in which they are hunted, particularly in Canada. They say that the Government’s current policy is to pursue an extension of the existing Community ban to include commercial imports of seal skin products from all harp and hooded seals, irrespective of age. The Ministers consider that that the current proposal goes beyond this, in that it does not just cover harp and hooded seals; it applies to all seal products, not just skins; and applies, not just to imports, but to exports and goods in transit and for sale. That said, the Government welcomes the proposal in principle, and would like to see a workable ban implemented as soon as possible.

3.6 The Ministers also note the views of other interested parties. They say that the British Fur Trade Association and the International Fur Trade Association are opposed to the ban, and that the proposal could affect certain pharmaceutical and health supplement products (either by cutting off the supply of seal oil, or by raising its cost); that animal welfare organisations have cautiously welcomed the proposal, but would like the removal of any derogation for “humane killing”, believing that the criteria suggested would not be sufficient to achieve this; that the Canadian Government believes that the seal hunt is conducted in a humane and effective way; and that HM Customs are concerned about implementation and enforcement, not least in terms of establishing whether or not a seal product comes from one of the species covered by the proposal (an issue which will be considered further in the Government’s Impact Assessment).

3.7 The Ministers add that some Member States have challenged the legal base used by the Commission, and have also suggested that the proposal could be vulnerable to challenge in either the World Trade Organisation, the European Court of Justice, or the national courts: and they say that these points are being considered further by the Council Legal Services. They also point out that there is a risk of challenge — albeit a low one — under the European Convention on Human Rights, insofar as the ban might be held to deny users of seal products the right to the peaceful enjoyment of their possessions.

3.8 The Ministers say that, although the Council is expected to hold an initial discussion on this proposal on 20 October, it is not clear when agreement will be reached, or when the European Parliament’s first reading will take place.

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19 In 2006, seven licences were issued by the Scottish Government, and 79 seals were killed by shooting.

## Conclusion

3.9 In addition to raising a number of important political issues on which we expect to receive further information in the Government's promised Impact Assessment, this proposal also gives rise to two legal points on which questions have been raised — the use of Articles 95 and 133 of the Treaty to address a matter which involves essentially ethical considerations, and the extent to which what is proposed is compatible with the European Convention on Human Rights. Consequently, although we are drawing the document to the attention of the House, we intend to hold it under scrutiny, pending further information, including the Impact Assessment which the Government intends to produce following its formal consultation with trade and other interests.

## 4 European Community assistance to Somalia

(29989) 13620/08 COM(08) 574	Draft Council Decision on the position to be adopted by the European Community within the ACP-EC Committee of Ambassadors regarding a decision on the allocation of resources to Somalia from the 10 <sup>th</sup> European Development Fund
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<i>Legal base</i>	Article 300(2) EC; QMV
<i>Document originated</i>	25 September 2008
<i>Deposited in Parliament</i>	1 October 2008
<i>Department</i>	International Development
<i>Basis of consideration</i>	EM of 10 October 2008
<i>Previous Committee Report</i>	None
<i>To be discussed in Council</i>	Sometime before 27 October 2008
<i>Committee's assessment</i>	Politically important
<i>Committee's decision</i>	Not cleared; further information requested

## Background

4.1 The Cotonou Agreement, signed in 2000 and substantially revised in 2005, provides the current framework for a longstanding partnership for EC development assistance to the 77 African, Caribbean and Pacific countries, funded mainly by the European Development Fund (EDF). The Agreement's principles of resource allocation are based primarily on needs and performance. "Needs" include factors such as income, population, social indicators, level of indebtedness and export earnings losses; "performance" captures issues such as institutional reforms, governance, use of resources, poverty alleviation or reduction, and macro-economic and sectoral policy. Each country allocation includes two elements: a sum for macro-economic support, sectoral policies, programmes and projects; and a sum for unforeseen needs, such as emergency aid, internationally agreed debt relief initiatives and to mitigate the effects of instability in export earnings. In addition, regional

allocations are based both on estimated need and the progress towards, and prospects, of regional cooperation and integration.

### The proposed Council Decision

4.2 In his Explanatory Memorandum of 10 October 2008, the Parliamentary Under-Secretary of State at the Department for International Development (Mr Gareth Thomas) says that this proposal concerns the provision of an allocation for Somalia from the 10<sup>th</sup> European EDF. He explains that Article 93(6) of the Cotonou Agreement provides for the granting of EDF assistance to ACP States that have been party to previous ACP-EC agreements but which, in the absence of established Government institutions, have not signed or ratified the Cotonou Agreement; and that “Somalia is currently in this position”.

4.3 He notes that:

- in December 2001, the ACP-EC Council of Ministers agreed to allocate an amount of €150 million to Somalia under the 8<sup>th</sup> and 9<sup>th</sup> EDF. In May 2007, the allocation was further increased by €39 million (£167.5 million) from the 9<sup>th</sup> EDF; and
- in August 2007, the European Commission made an indicative allocation for Somalia of €212 million (£118.5 million) for programmable activities and €3.8 million (£3 million) for unforeseen needs from the 10<sup>th</sup> EDF. These funds are intended to support activities in institution building and economic and social development and be programmed through a Special Support Programme 2008 — 2013. This allocation needs to be confirmed by the ACP-EC Council of Ministers.

4.4 The Commission, he says, proposes that the EU Council adopts the proposed decision to establish a Community position within the ACP-EC Committee of Ambassadors to whom the ACP-EC Council has delegated the decision.

### The Government’s view

4.5 In his Explanatory Memorandum the Minister supports this proposal. He welcomes “the Commission’s intention to support Somalia in its efforts towards institution building and economic and social development activities”, which he says is in line with UK policy. He says that he will “continue to work in partnership with the Commission to support these activities”.

4.6 The Minister further notes that:

- there has been no external consultation by DFID on this proposal;
- there are no direct financial implications for the UK arising from this proposal, the funds proposed to be allocated to Somalia are being made available from within the agreed overall funding ceiling for the 10<sup>th</sup> EDF; and
- this proposal needs to be considered by the Council before 27<sup>th</sup> October in advance of the ACP-EC Committee of Ambassadors on 30<sup>th</sup> October.

## Conclusion

**4.7 We have no objection in principle to providing help for Somalia’s social and economic development and institution-building. But the paucity of information about the present situation in that country in the Minister’s Explanatory Memorandum is both notable and important. What we are told — that Somalia cannot sign the Cotonou Agreement because of the lack of established institutions — coincides with a general impression of factionalism and lawlessness. The sums of money are significant. They are to be spent over six years via a “Special Support Programme”, but no information is given about what this is, or how the Commission will ensure that money is spent both properly and effectively over a long period of time.**

**4.8 Until we have satisfactory and reassuring answers to these questions, we shall continue to retain the document under scrutiny.**

## 5 Interim Economic Partnership Agreement between the European Community and its Member States and the Southern African Development Community EPA States

(a) (29973) 13314/08 + ADDs 1–13 COM(08) 562	Draft Council Decision on the signature and provisional application of the Economic Partnership Agreement between the European Community and its Member States and the Southern African Development Community States
(b) (29979) 13386/08 + ADDs 1–13 COM(08) 565	Draft Council Decision concluding the Economic Partnership Agreement between the European Community and its Member States and the Southern African Development Community EPA States

<i>Legal base</i>	Articles 133, 181 and 300 EC; QMV
<i>Documents originated</i>	(Both) 18 September 2008
<i>Deposited in Parliament</i>	(a) 26 September 2008 (b) 29 September 2008
<i>Department</i>	International Development
<i>Basis of consideration</i>	EM of 10 October 2008
<i>Previous Committee Report</i>	None; but see HC 16–xxix (2007–08), chapter 10 (10 September 2008); HC 16–xxi (2007–08), chapters 13 and 14 (14 May 2008); HC16–i (2007–08), chapter 1 (7 November 2007); and HC 16–iv (2007–08), chapter 3 (28 November 2007)
<i>To be discussed in Council</i>	Before the end of 2008
<i>Committee’s assessment</i>	Politically important
<i>Committee’s decision</i>	Not cleared; further information requested

### Background

5.1 The Economic Partnership Agreement (EPA) negotiations with the African, Caribbean and Pacific (ACP) group of countries, which began in 2002, aimed at redefining the trade regime between the two groups of countries, thereby replacing the long-standing Lomé system of preferential access to the European market for the ACP from 2008. The EPAs are intended to be in conformity with WTO rules, which require that barriers to trade be dismantled on both sides, introducing an element of reciprocity into trade relations between the EU and the ACP states for the first time. This gave rise to concerns that extensive opening of the markets in these countries to the EU could create strong adjustment pressures, while European suppliers would be only marginally affected by free market access for ACP goods and services. The deadline for the negotiations was 31 December 2007.

5.2 The Commission’s aim was always “full” EPAs — which include provisions on trade-related areas, trade-related rules and trade in services and include appropriate links to development cooperation, as well as trade in goods — in accordance with what is outlined in the Cotonou Agreement and the Commission’s negotiating mandate. Not all of the six ACP negotiating regions were likely to conclude a full EPA by the set deadline; so, for these regions, the Commission decided to pursue basic “trade in goods agreements”, which provide for duty free/quota free access and simplified Rules of Origin.

5.3 The fly in the ointment was those non-LDCs not in a position to conclude even a “trade in goods” agreement by 31 December. They would be offered, as an interim measure, the Union’s generalised scheme of preference, or GSP, which is less favourable than Cotonou preferences or EPA arrangements. The UK position had long been that ACP regions should not receive worse market access than that which they currently received under Cotonou preferences, and should not be offered GSP as an alternative to EPAs.

5.4 Our earlier Reports set out our consideration of the process in greater detail, concluding with a letter from the Parliamentary Under-Secretary of State at the Departments for International Development and Business, Enterprise and Regulatory Reform (Mr Gareth Thomas) outlining the general situation as of the end of April 2008.

5.5 We subsequently considered, and cleared, Council Decisions authorising the signature and the provisional application by the Community of EPAs between the EC and its Member States and, first, the CARIFORUM states<sup>20</sup> and, then Ghana; and Council Decisions authorising their conclusion.<sup>21</sup>

## The Council Decisions

5.6 These two proposals are for:

- a Council Decision authorising the signature, on behalf of the Community, and provisional application of an Agreement between the EC and its Member States on the one hand, and the SADC EPA states on the other; and
- a Council Decision authorising the formal conclusion, on behalf of the Community, of an Agreement between the EC and its Member States on the one hand, and the SADC EPA states on the other.

5.7 “SADC EPA states” refers to Namibia, Botswana, Lesotho, Swaziland and Mozambique, countries within SADC that have completed interim EPA negotiations. Of these, the first four are members, along with South Africa, of the Southern African Customs Union (SACU). In this Agreement, for some purposes the “SADC EPA states” act collectively and for others they act individually.

20 The CARIFORUM states are Antigua and Barbuda, the Bahamas, Barbados, Belize, Dominica, Dominican Republic, Grenada, Guyana, Haiti, Jamaica, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Suriname, and Trinidad and Tobago. See HC 16–xxi (2007–08), chapter 14 (14 May 2008).

21 See headnote: HC 16–xxix (2007–08), chapter 10 (10 September 2008); HC 16–xxi, chapter 13 (14 May 2008), HC 16–iv (2007–08), chapter 3 (28 November 2007) and HC16–i (2007–08), chapter 1 (7 November 2007).

5.8 The Commission has issued these proposals together as they both concern the formalities necessary to agree formally and give effect to the same international agreement, namely the Agreement establishing an interim Economic Partnership Agreement between the EC and its Member States and the SADC EPA states (the IEPA). The two step process is not unusual — the EC Treaty expressly allows the Community to apply international agreements provisionally, prior to their formal conclusion, as the formal conclusion process can be lengthy.

5.9 In his Explanatory Memorandum of 10 October 2008, the Parliamentary Under-Secretary of State at the Department for International Development (Mr Gareth Thomas) notes that the Commission and SADC EPA states initialled the IEPA on 23 November 2007, which enabled their inclusion in the EPA Market Access Regulation adopted by the Council of Ministers on 20 December 2007 (which provides for duty-free, quota-free access for all SADC EPA states' exports to the EU, commencing 1 January 2008). He continues as follows:

“The IEPA establishes a Free Trade Area (FTA) compatible with World Trade Organisation (WTO) rules. The Agreement, will make permanent the EU provisions regarding SADC EPA states' exports described in paragraph three. SADC EPA states will open their markets to the EU and the SACU members within this group (i.e. Botswana, Namibia, Lesotho and Swaziland but not Mozambique) and will offer duty-free, quota-free access on approximately 80% of EU exports by their current value, to be gradually introduced over 10 years. Most of the remaining exports will be subject to tariff reductions to bring those SACU members into line with South Africa's trade regime with the EU (the Trade, Development and Co-operation Agreement or TDCA) by 2012. The IEPA will leave the SACU EPA signatories' trade regime closely, but not entirely, aligned with that of South Africa.

“The application of different tariff regimes within SACU is not a novelty introduced by the IEPA. At present, SACU does not function as a full customs union. Botswana, Lesotho and Swaziland de facto implement the TDCA while Namibia applies its own tariff regime to imports from the EU.

“Mozambique (not part of SACU) has adopted a separate schedule of tariff reductions, under which it will eliminate tariffs on approximately 70% of EU exports over 10 years, although most of this will be effective immediately. The Agreement contains a provision to unite the Mozambican and SACU tariff schedules, creating a single trade regime for all signatories vis-à-vis the EU, when Mozambique updates its product classification system. This will be affected by decision of the Joint Council (see below).

“We note there are product lines missing from the liberalisation schedule. We are following up with the Commission to determine the likely impact of these omissions on the extent of liberalisation.

“The Agreement allows for both parties to take measures to protect their markets in particular circumstances. These include a safeguard clause which allows each party to raise duties or impose quotas on imports from the other if those imports cause or threaten to cause disturbances in a sector of the economy or serious injury to a

domestic industry producing like, or directly competitive products. This facility can also be used for protection of an infant industry for the first 12 years of the Agreement for SACU EPA states, and the first 15 years for Mozambique. The Agreement also contains provisions that allow the imposition of quantitative restrictions e.g. export bans in case of exceptional cases as provided for in WTO Article XI such as domestic food shortages.

“The trade in goods provisions are subject to a Most Favoured Nation Clause — a commitment to extend to the EU any more favourable treatment should the SADC EPA states offer this to a major trading partner in the future (and vice-versa).

“The Agreement contains a number of provisions on customs administration and trade facilitation. These mainly affirm that customs legislation and procedures will comply with existing international standards as set out inter alia in the Kyoto Convention and the World Customs Organisation (WCO). It also provides for co-ordination between customs agencies and co-operation on customs matters.

“The Agreement contains provisions on technical barriers to trade, including sanitary and phytosanitary (food safety, animal and plant health) measures. The objective of this part of the Agreement is to avoid unnecessary obstacles to trade as a result of technical regulations. The parties affirm their commitment to existing international agreements in this area and agree to exchange information on, inter alia, changes to their technical import requirements. EU assistance to build the capacity of SADC EPA states in this area is also foreseen.

“The Agreement contains provisions on development co-operation, including financial support. European Community development finance will continue to be provided in accordance with the provisions of the Cotonou Agreement. Member States separately commit to providing development assistance. The Agreement makes no specific commitments to provide finance (for example, spending targets). It identifies priorities for development co-operation, such as: adjustment of SADC EPA countries’ respective public revenue bases; development of trade in services and upgrading of SADC EPA states’ productive sectors. Support measures to mitigate lost customs revenues are also foreseen.

“Further elements of the Agreement provide for mechanisms for the settlement of disputes arising over its implementation and define its relationship to other agreements. The Agreement will establish a Joint Council in which the EU and SADC EPA states will have equal representation. This Committee has a role in dispute resolution and future amendments to the Agreement. It also oversees a number of more specialised committees. The detailed procedures for the Committee will be developed once the IEPA has been signed.

“The Agreement contains provisions that currency will be freely convertible for payments for goods and services, although capital controls may still be imposed. Emergency controls may also be imposed in a financial crisis.

“In the Agreement the parties, with the exception of Namibia, commit to conclude negotiations by 31 December 2008 on trade in services and investment. This will

involve providing a liberalisation schedule for one service sector and agreement to liberalise services in a wide range of sectors within 3 years following conclusion of the successor Agreement.

“Annexes to the Agreement contain: tariff reduction schedules for EU imports from the SADC EPA states, the SACU EPA states’ imports from the EU and Mozambican imports from the EU; preferential rules of origin (which determine which goods qualify for the new tariff rates); provisions on customs co-operation and a statement by the government of Namibia.”

5.10 The Minister says that the IEPA is a “mixed” competence international agreement: “as trade issues fall under the Community common commercial policy, it follows that most of the agreement relates to matters within exclusive Community competence. However, some elements are within Member States’ competence and some are within shared Member State and Community competence (e.g. development assistance)”. He explains that, given the mixed nature of the agreement, it will require action by both the Community and Member States: while Community signature, provisional application and conclusion of the IEPA are provided for by these Proposals, Member States will separately sign and ratify the IEPA themselves; in the case of the United Kingdom, this will require an affirmative Statutory Instrument.

5.11 The Minister goes on to note that:

- the Proposed Council Decision on signature and provisional application of the IEPA is based on Articles 133 and 181 EC (reflecting the trade and development content of the IEPA respectively) and Article 300(2) EC (which authorises provisional application of international agreements); and
- the Proposed Council Decision on conclusion of the IEPA is also based on Articles 133 and 181 EC and Article 300(3) (which provides for the conclusion of international agreements).

He then says that:

“Our initial analysis of the proposed decisions is that additional wording will be required to clarify that both Decisions — that on signature and provisional application and that relating to conclusion of the agreement — only apply to aspects of the IEPA that fall within Community competence. We will be raising our concerns when these draft Decisions are discussed at working group level. Previous Commission proposals relating to Council Decisions on the signature and conclusion of the Ghanaian EPA and CARIFORUM EPA were similarly unclear, and were appropriately amended by the Presidency at working group level.”

5.12 With regard to voting, the Minister says that, while a qualified majority in the Council is required for the adoption of these Decisions, “given that the IEPA is a mixed agreement, which the Member States are also required to ratify in their own right before it can take effect, in practice we understand that the matter is likely to proceed on consensus.”

## The Government's view

5.13 In his Explanatory Memorandum of 10 October 2008 the Parliamentary Under-Secretary of State at the Department for International Development comments in detail on the proposal, as follows:

“The UK has consistently stated that EPAs should help provide a strong framework for long term development, economic growth and poverty reduction for Africa, the Caribbean and Pacific (ACP). The UK’s policy on EPAs has centred on a number of key principles that the UK believes should be adhered to, to promote the development benefits of EPAs. This Agreement broadly aligns with these principles which were set out in the UK policy on EPAs published in the DFID/DTI Position Paper of 2005.<sup>22</sup>

“These principles include the belief that: ACP countries should be able to decide the scope of issues covered within their IEPA; they should have flexibility over their market opening; EPAs should provide them with duty and quota free market access into the EU with improved Rules of Origin; they should benefit from effective safeguards to protect their markets when required; and EU partners should provide ACP countries with effective development assistance to benefit from new trade opportunities while ensuring aid is not made conditional on signing an EPA.

“The UK’s position in allowing ACP countries to agree the scope of their EPAs, and future negotiations, has been reflected in this agreement. The initialling of this ‘goods-only’ agreement has enabled SADC EPA states to secure market access into the EU while allowing more time to work with other African neighbours to negotiate a regional EPA covering other trade issues such as services. We note however that this interim agreement does commit SADC EPA states to conclude negotiations on other trade issues (services and investment) by the end of 2008. We are concerned that this is an ambitious deadline and will be asking the Commission to show flexibility. While most SADC EPA states were content to negotiate on services, Namibia excluded itself from this provision.

“In addition because the IEPA covers only some of the states within the existing Customs Union — SACU (the biggest and most influential SACU member, South Africa, chose not to initial the IEPA), it has the potential to disrupt the Customs Union with implications for regional integration. South Africa manages most of the borders of the SACU members and collects tariffs which are redistributed between members. This has raised concerns over the feasibility of free circulation of goods as agreed in the IEPA.

“In addition, the SACU agreement technically prevents members from concluding new trade agreements without the consent of all and there could be difficulties should South Africa object to the IEPA agreement. However, in concluding the TDCA with the EU, South Africa acted unilaterally. Both the border administration and the SACU consent issue appear to be manageable in principle but will require

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<sup>22</sup> Which is reproduced at the Annex to chapter 1 of our First Report: see HC16–i (2007–08), chapter 1 (7 November 2007).

the good-will of South Africa to support an IEPA and close working between the SACU states to ensure more complicated border administration operates effectively. The UK is monitoring South Africa's position and regional dynamics on these issues — which may partly be affected by progress on negotiations towards a regional EPA.

“The UK remains supportive of the aspiration to conclude a region-wide Agreement. Ultimately the range of SADC countries that initialled the IEPA reflects choices made by the countries themselves. The liberalisation schedule for SACU EPA states is designed to be very similar to the schedule for liberalisation in the Customs Union. Also the agreement allows accession of new members and does not preclude the establishment or expansion of customs unions or free-trade areas. However, the IEPA limits the scope for SADC EPA states to use South African inputs in products for export to the EU. This potentially can restrict the take-up of preferential access to EU markets accorded by IEPA as well as restricting regional integration.

“SADC countries such as South Africa, Namibia and Angola have raised these concerns with the UK and the Commission as serious issues to be addressed. However, this is an interim Agreement. The intention of the Commission is to conclude a broader regional EPA to replace it that takes into account these concerns. The UK will monitor progress with a view to promoting any measures that can be taken to facilitate development gains and support for integration in the region.

“The UK's aim to secure flexibility for ACP countries on market opening has been addressed in this Agreement as it allows for up to ten years for SADC EPA states to reduce tariffs on goods coming from the EU. They were able to choose to exclude or only partially liberalise up to about 20% of imports meaning that the most vulnerable domestic producers should retain some protection as a result of the Agreement. In addition Mozambique has a separate liberalisation schedule which is more flexible.

“However, most of Mozambique's liberalisation happens immediately (2008) and the speed of adjustment could be a challenge. Moreover, we note that Mozambique's liberalisation schedule is to be merged with the SACU EPA states at such a time as Mozambique makes a technical move onto a new customs classification system (HS 2007) requiring it to liberalise further. This is not ideal — such a merger should be linked to development performance and not customs administration. The UK will aim to monitor the development impact of the proposed liberalisation schedule. We will also push the Commission to be flexible during implementation by taking due account of any perceived development impacts and challenges.

“We note that this agreement includes better Rules of Origin (ROOs) providing the SADC EPA states with a more flexible and liberal basis to export to Europe. For example the agreement allows them to out-source processing to any third-party state as long as that processing does not exceed 10% of the value of the end product. This 'extra-territoriality' provision is an important enhancement of ROOs for SADC EPA parties.

“SADC EPA states also maintain the right to impose quantity restrictions on exports in the event of food shortages. This addresses a common concern of African ACP countries on food security.

“The Agreement also contains protective measures such as safeguards, which will enable SADC to apply or raise duties or quotas on imports if faced with a surge of imports from the EU. These are easier to trigger than current WTO safeguards and should help protect vulnerable producers, including emerging industries, from the increased volatility associated with opening trade. The agreement specifically allows SADC EPA states to take up safeguard measures to protect infant industries. Some SADC EPA countries have expressed dissatisfaction over the time limitations imposed on such use. However, the 12 year provision for non-LDC SADC EPA countries and 15 years for LDC states is not, in our view, ungenerous.

“The Agreement has not been made a condition for accessing aid for trade but it does include a number of development provisions. These set out the need for EU assistance to support the capacity of SADC EPA states (for example to increase co-operation on supply-side competitiveness, trade in services and fiscal adjustment) to make the most out of the IEPA and wider trade opportunities. The Agreement includes the aspiration to create a regional development financing mechanism such as an EPA Fund which would provide this kind of assistance to SADC EPA states. Discussions continue on the best institutional arrangement for this purpose. A number of EU Member States, including the UK, are also supporting aid for trade initiatives in the region. The UK is currently on track to spend over £400 million per year on aid for trade globally by 2010. A major plank of our aid for trade efforts are situated in the southern African region and are specifically targeted towards regional trade facilitation.

“Separately, the Agreement, like other EPAs, includes provisions that are not strictly required for WTO compatibility but are common in free trade agreements, including the Most Favoured Nation Clause, Standstill Clause and ban on new export taxes. These provisions have been raised as concerns by some of the SADC countries and similar views are held by some ACP representatives and NGOs. South Africa, Namibia and Angola are very vocal about these concerns and have officially raised this as a matter of concern during discussions with the UK government. Namibia submitted a statement to Commission saying it initialled the IEPA on the understanding that these concerns would be addressed in subsequent negotiations leading to a comprehensive EPA.

“To summarise, a number of concerns have been raised about the terms of the Interim Agreement which we intend to pursue in Working Group. These include measures not required for WTO compatibility (e.g. MFN clause and standstill clause) and commitments to broaden the scope of the Agreement (on services and investment). Further concerns have been raised with regard to regional integration. We will monitor these and lobby the Commission to address them in broader regional negotiations towards a comprehensive EPA.

“Given these concerns and the fact that discussion on the concluded SADC IEPA has not been held so far in the Working Groups, it is possible that we may need to come back to the Committee with further developments and advice on the SADC IEPA.”

5.14 Finally, the Minister notes that, as part of the process of concluding this Agreement, DFID officials have consulted with officials in BERR, HMRC and the UK Permanent

Representation in Brussels; with SADC EPA states' officials; and with British NGOs; and that he himself has had “informal discussions with representatives of the SADC region on this agreement”.

## Conclusion

**5.15 Although no issues arise about the procedural aspects of these Council Decisions, the Minister has drawn attention to other important aspects about which he feels that he may need to revert to us.**

**5.16 We are, however, drawing them to the attention of the House because of the widespread interest in the EPA process, and also to the attention of our colleagues on the International Development Committee, so that they may be aware of the elements of the EPA, as described by the Minister, and of his concerns.**

**5.17 In the meantime, we shall retain the documents under scrutiny.**

## 6 Copyright in the Knowledge Economy

(29869) 12089/08 COM(08) 466	Commission Green Paper on Copyright in the Knowledge Economy
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<i>Legal base</i>	—
<i>Document originated</i>	16 July 2008
<i>Deposited in Parliament</i>	23 July 2008
<i>Department</i>	Innovation, Universities and Skills
<i>Basis of consideration</i>	EM of 8 September 2008
<i>Previous Committee Report</i>	None
<i>To be discussed in Council</i>	No date set
<i>Committee's assessment</i>	Legally and politically important
<i>Committee's decision</i>	Not cleared; further information requested

## Background

6.1 In its review of the single market “A single market for the 21<sup>st</sup> century” in 2007, the Commission emphasised the need to promote the free movement of knowledge and innovation as a “fifth freedom” in the single market and that a key concept in the “knowledge economy” was the use of intellectual resources such as know-how and expertise. By reason of its value, and the need to provide its creators with reward for its creation, most of this intellectual property has been the subject of protection under national law and by international convention.

6.2 Member States have long been party to international copyright conventions, such as the Berne Convention for the protection of literary and artistic works.<sup>23</sup> At Community level, Directive 2001/29/EC on the harmonisation of certain aspects of copyright and related rights was adopted in 2001.<sup>24</sup> This Directive harmonises a number of issues concerning copyright and related rights including the right to reproduce the protected work, to communicate it to the public, to make it available to the public and to distribute it. The Directive confirms that the right owner has an exclusive right in these respects, but provides for a number of exceptions to permit use of copyright works by libraries and archives, for research and for use by people with disabilities. The exceptions cover such matters as temporary copying (e.g. copies made during web browsing or created in the random access memory (RAM) of a computer, copying for private purposes, copying by libraries and educational establishments and copying for the purpose of recording current events and for criticism and review).

6.3 Directive 96/9/EC<sup>25</sup> also makes provision for the legal protection of databases. The Commission has analysed this Directive in a separate report, but a number of issues — notably on exceptions and limitations — are common to the two measures.

6.4 The Commission reported in 2007 on the implementation and application of Articles 5, 6 and 8 of Directive 2001/29/EC. We considered this report on 23 January 2008 but did not consider that it raised issues of sufficient legal or political importance to warrant reporting to the House, since it contained no proposals for new measures.

## The Commission's Green Paper

6.5 The Green Paper seeks to elicit views on the exceptions provided for under Directive 2001/29/EC with respect to the use of works by libraries and archives, the use of works for teaching and research purposes and the exception for the use of works by people with a disability. Additionally, the Green Paper discusses a possible exception for “user-created” content.

6.6 In relation to the use of works by libraries and archives, the Green Paper notes that two core issues have arisen, namely the production of digital copies of materials held in the collections of libraries and the supply of such digital copies to users. On the first of these, the Green Paper notes that the exception under Article 5(2)(c) of the Directive (which permits copying by “publicly accessible libraries, educational establishments or museums, or by archives” where such copying is not for “direct or indirect economic or commercial advantage”) arguably covers certain acts necessary for the preservation of works contained in the catalogues of libraries, but that it does not contain clear rules on “format-shifting”<sup>26</sup> or on the number of copies which may be made.

6.7 The Green Paper refers to consultation under way in the UK on the scope of the exception under section 42 of the Copyright, Designs and Patents Act 1988 (which allows

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23 The most recent version of the Convention is the Paris text of 1971, as amended in 1979. Around 168 countries are party to the Berne Convention.

24 OJ No. L167, 22.6.01, p.10.

25 OJ No. L 77, 27.3.96, p.20.

26 E.g. the transfer of material to a different format, such as from a CD to an MP3.

libraries or archives to make a single copy of a literary, dramatic or musical work held in their permanent collection for the purpose of preservation and replacement). The Green Paper notes that it is proposed that this exception should be expanded to allow for copying and format shifting of sound recordings, films and broadcasts and to allow for more than a single copy to be made where successive copying may be required to preserve permanent collections in an accessible format.

6.8 The Green Paper notes that private entities, such as search engines, cannot benefit from the exception under Article 5(2)(c) of the Directive, since this is limited to publicly accessible libraries, educational establishments or archives and then only for acts which are not for direct or indirect economic or commercial advantage.

6.9 As far as the supply of digital copies to users is concerned, the Green Paper notes that libraries, educational establishments and archives may make copies of the work available if this is done for the purpose of research or private study by means of dedicated terminals located on the premises of such establishments, and would arguably not cover the supply of electronic copies at a distance.

6.10 The Green Paper also raises the issue of “orphan works” i.e. works which are still subject to copyright protection but where the owners cannot be identified or located. The Green Paper notes that, apart from books, there are “thousands” of orphan works such as photographs and audiovisual works currently held in libraries, museums or archives and that the lack of data on their ownership can constitute an obstacle to making such works available online to the public and can impede digital restoration. The Green Paper refers to developments in the United States and Canada and to its own recommendation of 2006 encouraging Member States to create mechanisms to facilitate the use of orphan works and to promote the availability of lists of orphaned works and raises the question of whether any further measures are required at Community level.

6.11 On the use of works for teaching and research purposes, the Green Paper notes that although recital 42 to the Directive indicates that the exception under Article 5 (3)(a) is wide enough to cover distance learning, this aspect is not reflected in the text of the Article itself. The Green Paper also notes that the use of works for the purposes of illustration for teaching or scientific research is covered differently in the laws of the Member States, with some extending the exception to the rights of communication and making available to the public, whereas others limit it to the right of reproduction or allow communication to the public only on condition that it cannot be received outside the premises of the educational institution (as is the case with the United Kingdom). There are also differences between the length of the excerpts which can be reproduced or made available and the institutions which may make use of the exception.

6.12 As far as the use of works by people with a disability is concerned, the Green Paper notes that some Member States have applied the exception only to certain categories of disability, with the exception being applied only in respect of those whose sight is impaired whilst others apply the exception also to those whose hearing is impaired. The Green Paper also raises the issue of whether there should be any compensation for the use of works in these circumstances. The Green Paper also notes that no exception for disabled people is provided under Directive 96/9/EC on the legal protection of databases.

6.13 Finally, the Green Paper discusses the possibility of introducing an exception for “user-created” content. The Green Paper points out that the development of information technology is leading to users taking a much more active role and collaborative role in creating works and disseminating knowledge, such as through blogs, podcasts or video sharing. The Green Paper refers to an OECD study which defines user-created content as “content made available over the Internet, which reflects a certain amount of creative effort, and which is created outside of professional routines and practices”.<sup>27</sup>

6.14 The Green Paper further explains that whereas the need to clear rights in existing works before any transformative content can be made available could prevent new, potentially valuable works from being disseminated, there is no exception under the present Directive for such transformative user-created content. The Green Paper suggests that any such exception would have to be limited in its scope, so as not to infringe the right of reproduction and to authorise adaptations and seeks views on whether such an exception should be introduced.

### The Government’s view

6.15 In her Explanatory Memorandum of 8 September 2008 the Parliamentary Under-Secretary of State for Intellectual Property and Quality at the Department for Innovation, Universities and Skills (Baroness Delyth Morgan) explains that as the Green Paper represents the start of a consultation, no immediate and direct policy implications arise. However, the Minister also explains that the Green Paper considers two specific exceptions which were the subject of recommendations by the Gowers Review of Intellectual Property which was published in December 2006.<sup>28</sup>

6.16 The Minister explains that the exceptions covering libraries and archives, and teaching and research were included in the first stage of a consultation which began in January of this year, with a view to extending the exception to improve the ability of libraries and archives to preserve copyright works and to permit broader access to works for research purposes. The Minister adds that the Government is developing its response to the consultation with a view to publishing a second stage of the consultation before the end of the year.

6.17 The Minister adds that the Government is already considering the use of the exception relating to people with disabilities, and notes that the UK’s current exception essentially refers to visual impairment, whereas the exception under the Directive is not limited to specific disabilities. Finally, the Minister comments that the ongoing work in the UK will be used in the context of the Commission’s consultation.

### Conclusion

**6.18 As the Minister explains, the Green Paper is only the start of a consultation process. Nevertheless, given the detailed analysis set out by the Commission in its**

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<sup>27</sup> Participative Web and User-Created Content, OECD 2007.

<sup>28</sup> [www.hm-treasury.gov.uk/gowers\\_review](http://www.hm-treasury.gov.uk/gowers_review).

**Green Paper, it would be helpful to know more of the Government’s reaction to the various questions raised.**

**6.19 We shall therefore look forward to a more detailed reply in due course, setting out at least the Government’s initial views.**

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

## 7 Taxation of savings income

(29962) 13124/08 + ADD 1 COM(08) 552	Commission Report in accordance with Article 18 of Council Directive 2003/48/EC on taxation of savings income in the form of interest payments
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<i>Legal base</i>	—
<i>Document originated</i>	15 September 2008
<i>Deposited in Parliament</i>	19 September 2008
<i>Department</i>	HM Treasury
<i>Basis of consideration</i>	EM of 28 September 2008
<i>Previous Committee Report</i>	None
<i>To be discussed in Council</i>	Not known
<i>Committee’s assessment</i>	Politically important
<i>Committee’s decision</i>	Not cleared; further information awaited

### Background

7.1 Council Directive 2003/48/EC, the Directive on Taxation of Savings Income, or more commonly the Savings Directive, aims to ensure the effective taxation of personal savings income on accounts held in countries other than the taxpayer’s country of residence. It adopts the principle of exchange of information between tax authorities as the means to achieve this. It is complemented by a series of agreements with third countries and territories.<sup>29</sup> As a transition measure, some jurisdictions<sup>30</sup> apply a withholding tax, which they share with the taxpayer’s home country, instead of participating in exchange of information. The Directive requires the Commission to report to the Council every three years on how the measure has been operating.

29 Andorra, Liechtenstein, Monaco, San Marino, Switzerland, Jersey, Guernsey, Isle of Man, Aruba, Anguilla, British Virgin Islands, Cayman Islands, Turks and Caicos Islands, Montserrat and Netherlands Antilles.

30 Austria, Belgium, Luxembourg and the majority of non-EU partners.

## The document

7.2 This is the first such Report from the Commission. The Report first provides a short summary of the transposition and implementation of the Savings Directive and a short economic evaluation of its impact, the latter of which is expanded on in an accompanying staff working document. These sections say that:

- all Member States have transposed and begun implementation of the Directive;
- due to the restricted amount of data provided by Member States the Commission's economic analysis of the Directive is limited;
- a brief analysis of data from other sources, such as EUROSTAT and the Bank of International Settlements, show little significant change in the distribution of deposits and recipients following the introduction of the Directive;
- the UK reported the largest number of payments made from 01 July 2005 to 05 April 2006, the majority of revenue raised from withholding tax between 2005 and 2006 came from Switzerland and Luxembourg and the largest beneficiaries of withholding tax revenues were Germany and Italy;
- the Directive has proven effective, but its current coverage is not as wide as the ambition expressed by the Council in November 2000;<sup>31</sup> and
- specific issues include difficulties with the definitions of beneficial ownership and paying agent, treatment of financial instruments equivalent to those already explicitly covered by the Directive and certain procedural aspects that lessen the Directive's effectiveness.

7.3 The remainder of the Report is dedicated to considering possible amendments to the Directive to resolve the perceived difficulties. This section:

- concludes that clarifying the definition and obligations of paying agents is a more proportionate solution to the issue of individuals using an interposed legal person to avoid being identified as the beneficiary of an interest payment, than extension of the Directive to payments to all legal entities;
- suggests clarifications of the responsibilities of Community economic operators when they are aware that an interest payment to an operator outside the scope of the Directive is made for the benefit of an individual known to be a resident of a Member State;
- recommends that the definition of a paying agent on receipt be clarified, possibly through use of a positive definition and list — for example defining paying agents on receipt in such a way as to include all entities and arrangements not taxed on their income under the general rules for taxation;
- acknowledges that there needs to be clarity on which financial instruments are included under the Directive;

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31 See [http://www.consilium.europa.eu/ueDocs/cms\\_Data/docs/pressData/en/ecofin/13861.en0.html](http://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressData/en/ecofin/13861.en0.html).

- considers whether a definition could be found to cover all securities that are equivalent to debt claims and suggests that criteria be enshrined to allow paying agents to identify instruments falling within the Directive;
- suggests extending the scope of the Directive to cover investment funds;
- notes that the Directive may not be the most suitable framework for cooperation on dividends and capital gains from speculative investments;
- considers bringing life insurance contracts linked to debt claims or equivalent income under the scope of the Directive; and
- considers other refinements including measures such as asking paying agents to refer to the “best information available to them at a payment date” and determining whether the procedure for exception to withholding tax on the basis of a certificate submitted by the beneficial owner could be abolished.

### The Government’s view

7.4 The then Financial Secretary to the Treasury (Jane Kennedy) tells us that the Commission is expected to draw on the changes considered in the Report to make firm proposals for amending the Savings Directive in November 2008. She adds that:

- the Government will consider the Report and consult with interested parties, including the financial services sector and the Commission, in order to form a view on the proposed changes;
- the Government strongly supports the aim of the Savings Directive and the principle of exchange of information; and
- at the same time, it will wish to ensure that any extension of the scope of the Directive takes account of the burden on financial institutions and other market operators who are required to provide information under the legislation.

### Conclusion

**7.5 We anticipate that the outcome of the Government’s consideration of, and consultation on, the ideas in this document is unlikely to be available before the Commission proposes legislation amending the Savings Directive. So when that proposal is deposited we will expect to have not only a new Explanatory Memorandum but also information about the outcome of the consideration of, and consultation on, this present document. Meanwhile, it will remain unclear.**

## 8 Judicial cooperation — Maintenance obligations

(29668)	Draft Council Regulation on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations
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<i>Legal base</i>	Article 61(c) and 67(2) EC; consultation, unanimity
<i>Department</i>	Ministry of Justice
<i>Basis of consideration</i>	Minister’s letter of 6 October 2008
<i>Previous Committee Report</i>	HC 16–xxiv (2007–08), chapter 8 (18 June 2008)
<i>To be discussed in Council</i>	24 October 2008
<i>Committee’s assessment</i>	Legally and politically important
<i>Committee’s decision</i>	Not cleared; further information requested

### Background

8.1 The recognition and enforcement of maintenance decisions has long been the subject of international conventions, notably those elaborated by the Hague Conference on Private International Law. Broadly two thirds of the Member States are party to the 1973 Hague Convention Concerning Recognition and Enforcement relating to Maintenance Decisions. As this Convention pre-dates Council Regulation (EC) No. 44/2001, it is the conditions of the 1973 Hague Convention which continue to govern the recognition and enforcement of maintenance decisions between those Member States which are also party to that Convention. Most European States have also ratified the 1956 New York Convention on the recovery abroad of maintenance. Within the Hague Conference on Private International Law, discussions have been under way since 2003 for a new general convention on maintenance obligations. The Hague Convention on Maintenance Obligations and its optional Protocol on applicable law were concluded in November 2007.

### The document

8.2 Notwithstanding ongoing work in the Hague Conference, the Commission brought forward a proposal on jurisdiction, applicable law and judicial cooperation regarding maintenance obligations in early 2006. When we looked at the original text of this proposal we questioned whether any new proposal was premature in the light of the ongoing negotiations at the Hague Conference. We also expressed concerns about the proposed inclusion of choice of law rules which would lead UK courts to apply foreign law, whilst under present practice the courts generally applied the law of the forum in maintenance cases. In relation to a revised proposal published by the Commission in the spring, the Government itself raised concerns about the delay, complexity and costs which would arise from the proposed qualification of *lex fori* rule in maintenance cases. We shared those concerns and also warned about unintended consequences of the proposal in relation to intra-UK cases.

## The Minister's letter of 6 October 2008

8.3 In her letter of 6 October 2008 the Parliamentary Under-Secretary at the Ministry of Justice (Bridget Prentice) informs us that the Presidency has now circulated a draft of a new Presidency proposal which, however, still awaits official translation. The Minister's letter contains a provisional translation of that proposal provided by the Presidency. The new proposal is divided into nine chapters which the Minister summarises as follows:

### Chapter I

“This chapter deals with scope and definitions and has not changed in substance from the last version you received. The only significant change has been to include administrative authorities within the definitions, which was done to accommodate those Member States where the system is provided in that way. The Government is content with this chapter. Importantly, it makes the link between this proposal and the 2007 Hague Convention on the International Recovery of Child Support and other forms of Maintenance.

### Chapter II

“This chapter deals with jurisdiction. We consider that the general jurisdiction provisions provide for sound connection between the parties, the dispute and the jurisdiction seized, as well as permitting a degree of further choice for parties. We fully support the policy of this Regulation, which is to provide protective jurisdiction for maintenance creditors, who are likely to be more vulnerable parties. The UK delegation has succeeded in securing significant support for its proposal on subsidiary jurisdiction (Article 6) which would provide for a *forum necessitatis*. We considered this to be a more appropriate solution to subsidiary jurisdiction than resorting to the difficult exercise of identifying other jurisdictional grounds with a sufficient link. Although unlikely to be frequently needed, we believe it will be a worthwhile provision as it will enable access to justice to citizens who are unable to seize jurisdictions with which they have stronger connections, for example because of civil war.

### Chapter III

“This chapter contains the arrangements for the use of applicable law about which I have written before. You will recall that previously the proposal included rules to provide for the use of foreign law and this was a major point of concern for the UK. The current draft has removed those rules and instead contains a reference through which the EU can ratify the Applicable Law Protocol of the 2007 Hague Maintenance Convention. The UK would not opt in to that ratification which would thereby enable other Member States to use the applicable law provisions without the UK being bound by them. Removal of the rules from the body of the text has been seen as a major concession to facilitate the UK's participation in the instrument.

### Chapter IV

“The contents of this chapter have either been deleted or moved elsewhere in the instrument.

## Chapter V

“This chapter covers recognition, enforceability and enforcement of decisions. With the removal of the applicable law rules the consequences for how the exequatur procedure is applied within the EU has been the major remaining issue for the UK and others. Most Member States have made a link between the use of applicable law rules and the abolition of exequatur and consider that it is only possible to abolish that process if the rules on applicable law within the Hague Protocol have been applied in establishing the decision. Although we have made clear that we do not accept this link, it is clear that we will not be able to participate in the Regulation unless exequatur remains when the recognition and enforcement of a UK judgment is sought elsewhere in the European Union.

“The current Presidency text in section 2 of this chapter is based on the Brussels I Regulation and assumes that exequatur will not apply to judgments from other Member States entering the UK. The Government has pressed for this procedure to be kept as simple as possible and has asked for strict but realistic deadlines to avoid any undue delay in the process. Accordingly the new text includes timescales for certain aspects of the procedure in order to favour the swift processing of the case (see Articles 26(13) and 26(15)(5)). In addition, we have argued for the inclusion of a deadline for completion of appeal procedures in Article 26–17. The current text contains only a reference to the appeal decision being given ‘without delay’. At the most recent working group, there was broad support for the notion of a deadline consisting of a specific number of days with an ‘escape clause’ whereby the specific deadline would not apply in cases of particular difficulty. We are optimistic that the next version of the text will contain an additional compromise on this point. We are also seeking that the general review provision in Article 51a makes a specific reference to the review of this remaining use of exequatur so that its total removal can be considered at that time. We hope that with the evidence of its application which will be available by then that Member States will be prepared to abolish it altogether.

“It may be helpful to provide a brief comparison with how the Regulation will work for other EU Member States in terms of recognition and enforcement. Under Article 25, there will be no exequatur procedure and recognition will be automatic. However, some of the tests which were previously applied at the exequatur stage are retained in another form. The one test which is abolished is the test of public policy. Under Article 26–3, a defendant who did not enter an appearance at the original hearing has a right to apply for a review of the original decision on the basis that he was not served with the document instituting the original proceedings in such a way and at such a time as to enable him to arrange for his defence, or because he was prevented from contesting the claim by reason of extraordinary circumstances and without fault on his part. The difference here is that this test is now evaluated (on the defendant’s application) by the court making the original decision rather than the court considering recognition and enforcement. Equally, at Article 26–5, the court considering an application to enforce the decision obtained in the Member State of origin can refuse enforcement where limitation has expired or where the decision is irreconcilable with a decision in the Member State of enforcement or in a third state

which fulfils conditions necessary for recognition in the Member State of enforcement. Again, this requires the debtor to make an application, but to the court of enforcement on this occasion.

### **Chapter VIa**

“This chapter covers access to justice and is almost entirely based on the provisions of the Legal Aid Directive and the 2007 Hague Convention. The Hague Convention provides for virtually universal free legal aid for child cases which make up the bulk of this work and this has been replicated in the Regulation.

### **Chapter VII**

“This short chapter deals with court settlements and authentic instruments and links to chapter V. Authentic instruments are not used in England and Wales although they are known in the legal system in Scotland. Authentic instruments, and court settlements, are defined in Article 2. Both categories benefit from the advantages provided by the Regulation, provided that they are enforceable in the Member State of origin.

### **Chapter VIII**

“This is an important chapter as it deals with administrative co-operation which is the major improvement on existing EU legislation in this area. It will be familiar to the Committee as this is largely taken from the Hague Convention and to some extent Brussels IIa. However, the Regulation breaks new ground by introducing new provisions (Articles 44 to 47) enabling data sharing between central authorities, and in relation to enforcement of maintenance in cross-border cases. I have written to the Lords Scrutiny Committee before (copied to the Commons) concerning the data sharing provisions in these Articles. Discussions on these Articles continue to ensure that the provisions are both effective in terms of recovery of maintenance, and compliant with data protection law. They may also be used to provide limited information prior to an application being made, in order to locate the alleged debtor and identify whether it is worth making an application, pursuant to Article 41b.

“Following considerable persuasion from the UK delegation and others, the text of Article 44 is much clearer in terms of the obligations to share data, what data may be shared and with whom it can be shared. However, the most recent version of the text unexpectedly widened the categories of bodies who must share data with Central Authorities to ‘The entities in the Member States which hold the information referred to in paragraph 1a...’. Extending the scope of the provision to ‘entities’ seems to make its application too wide to be proportionate and acceptable. At the most recent working group in Brussels, there was considerable opposition to this aspect of the draft. At the conclusion of the discussion, it was agreed that it would be for Member States to select the authorities who would be responsible for provision of the information requested. There will be an emphasis on the use of public authorities (which was the original intention) — Member States might if they wish make use of private bodies but there will be no compulsion to do so. We therefore expect the issues to be resolved in the next version of the text.

“Further consideration is also being given to the drafting of Article 47, which attempts to deal with the problematic balance between the need to process information fairly, which requires the defendant to be notified that data relating to him has been transmitted, and the risk that once he has this knowledge, he would use it to frustrate the effective recovery of maintenance, for example by dissipating assets. The conclusion at the recent meeting was that the decision on, and manner of, notification, would be left to national law, subject to the possibility of deferral for 90 days if there was a risk of prejudice to the claim arising from earlier notification. The Committee will, of course, be aware that national law has implemented the Data Protection Directive (EC Directive 95/46).

### Chapter VIIIa

“This chapter deals with applications from public bodies. We are content with these provisions which have not changed significantly from earlier texts you have seen and the provisions mirror those in the 2007 Hague Convention.

### Chapter IX

“This covers the General and Final Provisions. They are standard provisions which have only given rise to one major debate for the UK; the review clause referred to above in the context of exequatur which we would like to be included in the general review in Article 51a. This is not as yet reflected in the text but received a degree of support in a recent working group, so we will continue to press for reference to review of exequatur in the text, or at least in a recital.

“The Presidency would like to obtain political agreement at the JHA Council on 24 October. Subject to the outstanding issues in Chapter VIII, as mentioned above, the Government believes that our concerns about this proposal have been resolved and that we will be able to apply to opt in at adoption stage. Since the UK did not opt-in, the UK will not have a vote at the Council. Nonetheless, I would like to be able to be in a position to signify our wish to accept the measure under the terms of Article 4 of the UK/Ireland protocol. The views of your Committee before that would, accordingly, be very helpful.”

## Conclusion

**8.4 We thank the Minister for her helpful summary of the latest provisional Presidency proposal as well as her detailed and helpful comments on the text. We ask the Minister if, on the basis of this proposal in its provisional form, the Government intends to opt in to the measure and, if not, what the minimum conditions would be for the Government to reconsider any decision not to opt in.**

**8.5 We agree with the Minister in welcoming the apparent realignment of the applicable law provisions in the proposal with the recently agreed Hague Protocol on the law applicable to maintenance obligations, but remain concerned about the proposed abolition of exequatur. We ask the Minister if the Government regards the retention of exequatur as a *sine qua non* for UK participation in the measure.**

8.6 We are also extremely concerned about the proposed inclusion of administrative cooperation provisions governing the transfer of sensitive data about debtors in maintenance cases. We ask the Minister if the Government intends to press for safeguards ensuring, in particular, that data about debtors in maintenance cases are only transferred in very strictly defined circumstances and, moreover, ensuring that Member States will provide adequate remedies in cases of mishandled or unlawfully transferred data.

8.7 Finally, we ask the Minister to provide us with the official Presidency proposal when it becomes available. Meanwhile, we shall keep the current proposal under scrutiny.

## 9 Radioactive waste and spent fuel management

(29951) 12939/08 + ADD 1 COM(08) 542	Commission Report on radioactive waste and spent fuel management
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<i>Legal base</i>	—
<i>Document originated</i>	8 September 2008
<i>Deposited in Parliament</i>	16 September 2008
<i>Department</i>	Environment, Food and Rural Affairs
<i>Basis of consideration</i>	EM of 30 September 2008
<i>Previous Committee Report</i>	None, but see footnotes 32, 33, 34 and 35
<i>To be discussed in Council</i>	No date set
<i>Committee's assessment</i>	Politically important
<i>Committee's decision</i>	Cleared

### Background

9.1 It has long been recognised within the Community that the use of nuclear power raises important safety issues in relation to health and the environment, this having been dealt with (inter alia) in a Commission Communication of November 2002;<sup>32</sup> in legislative proposals it put forward in January 2003<sup>33</sup> and September 2004<sup>34</sup> on the management of spent fuel and nuclear waste; and a Communication in January 2007 setting out “An Energy Policy for Europe”.<sup>35</sup> The Commission has also produced reports providing an overview of the status of radioactive waste and spent fuel management within the

32 (24146) 15875/02: see HC 63–xxix (2002–03), chapter 18 (10 July 2003).

33 (24704) 8990/03: see HC 63–xxix (2002–03), chapter 4 (10 July 2003) and HC 42–xxii (2003–04), chapter 6 (9 June 2004).

34 (25999) 12386/04: see HC 42–xxxiv (2003–04), chapter 5 (27 October 2004).

35 (28276) 5282/07: see HC 41–x (2006–07), chapter 2 (21 February 2007).

Community, and the current document represents the latest such report as at the end of 2004, aimed at stimulating further discussion in the Council and European Parliament .

### The current document

9.2 The Commission notes that the Council has indicated that each Member State should be urged to “establish and keep updated a national programme for the safe management of radioactive waste and spent fuel” including all radioactive waste under its jurisdiction and covering all stages of management. It also suggests that, although implementation-oriented research and development needs to continue, it has been sufficiently demonstrated that geological disposal now represents the safest and most sustainable option for the long term management of high level waste and spent fuel subject to direct disposal.

9.3 The Commission says that the policies and practices of Member States in this area reflect their historical, scientific and technological development, with five (Bulgaria, France, Germany, the Netherlands and UK) currently using the reprocessing option and two (Finland and Sweden) actively pursuing the option of directly disposing spent fuel. However, it adds that the majority of Member States do not have a definitive spent fuel disposal policy, other than arrangements to ensure a safe extended period of storage (50–100 years). In particular, it says that progress on disposal of the most dangerous waste category is limited to Finland, Sweden and France (which it suggests are likely to have operational facilities by 2025); that Germany and Belgium will possibly follow by 2040, but that the remaining countries are less advanced, because of political sensitivities, insufficient scientific, technical and financial resources, or other historic and societal reasons. At the same time, it points out that the experience in Finland demonstrates that even small nuclear programmes can afford their own national repository, and that there are increasing multi-national initiatives in this area.

9.4 The Commission adds that long lived low and intermediate level waste also requires geological disposal while, in the case of the least hazardous waste categories (short lived low and intermediate level waste and very low level waste), 7 of the 16 Member States with nuclear power plants currently operate disposal in engineered surface and near-surface facilities and if current plans are followed up, all Member States (apart from the Netherlands) could have such facilities for these types of waste by 2020.

9.5 Given this background, and indications that the public see the issue of radioactive waste as a major consideration in the use of nuclear energy, the Commission says that the implementation of geological disposal requires long-term political commitment and the early involvement of stakeholders in order to ensure acceptance of the kind achieved in Finland and Sweden. It also says that the postponement of a definitive solution is no longer acceptable; that progress needs to be made in identifying and operating safe waste repositories; and that decision-making could be accelerated by regional and international co-operation, though it adds that this depends upon a country being willing to host such an activity. At the same time, however, it cautions against encouraging disposal proposals from third countries, particularly if these do not encompass the requirements and conditions applicable within the Community.

## The Government's view

9.6 In his Explanatory Memorandum of 30 September 2008, the then Minister for the Environment at the Department for Environment, Food and Rural Affairs (Mr Phil Woolas) notes that (like Germany and Belgium) the UK also hopes to have geological repository for high level waste available by 2040, but, this point apart, he says that the report's conclusions are acceptable (and reflect the policy set out in the Government's 2008 White Paper<sup>36</sup> "*Managing Radioactive Waste Safely*"). He also believes that further discussions in the Council may be unavoidable, given that this has been an objective of the Commission since the rejection of the measures it put forward in 2003 and 2004 (see footnotes 2 and 3).

9.7 The Minister recalls that the UK opposed those measures since they would have imposed an obligation to implement deep geological disposal, thereby cutting across the consultation and public engagement on disposal options being carried out by the Government's Committee on Radioactive Waste Management. He adds that, now that the UK Government has accepted that Committee's recommendations on geological disposal and safe storage, and set out its policy in the 2008 White Paper, it would in principle be more receptive to a proposal favouring this option, but he points out that the Scottish Government does not accept that geological disposal is the right way forward, preferring to support long term "near surface, near site" facilities, whilst the Welsh Assembly Government has reserved its position, pending any proposal from a potential host community for a disposal site in Wales. The Minister adds that, in view of these differences, it would be difficult for the UK to support such a Directive, and that it would also be unacceptable if there were to be any diminution of national competence with regards to nuclear safety.

## Conclusion

**9.8 Although this is not a legislative proposal, it deals with an important and sensitive subject, and also highlights the Commission's wish to see a resumption of the discussions which took place following the proposals it put forward in 2003 and 2004. That said, we do not believe the document itself requires any further consideration, given that those proposals remain uncleared, but, in clearing it, we think it right to draw attention to it, and to the view now taken by the Government on the question of geological disposal. We also draw attention to the different views of the Scottish Government on this issue, and to the fact that the Welsh Assembly Government has reserved its position.**

## 10 Economic Partnership Agreement between the European Community and its Member States and Central Africa

(a) (29852) 11913/08 + ADDs 1,2,5, 6 COM(08) 445	Draft Council Decision on the signature and provisional application of the Economic Partnership Agreement between the European Community and its Member States and Central Africa
(b) (29856) 11959/08 + ADDS 1,2,5, 6 COM(07) 446	Draft Council Decision concluding the Economic Partnership Agreement between the European Community and its Member States and Central Africa

<i>Legal base</i>	Articles 133, 181 and 300 EC; QMV
<i>Documents originated</i>	10 July 2008
<i>Deposited in Parliament</i>	21 July 2008
<i>Department</i>	International Development
<i>Basis of consideration</i>	EM of 29 September 2008
<i>Previous Committee Report</i>	None; but see HC 16–xxix (2007–08), chapter 10 (10 September 2008); HC 16–xxi (2007–08), chapters 13 and 14 (14 May 2008) ; HC16–i (2007–08), chapter 1 (7 November 2007); and HC 16–iv (2007–08), chapter 3 (28 November 2007)
<i>To be discussed in Council</i>	November 2008 General Affairs and External Relations Council
<i>Committee’s assessment</i>	Politically important
<i>Committee’s decision</i>	Cleared; relevant to any debate on EU economic relations with the ACP states

### Background

10.1 The Economic Partnership Agreement (EPA) negotiations with the African, Caribbean and Pacific (ACP) group of countries, which began in 2002, aimed at redefining the trade regime between the two groups of countries, thereby replacing the long-standing Lomé system of preferential access to the European market for the ACP from 2008. The EPAs are intended to be in conformity with WTO rules, which require that barriers to trade be dismantled on both sides, introducing an element of reciprocity into trade relations between the EU and the ACP states for the first time. This gave rise to concerns that extensive opening of the markets in these countries to the EU could create strong adjustment pressures, while European suppliers would be only marginally affected by free market access for ACP goods and services. The deadline for negotiation was 31 December 2007.

10.2 The Commission’s aim was always “full” EPAs — which include provisions on trade-related areas, trade-related rules and trade in services and include appropriate links to development cooperation, as well as trade in goods — in accordance with what is outlined in the Cotonou Agreement and the Commission’s negotiating mandate. But not all of the six ACP negotiating regions were likely to conclude a full EPA by the set deadline; so, for these regions, the Commission decided to pursue basic “trade in goods agreements” which provide for duty free/quota free access and simplified Rules of Origin.

10.3 The fly in the ointment was those non-LDCs not in a position to conclude even a “trade in goods” agreement by 31 December. They would be offered, as an interim measure, the Union’s generalised scheme of preference, or GSP, which is less favourable than Cotonou preferences or EPA arrangements. The UK position had long been that ACP regions should not receive worse market access than that which they currently received under Cotonou preferences, and should not be offered GSP as an alternative to EPAs.

10.4 Our earlier Reports set out our consideration of the process in greater detail, concluding with a letter from the Parliamentary Under-Secretary of State at the Departments for International Development and Business, Enterprise and Regulatory Reform (Mr Gareth Thomas) outlining the general situation as of the end of April 2008.

10.5 We subsequently considered, and cleared, Council Decisions authorising the signature and the provisional application by the Community of EPAs between the EC and its Member States and, first, the CARIFORUM states<sup>37</sup> and then Ghana; and Council Decisions authorising their conclusion.<sup>38</sup>

## The Council Decisions

10.6 In its covering Explanatory Memorandum, the Commission explains that the proposal constitutes the legal instrument for the signature and provisional application of a stepping stone (sic) EPA between the European Community and its Member States and Central Africa. Conclusion of a complete EPA with the whole Central African region before end-2007 not being possible, this stepping stone EPA has, the Commission says, been negotiated in order to avoid disrupting trade between Central Africa — which is composed of Cameroon in the stepping stone EPA for the time being — and the European Community, pending completion of the comprehensive EPA with the whole Central African region<sup>39</sup>

10.7 The Commission then explains that, following the initialling of this stepping stone EPA on 17 December 2007, Cameroon was added to the list of countries benefiting from the EPA trade regime established by Council Regulation (EC) No 1528/2007, adopted on 20 December 2007, which provides for an advance application of the EPA trade regime. This, the Commission says, ensured that there was no trade disruption for Cameroon upon

37 The CARIFORUM states are Antigua and Barbuda, the Bahamas, Barbados, Belize, Dominica, Dominican Republic, Grenada, Guyana, Haiti, Jamaica, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Suriname, and Trinidad and Tobago. See HC 16–xxi (2007–08), chapter 14 (14 May 2008).

38 See headnote: HC 16–xxix (2007–08), chapter 10 (10 September 2008); HC 16–xxi, chapter 13 (14 May 2008), HC 16–iv (2007–08), chapter 3 (28 November 2007) and HC16–i (2007–08), chapter 1 (7 November 2007).

39 The countries of this region are Cameroon, Central African Republic, Chad, Democratic Republic of Congo, Congo, Equatorial Guinea, Gabon, Sao Tomé and Príncipe.

the expiry on 31 December 2007 of the trade provisions set out in Annex V of the Cotonou Agreement and the WTO waiver that covered them.

10.8 The Commission further explains that, as Least Developed Countries (LDC), all other Central African countries, except Gabon and the Republic of Congo, have benefited from the Everything But Arms (EBA) initiative since January 2008 — a regime that it describes as “broadly equivalent to the transitory trade regime of Cotonou” and which “therefore does not disrupt their trade with the European Community”.<sup>40</sup> In the case of Gabon and the Republic of Congo, the Commission notes that they have been subject to the regular GSP regime since 1 January 2008, “were offered the possibility of joining the stepping stone EPA” but “Up to now, they have not decided to do so.”

10.9 The Commission further notes that the stepping stone EPA contains provisions on Trade in Goods, “that is to say Customs and Non Tariff Measures, Trade Defence Instruments, Customs Regime and Trade Facilitation, Technical Barriers to Trade and Sanitary and Phytosanitary Measures, and Forestry Governance and Trade for Forest Related Products.” It also contains Development Cooperation provisions setting out priority areas of action for its implementation and “establishes a framework for development cooperation towards the strengthening of capacity and reinforcement of national economies in Central Africa”.

10.10 The agreement “also recalls the Commission’s and Member States’ intention to contribute to a regional development fund.”

10.11 Looking ahead, the Commission says that:

- the negotiation of a full EPA with all Central African states continues, consistent with the negotiating directives for EPAs with the ACP States adopted by Council on 12 June 2002;
- the stepping stone EPA initialled by Cameroon is intended to be available for the region as a whole;
- it will be extended by the outcome of negotiations for full EPA reached in 2008; and
- it therefore foresees the continuation of negotiations at regional level on Establishment, Services and Electronic Trade and Trade Related rules.

10.12 In conclusion, having judged the results of the negotiations to be satisfactory and in accordance with the negotiating directives from the Council, the Commission requests the Council:

- to authorise the signature, on behalf of the European Community, of the stepping stone EPA with Central Africa; and
- to approve the provisional application of the stepping stone EPA pending its entry into force.

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<sup>40</sup> Everything But Arms (EBA) is an initiative under which all imports to the EU from the Least Developed Countries are duty free and quota free, with the exception of armaments. EBA entered into force on 5 March 2001.

## The Government's view

10.13 In his Explanatory Memorandum of 29 September 2008, the Parliamentary Under-Secretary of State at the Department for International Development and Business, Enterprise and Regulatory Reform (Mr Gareth Thomas) explains that the Commission has issued these proposals together as they both concern the formalities necessary to agree formally and give effect to the same international agreement, establishing a stepping stone EPA; and that the two step process is, he says, “not unusual — the EC Treaty expressly allows the Community to provisionally apply international agreements prior to their formal conclusion, as formal conclusion can be a lengthy process.”

10.14 The Minister notes that the Presidency has issued an amended version of the first proposal (11913/08) relating to signature and provisional application:

“This makes explicit that provisional application will occur for only those parts of the Agreement which fall under Community competence. The intention is for the Council to adopt the proposed Decision authorising signature of the EPA and limited provisional application after Member States have received the translated texts of the EPAs in all official Member States languages.”

10.15 With respect to the second proposal, the Minister says that the Council Decision authorising formal conclusion of the Agreement on behalf of the Community will not take place until after the European Parliament has given its assent and Member States have separately ratified the EPA: “We are seeking a revision to this Decision to clarify that it also applies to Community competence only.”

10.16 Noting that the EPA is a “mixed” competence international agreement, the Minister says:

“As trade issues fall under the Community common commercial policy, it follows that most of the agreement relates to matters within exclusive Community competence. However, some elements are within Member States’ competence and some are within shared Member State and Community competence (e.g. development assistance).

“Given the mixed nature of the agreement, it will require action by both the Community and Member States. Community signature, provisional application and conclusion of the EPA are provided for by these Proposals. Member States will separately sign and ratify the EPA themselves. In the United Kingdom, therefore, there will subsequently be separate consideration of the EPA for the purpose of UK ratification (which will require an affirmative Statutory Instrument).”

10.17 The Minister then notes that, as well as ratifying the EPA, Member States will provisionally apply the agreement insofar as their domestic law permits: “In the United Kingdom, provisional application is very limited — it only relates to aspects of the agreement that do not require legislation (information exchange on customs, development assistance provisions.)”

10.18 Turning to the EPA itself, the Minister says that it establishes a Free Trade Area (FTA) compatible with World Trade Organisation (WTO) rules, and continues as follows:

“On the one hand, this will make permanent the EU provisions regarding Cameroonian exports described in paragraph 5. On the other, Cameroon will offer duty-free, quota-free access on approximately 80% of EU exports by their current value. This will be achieved by a gradual reduction of tariffs over 15 years, specified in a schedule annexed to the Agreement. Tariff reduction will begin in 2010. The EC has agreed to dismantle agricultural export subsidies for any products liberalised by Cameroon.

“A chapter on sustainable forestry provides for measures to ensure that Cameroonian exports of timber products are verified to be from legal sources.

“The Agreement allows for both parties to take measures to protect their markets in particular circumstances. These include a safeguard clause which allows each party to raise duties or impose quotas on imports from the other if those imports cause or threaten to cause disturbances in a sector of the economy or serious injury to a domestic industry producing like, or directly competitive products. This facility can also be used to protect food security or, (for the first ten years of the Agreement) protection of an infant industry.

“The trade in goods provisions are subject to a Most Favoured Nation Clause — a commitment to extend to the EU any *more* favourable treatment should Cameroon offer this to a major trading partner in the future (and vice-versa).

“The Agreement contains a number of provisions on customs administration and trade facilitation. These mainly affirm that customs legislation and procedures will comply with existing international standards as set out *inter alia* in the Kyoto Convention and the World Customs Organisation (WCO). It also provides for co-ordination between customs agencies and co-operation on customs matters.

“The Agreement contains provisions on technical barriers to trade, including sanitary and phytosanitary (food safety, animal and plant health) measures. The objective of this part of the Agreement is to avoid unnecessary obstacles to trade as a result of technical regulations. The parties affirm their commitment to existing international agreements in this area and agree to exchange information on, *inter alia*, changes to their technical import requirements. EU assistance to build Cameroonian capacity in this area is also foreseen.

“The Agreement contains provisions on development co-operation, including financial support. European Community development finance will continue to be provided in accordance with the provisions of the Cotonou Agreement. Member States separately commit to providing development assistance. The Agreement makes no specific commitments to provide finance (for example, spending targets.) It identifies priorities for development co-operation, such as: adjustment of the Cameroonian public revenue base; improvement of the business climate and upgrading of Cameroon’s productive sectors. Funding to (partially) replace lost customs revenues is also foreseen.

“Further elements of the Agreement provide for mechanisms for the settlement of disputes arising over its implementation and define its relationship to other

agreements. They establish an EPA Committee in which the EU and Cameroon will have equal representation. This Committee has a role in dispute resolution and for future amendments to the Agreement. The detailed procedures for the Committee will be developed once the EPA has been signed.

“In the agreement the parties commit to conclude negotiations by 1 January 2009 on trade in services, investment, movement of capital and, potentially, on competition. The Agreement also contains commitments to measures on data protection.

“The Agreement repeatedly refers to regional integration, including free circulation of EU exports within Central Africa, and co-ordination of Central African authorities. As only one state is currently a signatory to the Agreement, most of these will have no effect. However, CEMAC and CEEAC (regional economic communities) will have representation on the EPA Committee. The chapter on development co-operation notes the desirability of a regional financing mechanism.”

10.19 The Minister says that the UK has consistently stated that EPAs should deliver long term development, economic growth and poverty reduction for Africa, the Caribbean and Pacific, and continues as follows:

“The UK’s policy on EPAs has centred on a number of key principles that the UK believes should be adhered to, to promote the development benefits of EPAs. This Agreement aligns with these principles which were set out in the UK policy on EPAs published in the DFID/DTI Position Paper of 2005.<sup>41</sup>

“These principles include the belief that: ACP countries should be able to decide the scope of issues covered within their EPA; they should have flexibility over their market opening; EPAs should provide them with duty and quota free market access into the EU with improved Rules of Origin; they should benefit from effective safeguards to protect their markets when required; and EU partners should provide ACP countries with effective development assistance to benefit from new trade opportunities while ensuring aid is not made conditional on signing an EPA.

“The UK’s position in allowing ACP countries to agree the scope of their EPAs, and future negotiations, has largely been achieved. The initialling of this ‘goods-only’ agreement has enabled Cameroon to secure market access into the EU while allowing significantly more time for it to work with Central African neighbours to negotiate a regional EPA covering other trade issues such as services. However, as Cameroon has signed ahead of other countries in the region, this means it has commitments that others do not. This could disrupt the customs union it maintains with its neighbours and complicate the negotiation of other trade issues in future.

“The aspiration to conclude a region-wide Agreement is in line with the UK, EU and ACP emphasis on the importance of regional integration. Conclusion of a region-wide Agreement is critical to maintaining the customs union. The text of the agreement reflects the fact that at the beginning of negotiations it was possible that

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41 Which is reproduced at the Annex to chapter 1 of our First Report: see HC16–i (2007–08), chapter 1 (7 November 2007).

more Central African countries would sign and this could be a regional agreement. It therefore has a number of clauses relevant to a region-wide agreement that are redundant for a Cameroon-only EPA. These redundant clauses should not be automatically adopted in any future region-wide agreement. It is unclear whether the representation of regional organisations on the EPA Committee is desirable in this bilateral agreement.

“The UK’s aim to secure flexibility for ACP countries on market opening has been addressed in this Agreement as it allows for up to fifteen years for Cameroon to reduce its tariffs on goods coming from the EU. Cameroon was also able to choose to exclude 20% of imports from liberalisation meaning that the most vulnerable domestic producers should retain some protection as a result of the Agreement.

“The Agreement also contains protective measures such as safeguards, which will enable Cameroon to apply or raise duties or quotas on imports if faced with a surge of imports from the EU. These are easier to trigger than current WTO safeguards and should help protect vulnerable producers, including emerging industries, from the increased volatility associated with opening trade. Moreover, the likelihood of a surge of EU agricultural exports is reduced by the EC commitment to eliminate export subsidies on agricultural goods subject to reductions in the Cameroonian tariff.

“The Agreement has not been made a condition for accessing aid for trade — but it does include a number of development provisions which set out the need for EU assistance to support Cameroonian capacity to make the most out of the EPA and wider trade opportunities. The Commission is in the process of agreeing a regional integration programme which will provide this kind of assistance to Cameroon and other Central African partners. A number of Member States, including the UK, are also supporting aid for trade initiatives in the region. The UK is currently on track to spend over £400 million per year on aid for trade globally by 2010 and a significant proportion of this will benefit countries like Cameroon over the next few years.

“Separately, the Agreement, like other EPAs, includes provisions that are not strictly required for WTO compatibility but are common in free trade agreements, including the Most Favoured Nation Clause. Some of these provisions have generated concerns amongst some ACP representatives and NGOs. However, the Cameroonian authorities have not raised this as a matter of concern during discussions with the UK government.

“One of the key potential benefits of this Agreement is the new rules of origin and it is disappointing that they were not negotiated earlier in the process. We note that the Agreement stipulates that new rules of origin should be agreed by the time it is provisionally applied (i.e. on signature) — this is now an ambitious deadline.”

10.20 The Minister then notes that, as part of the process of forming its policy positions and concluding this Agreement DFID has consulted with officials in BERR, HMRC FCO, DEFRA and UKREP Brussels; with Cameroonian officials; and with British NGOs. The Minister has “also had informal discussions with representatives of the Cameroon government on this agreement.”

10.21 With regard to the *Financial Implications*, the Minister says that the EPA Market Access Regulation led to “a modest loss of EU tariff revenue as duties were eliminated on the small remaining number of products on which tariffs were charged under the Cotonou Agreement. The Agreement makes these arrangements permanent for Cameroon, but there are no additional financial implications.” Given that existing EU agricultural exports to Cameroon are small, the financial impact of the dismantling of subsidies for those exports bound for Cameroon is, he says, likely to be negligible. Commitments to co-ordinate with the Cameroonian customs authorities “will also have a negligible financial impact.”

10.22 Finally, the Minister says that: before the EPA can be signed it must be translated into all the languages of the EU, which is under-way; it is likely that agreement on the signature and provisional application of the EPA will be sought at the November GAERC; and that, prior to this, he expects “regular debate on this agreement to re-commence in the 133 Deputies committee and the ACP Working Group from September.”

## Conclusion

10.23 **No issues arise from the Council Decisions, which, as the Minister helpfully explains, are the standard procedure for agreements of this nature. We accordingly now clear the documents.**

10.24 **We are, however, drawing them to the attention of the House because of the widespread interest in the EPA process.**

10.25 **We are also drawing them to the attention of our colleagues on the International Development Committee, so that they may be aware of the elements of the EPA as described by the Minister.**

10.26 **We also consider the document relevant to any debate on EU economic relations with the ACP states.**

## 11 Administration of Value added taxation

(29570) 7688/08 COM(08) 147	Draft Council Directive amending Directive 2006/12/EC on the common system of value added tax to combat tax evasion connected with intra Community transactions Draft Council Regulation amending Regulation (EC) No. 1798/2003 to combat tax evasion connected with intra Community transactions
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<i>Legal base</i>	Article 93 EC; consultation; unanimity
<i>Department</i>	HM Treasury
<i>Basis of consideration</i>	Minister's letter of 1 October 2008
<i>Previous Committee Report</i>	HC 16–xx (2007–08), chapter 5 (30 April 2008) and HC 16–xxviii (2007–08), chapter 5 (22 July 2008)
<i>To be discussed in Council</i>	4 November 2008
<i>Committee's assessment</i>	Politically important
<i>Committee's decision</i>	Cleared

### Background

11.1 Under the transitional VAT arrangements which were adopted when the single market came into operation, there is a system for exchanges of information about intra-Community supplies of goods which helps to combat evasion of VAT.

11.2 In this draft Directive and draft Regulation the Commission proposed changes to the information system both to meet a perceived need for improvements to combat VAT evasion and to ensure, in the light of changes to the place of taxation of services supplied cross-border within the Community, including the increased use of the reverse charge (where the ultimate purchaser is responsible for VAT returns, rather than each supplier under the fractionated system),<sup>42</sup> that such supplies are reported and accounted for correctly. This would require Member States to change their procedures for the submission and exchange of information contained within the recapitulative statements (in which suppliers provide information about what they have supplied to whom in other Member States and which in the UK are known as EC Sales Lists) and the VAT return.

11.3 When we considered this proposal in April 2008 we said that we, like the Government, recognised the utility of VAT administrative co-operation and information exchange arrangements in combating cross-border VAT fraud and improving overall levels of taxpayer compliance and accepted that there might be a need to improve the arrangements. We reported the Government's view that:

42 (25221) 5051/04: see HC 42–ix (2003–04), chapter 19 (4 February 2004), HC 42–xviii (2003–04), chapter 4 (28 April 2004) and *Stg Co Debs*, European Standing Committee B, 10 March 2004, cols. 3–22; and (26739) 11439/05: see HC 34–v (2005–06), chapter 6 (12 October 2005), HC 34–xv (2005–06), chapter 3 (18 January 2006) and *Stg Co Debs*, European Standing Committee, 16 February 2006, cols. 3–20.

- some aspects of the Commission’s proposal, in particular relating to the frequency of, and time limits for, submission and exchange of recapitulative statements would strengthen the VAT system against fraud; but
- it remained to be convinced that the potential benefits in helping combat fraud of the other aspects of the proposals would be proportionate to the burdens imposed on businesses.

We noted that the Government was discussing with the Commission a subsidiarity issue — the Government accepted that some aspects of the proposal relating to recapitulative statements met the subsidiarity test, but thought that other aspects, particularly those relating to VAT returns were matters for Member States as they primarily concern their domestic VAT systems. We said that we would await the outcome of that discussion and the Government’s Impact Assessment before considering the proposal further.

11.4 When we considered the matter again, in July 2008, we noted that the Government’s initial (consultative) Impact Assessment:

- said that, although the proposal as a whole should play a part in reducing Community-wide intra-Community VAT fraud, this benefit was not quantifiable;
- estimated quantified costs for businesses at £21 million for initial implementation followed by £46.7 million annually;
- called for interested parties to help in refining these costs and in estimating costs not yet quantified; and
- showed that all of the implementation costs and £36.2 million of the estimated continuing costs related to aspects of the proposal where the Government needed to be convinced the potential benefits were proportionate to the burden for businesses.

We noted also the Government’s further information that:

- the Commission had clarified that it was not the intention, for electronic submission of recapitulative statements and VAT returns, that electronic file transfer be the norm. Rather, it wanted to ensure that all Member States offered businesses the opportunity to submit these documents electronically, including by electronic file transfer, if they so wished;
- it was now understood that rather than allowing traders one month to submit a recapitulative statement and a further month for Member States to exchange the data with other Member States, the proposal would require both of these stages to be completed within one month from the end of the month to which they related;
- the proposal was expected to be considered at an ECOFIN Council in the autumn of 2008; and
- the proposal had been discussed in Council Working Groups on four occasions but, because many Member States, like the Government, had been consulting

businesses and had not yet decided their attitude to the draft legislation, it was still not clear what the likely outcome will be.

We observed that:

- the question of subsidiarity appeared to be unresolved;
- the Impact Assessment suggested that proportionality was also an issue; and
- the Government had yet to determine its stance on the draft legislation.

We said that before considering this matter again we should like to hear further from the Government about developments on subsidiarity, proportionality and its decision on policy on the proposed legislation. Meanwhile the document remained unclear.<sup>43</sup>

### The Minister's letter

11.5 The then Financial Secretary to the Treasury (Jane Kennedy) tells us in her letter of 1 October that as a result of lengthy negotiations, which have been given added impetus by the French Presidency, the proposal has been substantially amended from the original version. She then gives us an account of where matters stand on each component of the original draft legislation.

*All businesses required to submit recapitulative statements will have to do so monthly, within a month of the month to which they relate.*

11.6 The Minister says that the requirement to report services in the recapitulative statement begins on 1 January 2010 and the existing requirement for quarterly returns for goods would also apply to services. She continues that:

- the original Commission proposal would have required businesses to submit monthly recapitulative statements for their intra-Community supplies of both goods and services;
- although the Government could see the benefit of requiring goods to be reported on a monthly basis, as this is where missing trader intra-Community fraud is almost entirely concentrated, it could not see the same justification for applying it to services;
- the Presidency compromise means that Member States would have a number of options regarding the frequency with which their businesses must submit their recapitulative statement. These are introduction of a threshold above which monthly recapitulative statements from businesses that make intra-Community supplies of goods would be required, businesses making supplies of goods below the threshold being able to submit their statements monthly or quarterly, allowing businesses making intra-Community supplies of services to choose to submit their statements either monthly or quarterly, regardless of the value of the supplies made, and requiring a business that makes supplies of both goods and services,

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43 See headnote.

which must submit its statements covering supplies of goods monthly by virtue of exceeding the threshold, to report their supplies of services monthly as well;

- the effect of the threshold for goods and separate treatment for services is to greatly reduce the administrative burden on small and medium sized businesses, where the Government considers there to be a much lower fraud risk;
- the Government therefore considers that this part of the proposal now passes the proportionality test as any extra administrative burdens can be targeted on those areas where there is the highest fraud risk; and
- the Government also considers that the revised text passes the subsidiarity test — as it is the tax administration in the Member State of the recipient of the supply which benefits from the information provided on the recapitulative statement. However, there is a need for an Community framework of rules to ensure that it gets timely information in the areas of the greatest fraud risk.

*Electronic submission of recapitulative statements and VAT returns will become the norm.*

11.7 The Minister reminds us that the Commission included these measures with the intention of mitigating the impact of the additional burdens that would be generated by the other measures in its proposal. Its research had shown that while electronic file transfer was the most cost effective means of submitting a declaration it was not available as an option in all Member States. She continues that:

- the original drafting would have limited the freedom of Member States to offer alternative methods of submitting recapitulative statements other than electronic file transfer;
- the Government was able to clarify that the Commission’s intention had been to ensure that all Member States provided the option of electronic file transfer to their traders, but not to limit the freedom to offer alternative methods;
- subsequently the Commission stated its view that the rule change was only necessary for recapitulative statements, where it provided the most cost saving, and so the current text has dropped any changes to the provisions covering submission of the VAT return. The current drafting better reflects the Commission’s original intention;
- as it would not limit the Government’s scope of options, it does not conflict with the principle of subsidiarity. And the Government is satisfied that proportionality is not an issue as it is aimed at relieving business burdens — and in any case, the Government already provides electronic file transfer as an option;
- there would also be potential benefits for UK businesses that also have a VAT registration in other Member States that do not currently offer electronic file transfer; and
- the Government can therefore accept this change.

*Member States will be obliged to make the information on the recapitulative statement available to other Member States more quickly than at present.*

11.8 The Minister reminds us that in her supplementary Explanatory Memorandum of 12 July 2008 she clarified that the original proposal would reduce the timeframe within which businesses must submit their recapitulative statement and the Government must exchange the data with other Member States from three months to one, and that the same timeframe would apply to services. She comments that:

- this component of the proposal plays a large part in reducing the time taken for a Member State to receive important data about the movement of goods into their territory from six months to two;
- because the data being exchanged is primarily for the use of the Member State that receives the goods or services, there is no conflict with subsidiarity in setting uniform obligations upon the business and the tax administration in the Member States of the supplier;
- the Government accepts this measure will lead to an increase in burdens for businesses that submit recapitulative statements;
- however, it considers that this burden is proportionate to the anti-fraud benefits that would result; and
- therefore, the Government can support it.

*Monthly VAT returns will become the norm.*

11.9 The Minister says that there was very little support for this measure, identified as the most burdensome aspect of the proposal in the Government's Impact Assessment, and it has been dropped from the current text of the proposal.

*Businesses which purchase intra-Community supplies of services subject to the reverse charge will have to show the total value of such purchases separately on the VAT return.*

11.10 This measure has been dropped in the current text.

*Change of rules for when VAT is due on intra-Community supplies of services so that submitted declarations from the vendor and the purchaser for the same period can be cross-checked efficiently by Member States.*

11.11 The Minister tells us that these measures are intended to ensure that when a reverse charge service is reported on the recapitulative statement, from 1 January 2010, the corresponding entry on the customer's VAT return falls within the same period to allow for cross-checking. She continues that:

- since the original proposal there have been some amendments. However, the current drafting would still require a change to the UK's rules governing when a reverse charge service is deemed, for VAT purposes, to have been received;

- the Government accepts that introducing this harmonized rule will generate some additional costs for businesses in changing their accounting systems. However, there could also be some longer term benefits for suppliers who, without these changes, would have to establish what the rules were in each of their customers' Member States — these could vary extensively;
- while the new rules would not entirely eliminate possible problems with differences in the time of supply, the Government can accept the logic of harmonised time of supply rules for intra-Community supplies and so does not feel that subsidiarity is a concern; and
- as for proportionality, although these problems may mean that the changes will not be as effective as the Commission believes, the Government is prepared to agree to them as part of the package designed to tackle fraud.

11.12 The Minister concludes that:

- overall, the Government thinks that the measures in the compromise proposal can be justified as proportionate — although there would be some additional burdens, these are balanced by the benefit for the fight against fraud of obtaining data on those intra-Community supplies of goods where the fraud risk is greatest within a much shorter timeframe;
- following the removal of both of the proposed changes to the VAT return and the clarification over the method for electronic submission, the Government's concerns relating to subsidiarity have been resolved; and
- the revised text meets the Government's major concerns with the original proposal and therefore it supports it.

11.13 Finally, the Minister tells us of the French Presidency's intention to reach agreement on the compromise text of the draft legislation at the ECOFIN Council of 7 October 2008. She says that the Government would not withhold assent to such an agreement, even though the document is still under scrutiny. She apologises for this, commenting that the significant developments on the proposal have occurred very recently and well after the start of the Parliamentary recess, that refusal to join the agreement could have severe consequences for the UK's reputation as being committed to fighting fraud and that such a refusal could have worrying consequences for the Government's relations with its Community partners and impinge upon its ability to secure successful negotiations in other crucial areas. (In the event the Council of 7 October 2008, because of the press of other more urgent business, did not consider this matter. We understand that it is the intention to take the compromise text to the ECOFIN Council meeting of 4 November 2008.)

## Conclusion

**11.14 We are grateful to the Minister for her account of developments on this draft Directive and draft Regulation and note the clarifications and improvements achieved. We have no further questions to ask and clear the document.**

11.15 As for the question of the scrutiny reserve, although it is no longer an issue we observe that we would have understood the Minister's proposed action.

## 12 Tobacco and excise duty

(a) (29928) 12583/08 + ADDs 1–2 COM(08) 459	Draft Council Directive amending Directives 92/79/EEC, 92/80/EEC and 95/59/EC on the structure and rates of excise duty applied on manufactured tobacco
(b) (29930) — COM(08) 460	Commission Report on the structure and rates of excise duty applied on cigarettes and other manufactured tobacco products

<i>Legal base</i>	(a) Article 93 EC; consultation; unanimity (b) —
<i>Documents originated</i>	16 July 2008
<i>Deposited in Parliament</i>	(a) 3 September 2008 (b) 4 September 2008
<i>Department</i>	HM Treasury
<i>Basis of consideration</i>	EM of 19 September 2008
<i>Previous Committee Report</i>	None
<i>To be discussed in Council</i>	Not known
<i>Committee's assessment</i>	Politically important
<i>Committee's decision</i>	Cleared

### Background

12.1 Council Directives 92/79/EEC and 92/80/EEC set minimum rates of taxation for tobacco products, above which Member States are free to set their levels of taxation, and Council Directive 95/59/EEC covers the structure of tobacco taxation by defining the various categories of manufactured tobacco. At present, Member States must apply to cigarettes a specific excise duty for a unit of the product and a proportional, *ad valorem*, excise duty calculated on the basis of the maximum retail-selling price of cigarettes. For other manufactured tobacco products Member States can choose between a specific duty, an *ad valorem* duty, or a combination of both. Under the first Directive the Commission is required to examine the structure and rates of excise duty applied to cigarettes and other manufactured tobacco every four years.

## The documents

12.2 Document (b) is the report of the latest such review, the fourth. The report includes statistical data to illustrate trends and patterns on prices, excise duty levels, and consumption levels in each Member State. In the report the Commission concludes that a number of amendments are necessary for the smooth operation of the single market to maintain the real value of excise duty rates and meet the wider objectives of the Treaty, particularly relating to the promotion of health objectives. In order to achieve this, the Commission suggests:

- replacing the “most popular price category” (MPPC) with weighted average prices, as a reference point for Community minima, saying that this will address health objectives in a more efficient manner;
- aligning taxation of cigarettes and fine cut tobacco (“roll-your-own” or hand rolling tobacco — HRT) to reduce the substitution effect;
- increasing minimum rate requirements for cigarettes and fine cut tobacco to combat illicit trading and again to address health concerns; and
- amending existing definitions of cigarettes, cigars and pipe tobacco to deter tax avoidance and evasion.

12.3 In the light of the review the Commission brings forward the draft Directive, document (a), to amend the three Directives governing excise duty on tobacco in order to modernise and simplify the existing rules, make them more transparent and to better integrate public health concerns. The main elements of the proposal are:

- abolishing the MPPC as the reference point for minimum requirements on excise duties for cigarettes and for measuring the importance of specific excise duties within the total tax burden;
- as the alternative, making a cash minimum of €64 (£50.50) per 1000 cigarettes, to be applied to all cigarettes not just those in the MPPC, and using weighted average prices as the benchmark for the other minimum requirements;
- gradual increases to minimum rates of taxation on cigarettes, reaching €90 (£71.01) per 1000 cigarettes and 63% on the weighted average price by 2014, up from the current figures of €64 (£50.50) and 57%, such that 23 Member States would be required to increase their current levels of taxation;
- greater flexibility for Member States to apply specific duties, widening the range of specific duty which Member States can apply from 5%-55% of the total tax burden to 10%-75%;
- gradual alignment of minimum rates for HRT with the rate for cigarettes, with monetary and proportional minimum duty requirements for HRT at around two-thirds of the cigarette minima, that is €43 (£33.93) per kilogram, and 38% of the weighted average price of HRT by 2014. This would require 19 Member States to increase the duty on HRT from current levels, by an average of 50%;

- adjusting the minimum requirements for tobacco products other than cigarettes and HRT in line with inflation; and
- amending the existing definitions of cigarettes, cigars and other smoking tobacco.

12.4 The draft Directive is accompanied by an impact assessment. Views of various interested parties contributed to this assessment and it:

- includes a summary of responses from the tobacco industry, health sector, national governments and others to a public consultation that the Commission conducted in 2007;
- sets out how changes in the tobacco duty rates and structures Directives will impact on the interested parties;
- identifies problems under the current Community excise duty legislations and sets out four broad options to address these problems;
- includes extensive statistical information concerning the impact of different legislative options; and
- concludes that an approach involving an increase in minimum rates of tax on tobacco products combined with a restructuring of the rules, as proposed in the draft Directive, delivers the best balance between costs and benefits.

### The Government's view

12.5 The then Financial Secretary to the Treasury (Jane Kennedy) says that, since the introduction of Community rules on tobacco taxation, UK Governments have consistently argued for changes that would increase the price of tobacco products in other Member States, so as to reduce the incentive for both legitimate cross-border shopping and smuggling, both of which undermine revenue and health policy objectives. She continues that:

- this proposal contains a number of positive elements that will lead directly to price increases for cigarettes and HRT in most other Member States and offers the Government (and other Member States) the opportunity to alter the current balance of taxation of cigarettes between *ad valorem* and specific duties in favour of the latter;
- for a given total duty yield this helps to ensure that all cigarettes are appropriately taxed regardless of their pre-tax price and reduces the incentive for cross-border purchase of these products in low duty jurisdictions;
- the Government applies a high level of specific duty to cigarettes in order to maintain a high price for all cigarettes, already meeting the proposed minimum rates requirements. The current rules on the range of duty which can be in the form of specific duties have constrained the UK's ability to set even higher levels of specific duty in the past. The proposal offers greater flexibility for Member States to

set higher specific duties, as a proportion of the total tax, than is currently possible, should they choose to do so;

- the Government supports the proposed abolition of the MPPC as a benchmark for determining the amount of tax levied on cigarettes, as it does not think that the price category most in demand is justified as a reference point for setting the minimum requirements, because this makes the amount of duty charged on cigarettes vulnerable to changes in consumer preferences and price competition between manufacturers;
- the Government supports extension of the cash minima to all cigarettes, including those priced below the MPPC, as this better promotes single market and health objectives; and
- the technical change to the definition of a cigarette will have no direct impact on the operation of the UK market. The technical changes to the definitions of other tobacco products are also unlikely to have a significant direct impact on the operation of the UK market as the products which will be affected by these changes are not widely marketed here. However, the Government supports these proposals as a means of preventing potential tax avoidance through the introduction of new products designed solely with a view to artificially reducing the duty payable, as has happened in some other Member States.

12.6 As for the financial implications of the draft Directive the Minister says that:

- there are no direct implications for the UK, although any increases in tobacco duty in other Member States may reduce the incentive to smuggle or cross-border shop into the UK, with potentially beneficial impacts on UK revenue; and
- there are no impacts on the Community budget or own resources.

## Conclusion

12.7 **The draft Directive, document (a), is important in that it would give greater scope to the Government in seeking to meet health objectives, in relation to tobacco consumption, through price mechanisms. And it could also limit the opportunities for tax evasion and avoidance. However, it raises no issues we need to pursue, so we clear it and the associated Commission report, document (b).**

## 13 Stability and Growth Pact

(a) (29931) 11300/08 —	Council Decision on the existence of an excessive deficit in the United Kingdom
(b) (29932) 11302/08 —	Council Recommendation with a view to bringing an end to the situation of an excessive government deficit in the United Kingdom

<i>Legal base</i>	(a) Article 104 (6) EC; —; QMV (b) Article 104 (7) EC; —; two-thirds of a QMV weighted vote, excluding the Member State concerned
<i>Deposited in Parliament</i>	4 September 2008
<i>Department</i>	HM Treasury
<i>Basis of consideration</i>	EM of 25 September 2008
<i>Previous Committee Report</i>	None
<i>Discussed in Council</i>	8 July 2008
<i>Committee's assessment</i>	Politically important
<i>Committee's decision</i>	Cleared

### Background

13.1 The Stability and Growth Pact, the political agreement setting the rules on budgetary discipline adopted by the Amsterdam European Council in June 1997, emphasised the obligation of Member States not to exceed two reference criteria: a ratio of a planned or actual deficit to gross domestic product (GDP) at market prices of a “reference value” of 3% and a debt-to-GDP ratio of 60%. This obligation does not apply to Member States, including the UK, whilst they remain outside the eurozone, but they are required to endeavour to avoid excessive deficits.

13.2 The Pact has a preventative arm and a dissuasive arm. The dissuasive arm is the excessive deficit procedure provided for in Article 104 EC and the relevant Protocol which is triggered by a breach of the 3% reference value. This procedure consists of Commission reports followed by a stepped series of Council Recommendations. The final two steps do not apply to non-members of the eurozone, including the UK. Failure to comply with the final stage of Recommendations allows the Council to require publication of additional information by the eurozone Member State concerned before issuing bonds and securities, to invite the European Investment Bank to reconsider its lending policy for the Member State concerned, to require a non-interest-bearing deposit from the Member State concerned whilst its deficit remains uncorrected, or to impose appropriate fines on the Member State concerned.

## The documents

13.3 On 11 June 2008, following publication of the Commission’s Spring 2008 economic forecasts and the UK’s March 2008 Budget, the Commission formally adopted, under Article 104(3) EC, a report assessing the UK in relation to the excessive deficit procedure. Having regard to the subsequent opinion of the Economic and Financial Committee on that report, under Article 104(4) EC, the Commission came forward with a draft Decision and a draft Recommendation on how to take forward the excessive deficit procedure for the UK.

13.4 On the basis of those drafts the ECOFIN Council, on 8 July 2008, adopted a Decision under Article 104(6) EC that an excessive deficit exists in the UK, document (a). The Council then adopted a Recommendation under Article 104(7) EC, document (b), that the Government put an end to the excessive deficit by financial year 2009/10 at the latest and that the authorities ensure a structural improvement of at least 0.5% of GDP in 2009/10. The Council established a deadline of 8 January 2009 for the Government to take effective action to this end.

## The Government’s view

13.5 The then Economic Secretary to the Treasury (Kitty Ussher) says that the latest fiscal projections, published in the 2008 Budget, are consistent with the Council’s recommendations. The UK’s deficit is forecast to fall below the reference value to 2.8% in 2009–10 — this includes a structural improvement of 0.5% between 2008–09 and 2009–10.

13.6 The Minister then emphasises, using the familiar wording of the assurance we are given in relation to every document we scrutinise concerning the Stability and Growth Pact and other fiscal issues, that “the Government believes in a prudent interpretation of the pact, which takes into account the economic cycle, the long-term sustainability of public finances and the important role of public investment”. She then comments that:

- the projections set out in the 2008 Budget are consistent with this prudent interpretation;
- 2008 Budget forecasts show the Government meeting its strict fiscal rules, which allow it to support the economy in times of uncertainty whilst ensuring sound public finances are maintained in the medium term; and
- the Government will publish the next update on the fiscal position in its Pre-Budget Report this autumn.

## Conclusion

**13.7 These documents give a Community perspective of Government policy in relation to the Growth and Stability Pact. We have no questions to ask and clear the documents. However, we are sure the Treasury Committee, and Members more generally, will wish to bear these documents in mind in any consideration of the fiscal aspects of the current financial problems.**

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

### Department for Business, Enterprise and Regulatory Reform

(29968) 13274/08 COM(08) 544	Draft Council Directive on coordination of safeguards which, for the protection of the interests of members and others, are required by Member States of companies within the meaning of the second paragraph of Article 48 of the Treaty, in respect of the formation of public limited liability companies and the maintenance and alteration of their capital, with a view to making such safeguards equivalent (codified version).
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### Department for Environment, Food and Rural Affairs

(29957) 12998/08 COM(08) 545	Commission Communication on an Action Plan for the implementation of the EU Animal Health Strategy.
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(29978) 13410/08 COM(08) 570	Commission Report on the dried fodder sector.
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### Foreign and Commonwealth Office

(30010) — —	Council Decision concerning the conclusion of the agreement between the European Union and Georgia on the status of the European Union monitoring mission in Georgia.
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### Ministry of Justice

(29977) 13327/08 COM(08) 571	Draft Council Decision on a Community position in the EC-Croatia Stabilisation and Association Council on the participation of Croatia as an observer in the European Union Agency for Fundamental Rights' work and the respective modalities, within the framework set in Articles 4 and 5 of Council Regulation (EC) No.168/2007, including provisions relating to participation in initiatives undertaken by the Agency, to the financial contribution and to staff.
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## HM Revenue and Customs

(29916)  
12476/08  
COM(08) 497

Draft Council Regulation amending Council Regulation (EEC) No.2112/78 concerning the conclusion of the Customs Convention on the international transport of goods under cover of TIR carnets (TIR Convention) of 14 November 1975 at Geneva.

## Department for Transport

(29911)  
12440/08  
COM(08) 506

Draft Council Decision on the signing of the Agreement on certain aspects of air services between the European Community and the United Mexican States.  
Draft Council Decision on the conclusion of the Agreement on certain aspects of air services between the European Community and the United Mexican States.

## HM Treasury

(29925)  
12550/08  
+ ADD 1  
COM(08) 520

Commission Report on the implementation of the macro financial assistance to third countries in 2007.

(29948)  
12819/08  
COM(08) 547

Draft Decision on the mobilisation of the European Globalisation Adjustment Fund.

(29960)  
13106/08  
COM(08) 551

Commission Communication on the Second Annual Report 2007 on the implementation of Community assistance under Council Regulation (EC) No. 389/2006 of 27 February 2006 establishing an instrument of financial support for encouraging the economic development of the Turkish Cypriot community.

# Formal minutes

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**Wednesday 15 October 2008**

Members present:

Michael Connarty, in the Chair

Mr Adrian Bailey	Mr David Heathcoat-Amory
Mr David S Borrow	Keith Hill
Mr William Cash	Kelvin Hopkins
Mr James Clappison	Mr Bob Laxton
Jim Dobbin	Mr Richard Younger-Ross
Mr Greg Hands	

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## **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.

Paragraph 1, Headnote read. Amendment proposed in line 18, to leave out the words “Cleared, but further information requested”, and to insert the words “Do not clear; for debate in European Committee B together with document 13829/07”. — (*Mr David Heathcoat-Amory*.)

Question put, That the Amendment be made.

The Committee divided.

Ayes, 4	Noes, 3
Mr James Clappison	Mr Adrian Bailey
Mr Greg Hands	Keith Hill
Mr David Heathcoat-Amory	Mr Bob Laxton
Kelvin Hopkins	

Headnote, as amended, agreed to.

Paragraphs 1.1 to 1.24 read and agreed to.

Paragraph 2, Headnote read. Amendment proposed in line 17, to leave out the words “Cleared, but further information requested”, and to insert the words “Do not clear; for debate in European Committee B together with document 8136/08”. — (*Mr Greg Hands*.)

Question put, That the Amendment be made.

The Committee divided.

Ayes, 4

Mr William Cash  
Mr James Clappison  
Mr Greg Hands  
Mr David Heathcoat-Amory

Noes, 2

Mr Adrian Bailey  
Mr Bob Laxton

Headnote, as amended, agreed to.

Paragraphs 2.1 to 9.8 read and agreed to.

Paragraph 10, as amended, agreed to.

Paragraphs 10.1 to 13.7 read and agreed to.

Paragraph 14 read. Amendment proposed, to leave out lines 20 to 22. — (*Mr William Cash.*)

Question put, That the Amendment be made.

The Committee divided.

Ayes, 1

Mr William Cash

Noes, 3

Mr Adrian Bailey  
Mr Greg Hands  
Mr Bob Laxton

Paragraph agreed to.

*Resolved*, That the Report be the Thirty-fifth Report of the Committee to the House.

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

[Adjourned till Wednesday 22 October at 2.30 p.m.]

## Standing order and membership

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

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

The expression “European Union document” covers —

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

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

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

### Current membership

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