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European Scrutiny Committee

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Documents considered by the Committee on 22 October 2008

Report, together with formal minutes

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Notes

Numbering of documents

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

> Numbers in brackets are the Committee's own reference numbers.
>
> Numbers in the form "5467/05" are Council of Ministers reference numbers. This system is also used by UK Government Departments, by the House of Commons Vote Office and for proceedings in the House.
>
> Numbers preceded by the letters COM or SEC are Commission reference numbers.

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

Abbreviations used in the headnotes and footnotes

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

Euros

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

Further information

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

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

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1 European Works Councils

(29831) 11555/08 COM(08) 419	Draft Directive on the establishment of a European Works Council or a procedure in Community-scale undertakings or Community-scale groups of undertakings for the purposes of informing and consulting employees (Recast)
+ ADD 1	Commission staff working document: impact assessment
+ ADD 2	Commission staff working document: summary of impact assessment
+ ADD 3	Commission staff working document: *Restructuring and employment — the contribution of the European Union*
+ ADD 4	Commission staff working document: *The role of transnational company agreements in the context of increasing international integration*
+ ADD 5	Commission staff working document: *Report on the implementation of the European social partners' Framework Agreement on Telework*

Legal base	Article 137 EC; co-decision; QMV
Document originated	2 July 2008
Basis of consideration	Minister's letter of 17 October 2008
Previous Committee Report	HC 16–xxix (2007–08), chapter 3 (10 September 2008)
To be discussed in Council	December 2008
Committee's assessment	Politically important
Committee's decision	Not cleared; further information requested

Previous scrutiny

1.1 On 10 September, when we considered this proposal for an up-dated Directive on the establishment of European Works Councils, we noted that Article 137 of the EC Treaty requires the Community to support and complement the activities of the Member States on, among other things, information for and consultation with workers. It also authorises the Council to adopt Directives setting minimum requirements.

1.2 In 1994, the Council adopted a Directive about information for and consultation with the employees of multinational companies. It applies to businesses with more than 1000 employees in the EC and at least 150 workers in two Member States. It sets out the procedure managers or employees of a multinational may use to set up — by agreement — a European Works Council.

1.3 The Commission has reviewed the operation of the Directive and consulted European organisations representing employers and employees. It has concluded that the 1994 Directive requires substantial updating so as to remove legal uncertainties and ensure that

European Works Councils are properly consulted about cross-border matters which will affect employees (such as mergers, re-location, or changing the skills-mix). It proposes a new Directive to replace the old one.

1.4 The Minister of State for Employment Relations and Postal Affairs at the Department for Business, Enterprise and Regulatory Reform (Mr Pat McFadden) told us that the Government favours greater engagement between employees and the multinationals they work for and is not opposed to the draft Directive. The 1994 Directive would benefit from some updating but, in the Government's view, does not need radical change. The Minister expressed concern about the risk of over-regulation and cited some of the detailed provisions of the draft Directive to illustrate his point. He said that the Government was initiating public consultations on the proposal.

1.5 We asked the Minister to send us:

- progress reports on the negotiations;
- a note on the Government's further, detailed assessment of the provisions of the draft Directive:
- a copy of his Department's draft Impact Assessment of the proposal; and
- a summary of the responses to the Department's public consultations.

Pending his reply, we decided to keep the document under scrutiny.

The Minister's letter of 20 October 2008

1.6 The Minister's letter tells us that the European organisations representing management and labour ("the social partners") wrote to the French Presidency on 29 August. They said that they supported the Commission's proposal for the new Directive subject to some detailed amendments (which are enclosed with the Minister's letter to us). For example, they propose amendments to the draft Directive's definitions of "information" and "consultation" and to Article 12 which concerns the conduct of negotiations at both European Works Council and national level in certain circumstances. The TUC and CBI support the contents of the social partners' letter.

1.7 The Minister comments on the social partners' views in his responses to our requests for further information, which are summarised below.

Progress report on negotiations

1.8 The Minister says that the Council of Ministers decided to accept the substance of the amendments proposed by the social partners, subject to some minor changes to ensure clarity and legal certainty. Accordingly, the French Presidency has sent the social partners a revised text, which they are understood to have accepted.

1.9 By the end of October, the Council's Social Questions Working Group will have held six meetings to discuss the draft Directive. The French Presidency will seek political agreement to the proposal in December.

The Government's further assessment of the proposal

1.10 The Minister reminds us that the Government had two main reservations about the Commission's original draft of the Directive. The first of them concerned Article 12, which made provision for information and consultation at both the European Works Council and national level in certain circumstances. Article 12(3) would have required Member States to ensure that "the processes of informing and consulting the European Works Council and national bodies *start in parallel*" (our emphasis). The Government was concerned that the words shown in italics "could create scope for bureaucratic delay in the company's effective decision making processes" and was also concerned about the effect on the UK's national systems of representation.

1.11 The Minister tells us that an amendment proposed by the social partners removes the requirement to start the processes in parallel and replaces it with a general requirement, which allays the Government's concerns and allows companies and employees the flexibility to decide on the arrangements which best suit them in each case.

1.12 The Government's second reservation was about Article 13 of the Commission's draft. It would have required the renegotiation of existing voluntary agreements between multinational companies and representatives of their employees in certain circumstances. The Government was concerned that this "would have resulted in destabilising existing information and consultation arrangements in companies, even where these had wide-spread support among the workforce".

1.13 The Minister tells us that the Government's concern on this point has been removed by the amendment to Article 13 proposed by the social partners. It allows existing agreements "to be revised or renewed without affecting their flexible nature or voluntary status where these have employee and management support".

Draft Impact Assessment

1.14 The Government's draft of the assessment of the draft Directive is included in the consultation paper the Minister has sent us. It will be completed in the light of the responses to the paper.

Summary of Responses to the Government's consultations

1.15 The Minister tells us that, by 6 October, his Department had received about 30 responses to its public consultation document on the draft Directive, and that he will send us a summary of the responses when it is ready.

Conclusion

1.16 **We are grateful to the Minister for providing us with such a full and helpful reply to our request for further information. It appears that the amendments proposed by the social partners have been crucial in removing obstacles to the updating and clarification of the Directive. We note, in particular, that the amendments remove the Government's reservations about the Commission's text.**

1.17 **We look forward to receiving from the Minister the summary of the responses to the Government's consultations and a further progress report on the negotiations. Meanwhile, we shall keep the document under scrutiny.**

2 Roaming charges for mobile phones

(a) (29984) 13521/08 COM(08) 579	Commission Communication on the outcome of the review of the functioning of Regulation (EC) No. 717/2007 on roaming on public telephone networks
(b) (29985) 13531/08 COM(08) 580	Draft Regulation to amend Regulation (EC) No. 717/2007
+ ADD 1	Commission staff working document: impact assessment of the draft Regulation
+ ADD 2	Commision staff working document: summary of impact assessment

Legal base	Article 95 EC; co-decision; QMV
Document originated	(Both) 23 September 2008
Deposited in Parliament	(Both) 30 September 2008
Department	Business, Enterprise and Regulatory Reform
Basis of consideration	EM of 16 October 2008
Previous Committee Report	None
To be discussed in Council	27 November 2008
Committee's assessment	Politically important
Committee's decision	(Both) Not cleared; further information requested

Background

2.1 "International roaming" is the ability of mobile phone subscribers to use their phones while travelling abroad to make voice calls, send text messages or use "data roaming services" to, for example, download a television broadcast from the Internet. The subscriber's mobile network operator ("the home provider") makes international roaming agreements with operators in other countries. The subscriber pays the home provider both to make and receive calls when "roaming".

2.2 In 2006, because high roaming charges were identified as a persistent problem by consumer organisations, regulators, and legislators across the Community, the

Commission proposed a Regulation ("the 2077 Regulation") on charges for voice calls.[1] Its main provisions are as follows:

- The *average wholesale charge* that an operator of a visited network may charge a home provider was set at no more than €0.30 a minute until 30 August 2008, when it reduced to €0.28 and it will come down to €0.26 in 2009;
- Home providers must offer their roaming customers a *Eurotariff* which must not exceed the *retail charges* set by the Regulation. The retail charges for voice calls from 30 August 2007 were set at €0.49 a minute for each call made by a subscriber and €0.24 a minute for each call received; on 30 August 2008, the retail charges reduced to €0.46 a minute for calls made and €0.22 a minute for calls received; and they will reduce to €0.43 a minute for calls made and to €0.19 a minute for calls received from 30 August 2009; and
- The Regulation will expire on 30 June 2010.

2.3 Article 11 of the 2007 Regulation requires the Commission to review the operation of the Regulation by 30 December 2008. The review must:

- evaluate whether the objectives of the Regulation have been achieved;
- review the developments in wholesale and retail charges for voice, text and data roaming services;
- if necessary, make recommendations about the need to regulate the services; and
- assess whether the life of the Regulation should be extended and if it should be amended otherwise.

Document (a)

2.4 Document (a) is the report of the review required by Article 11. It is based on information provided by the European Regulators' Group, a study by an independent consultant and the responses of Member States, national regulators, operators and consumers' organisations to the Commission's questionnaire.

2.5 The Commission's main finding are as follows:

- the obligations set out in the 2007 Regulation are being met and consumers have access to a Eurotariff which is at or below the price caps set by the Regulation;
- as a result, on average, consumers are saving 36.4% on outgoing voice calls and 42.9% on incoming calls compared to the charges made early in 2007;
- the Regulation has ensured that smaller operators have access to lower wholesale charges; and

1 Regulation (EC) No. 717/7007: OJ No. L 171, 29.6.07, p.32.

- some operators are not charging consumers by the second but by periods of up to a minute (for example, if a calls lasts 63 seconds, some operators charge for 2 minutes) — the European Regulators' Group estimates that this adds about 24% to a typical retail bill for calls made and 19% for calls received.

2.6 In the light of its review, the Commission recommends that:

- the life of the 2007 Regulation should be extended to 2013 with further annual reductions in the wholesale and retail charges for voice calls;
- operators should be required to charge customers by the second "subject only to the possibility to apply an initial charging period of 30 seconds for calls made" (this is to recognise, for example, the operator's costs in recording the charge for the call and billing for it);
- caps should be placed on wholesale and retail charges for texts; and
- home operators should be required to provide their subscribers with an automated message containing information about the charges for data roaming services.

Document (b)

2.7 Document (b) is the draft of a Regulation to give effect to the Commission's recommendations in document (a). It does this by proposing amendments to the 2007 Regulation.

2.8 The main provisions of the draft Regulation are as follows:

- the 2007 Regulation should not expire until 30 June 2013;
- wholesale charges for voice calls should be €0.26 from 1 July 2009; €0.23 from 1 July 2010; €0.20 from 1 July 2011; and €0.17 from 1 July 2012;
- the retail charge which a home provider may levy on a roaming customer for making a voice call should not exceed €0.43 a minute from I July 2009; €0.40 a minute from I July 2010; €0.37 a minute from 1 July 2011; and €0.34 a minute from I July 2012;
- the retail charge to a roaming customer for receiving a voice call should not exceed €0.19 a minute from 1 July 2009; €0.16 a minute from 1 July 2010; €0.13 a minute from 1 July 2011; and €0.10 a minute from 1 July 2012;
- from 1 July 2009, home providers should charge on a per second basis for voice calls made and received but may apply a minimum charging period of no more than 30 seconds for calls made;
- from 1 July 2009, the average wholesale charge the operator of a visited network may levy on a home operator for the provision of a text message originating on the visited network should not exceed €0.4 per message;

- from 1 July 2009, the retail charge that a home operator may levy on a roaming customer for a text message should not exceed €0.11;
- home providers should send subscribers a text message when they cross into another Member State explaining the tariff for voice calls made and received and for text messages;
- from 1 July, 2009, home providers should send subscribers information about the tariff for using data roaming services when they initiate a data roaming service in a Member State other than their home State;
- by 1 July 2010, home providers should establish a "cut off limit" which will enable subscribers to set a financial limit for use of data roaming services so that, when the financial limit is reached, the home provider will cease to provide the customer with data roaming services (the aim is to help subscribers avoid inadvertently running up huge bills for downloading data from the Internet to their mobile phones while they are abroad);
- the average wholesale charge that the operator of a visited network may levy on a home operator for the provision of data roaming services via the visited network should not exceed €1 per megabyte of data transmitted; and
- the Commission should review the functioning of the amended Regulation and report to the Council and the European Parliament by the end of 2011.

The Government's views on documents (a) and (b)

2.9 The Minister for Communications, Technology and Broadcasting at the Department for Business, Enterprise and Regulatory Reform (Lord Carter of Barnes) says that document (a) is a reasonable assessment of the way the market has developed since the implementation of the 2007 Regulation. In the Government's view there is sufficient evidence to justify extending the life of the Regulation until 2013 and applying it to text messaging.

2.10 As to the proposal to require home operators to charge per second for voice calls, the Minister says that the Government:

> "will be open to consider arguments during the negotiations on how best to strike a balance to get the best outcome for consumers and suppliers. The proposal of a 30 second charge is constructive but other approaches may emerge."

2.11 As to data roaming, the Minister says that:

> "the most important policy consideration is to avoid regulation of retail prices for data roaming. We believe that the market is still in the early stages of development and precipitous legislation could have a serious chilling effect on this important new communications market. We can see the sense in the Commission's approach of chasing out the highest price but need to be sure that the approach taken by the Commission does not have any unintended consequences. Similarly, we can see considerable value in transparency requirements [requiring the home operator to

> send the subscriber information about the tariff for using data roaming services] but have to be certain that they can be delivered and are not exorbitantly expensive. The Commission has not made a strong argument in that respect."

2.12 The Minister tells us that the Government will be producing its own Impact Assessment of the draft regulation. It is currently consulting operators and consumers about the proposals. The French Presidency wishes to achieve a common position on the draft Regulation at the Telecommunications Council on 27 November.

Conclusion

2.13 **We share the Minister's view that there appears to be sufficient justification for extending the life of the 2007 Regulation and applying it to text messages. We also agree with him about the importance of checking that the provisions on data roaming services would not have unintended consequences and that the requirements about telling subscribers the tariff are technically feasible and proportionate.**

2.14 **The legal base for document (b) is Article 95 EC. That Article also provides the legal base for the 2007 Regulation itself. When we considered the draft of the 2007 Regulation last year, we questioned whether Article 95 is an appropriate legal base for a measure to set prices rather than to harmonise Member States' laws on the establishment and functioning of the common market. The Government explained why it did not share our doubts and we acknowledged that this is a question of law which, ultimately, would be for the European Court of Justice to decide if the Regulation were challenged by, for example, mobile phone operators. While we recognise that there are respectable arguments in support of the use of Article 95, we draw attention to the contrary view. We see no need to repeat the arguments here because they are fully ventilated in our reports on the draft of the 2007 Regulation.[2]**

2.15 **We should be grateful if the Minister would send us a summary of the views expressed during the Government's consultations and a copy of the Impact Assessment. We should also be grateful for progress reports on the negotiations. Meanwhile, we shall keep documents (a) and (b) under scrutiny.**

2 (27710) 11724/06: see HC 41–xxiv (2006–07), 6 June 2007.

3 Protection of animals at the time of killing

(29969) 13312/08 + ADDs 1–2 COM(08) 553	Draft Council Regulation on the protection of animals at the time of killing

Legal base	Article 37EC; consultation; QMV
Document originated	18 September 2008
Deposited in Parliament	24 September 2008
Department	Environment, Food & Rural Affairs
Basis of consideration	EM of 14 October 2008
Previous Committee Report	None
To be discussed in Council	No date set
Committee's assessment	Politically important
Committee's decision	Not cleared; further information awaited

Background

3.1 According to the Commission, nearly 360 million pigs, sheep, goats and cattle are killed in Community slaughterhouses each year, as well as more than 4 billion poultry. It adds that the control of contagious diseases may also require the killing of millions more. It says that measures have been in place since 1974 to regulate these activities, but, since the most recent of these (Directive 93/119/EC)[3] was enacted, there have been a number of significant developments, notably an increasing public concern for animal welfare, the introduction of wider food safety legislation which emphasizes the responsibilities of business operators, and the mass killings during epidemics which raised questions about the methods used. In addition, it also notes a number of specific issues identified with current Community legislation, such as the lack of harmonised methodology for new stunning methods, the lack of clear responsibilities for operators, the level of competence of the personnel involved and inadequate welfare conditions.

The current proposal

3.2 The Commission has therefore brought forward this draft Regulation, which would apply to all animals — including poultry and (to a very limited degree) fish, but not reptiles and amphibians — killed in a slaughterhouse, on farm or for diseases control purposes. It would not, however, apply to scientific experiments carried out under official supervision; to hunting; during cultural or sporting events; or to the slaughtering of poultry and rabbits for personal consumption.

3.3 It aims to improve the protection of animals at the time of slaughter or killing; to encourage innovation in relation to stunning and killing techniques; and to provide a level

3 OJ No. L 340, 31.12.93, p.21.

playing field within the internal market for those concerned. In addition, it identifies a number of more specific objectives needed to achieve these aims, notably the development of a common methodological approach to encourage new stunning methods; the encouragement of better integration of animal welfare concerns into production processes; the upgrading of the standards governing slaughterhouse construction and equipment; an increase in the level of competence of the operators and officials concerned; and an improvement in the welfare of animals during mass killing operations.

3.4 These objectives would in the first instance be achieved by a number of general requirements. Thus:

- animals would have to be spared any avoidable pain, distress or suffering;
- they would have to be provided with physical comfort and protection, and protection from injury and disease, handled and housed with due consideration, and not subjected to prolonged withdrawal of feed or water;
- the facilities used would have to be designed, constructed, maintained and operated so as to meet these objectives;
- animals must only be killed by a method ensuring instantaneous death or after stunning carried out in accordance with certain detailed provisions, subject to a derogation enabling Member States to permit killing without prior stunning where that is prescribed by religious rites;
- killing must be in accordance with standard operating procedures, and may only be carried out by those holding a certificate of competence, with certain other operations[4] also requiring such a certificate; and
- equipment used for restraining or stunning must have appropriate instructions for its use and maintenance, specifying the categories and weights of the animals involved, and means of monitoring its efficiency, and, in the case of stunning, appropriate back-up equipment must be available.

3.5 In addition, the proposal lays down a number of more specific conditions applicable to slaughterhouses and so-called "depopulation" and "emergency killing".[5] Those relating to slaughterhouses would apply immediately to new premises, and from 1 January 2019 to existing establishments, and would cover:

- approval of their construction and layout, and the equipment deployed, including such aspects as maximum throughput for each slaughter line, the categories of animals and weights for which the available restraining and stunning equipment may be used, and maximum lairage capacity;

4 Such as handling before and during restraint, stunning and the assessment of its effectiveness, shackling or hoisting of live animals, and bleeding of live animals.

5 Depopulation is defined as the supervised killing of animals for public health, animal health, animal welfare or environmental reasons, whilst emergency killing is the unavoidable killing of those which are injured or have a disease associated with pain or suffering.

- an obligation on operators to ensure that the relevant rules are complied with, including the mechanical restraint of animals killed without stunning, and the prohibition of various methods of restraint;
- appropriate monitoring procedures to ensure that animals are effectively stunned; and
- the designation of a suitably qualified animal welfare officer, under the direct authority of the operator and responsible for ensuring compliance with the rules laid down, for each slaughterhouse handling over 1000 livestock unit or 150,000 poultry units a year.

3.6 In the case of depopulation, there would need to be an action plan drawn up by the competent authority and the operators concerned would have to ensure compliance with the rules laid down, followed by an annual evaluation report to the Commission showing the reasons for the depopulation exercise, the number and species of animals killed, the stunning and killing methods used, a description of any difficulties encountered (and solutions found), and a note of any use made of the ability to grant derogations where compliance would affect human health or significantly slow down the eradication of a disease. In the case of emergency killing, there would be a requirement that this should be carried out as soon as possible.

3.7 Member States would be required to appoint a national reference centre to provide the scientific and technical expertise needed for the approval of slaughterhouses; carry out assessments of new stunning methods; encourage the development of codes of good practice; accredit those bodies issuing certificates of competence; and share technical information and best practice with the Commission and reference centres in other Member States. Member States would also have to designate a competent authority responsible for ensuring that approved training courses are available for those involved in killing and related operations, and delivering to those in question the necessary certificates of competence (which would be valid for up to five years);[6] the competent authority would also be able to request operators to slow down or stop their procedures, increase the frequency of monitoring, to withdraw certificates of competence, and to withdraw accreditation of bodies issuing such certificates. Member States would also be required to lay down appropriate penalties and to ensure that the provisions in the Regulation are implemented.

The Government's view

3.8 In her Explanatory Memorandum of 14 October 2008, the Minister for Farming and Environment at the Department for Environment, Food and Rural Affairs (Jane Kennedy) says that, subject to further consideration of some of the detailed technical provisions, the proposal would bring welfare standards across the Community into line with some of those currently applying in the UK (or considered by the Government to be best practice), and that it places more responsibility on operators to ensure the welfare of animals in their care, which is consistent with Government policies on cost and responsibility sharing. However,

6 Until 31 December 2014, these certificates could be issued without examination to those demonstrating at least ten years uninterrupted relevant experience.

she also suggests that the proposal would not include some of the current UK welfare requirements, and that enforcement of these might not be possible under the new Regulation; and she says that the Regulation would increase regulatory and administrative burdens (such as introducing new reporting and notification procedures) in a way which is potentially at odds with the Government's aim of reducing and keeping such burdens to a minimum. For example, the proposed licensing provisions go wider than current UK procedures, which grant a licence for life, and do not cover handling and care of animals before they are restrained; and, although the provisions of depopulation allow derogations on a case-by-case basis, this is potentially more restrictive than the current Directive, which permits the use of any killing method so long as it does not cause unnecessary excitement, pain or suffering.

3.9 The Minister says that the Government will therefore wish to ensure that an appropriate balance is struck. It has also noted that the derogation permitted from the prior stunning requirements for killing methods permitted by religious rites could potentially conflict under human rights legislation with the freedom of conscience of those who consider that the only humane way to slaughter an animal is with prior stunning or instantaneous death, should the method of slaughter not be clear to those obtaining the meat. She also says that

> "The manifestation of either right is subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others. Therefore, any limitation of either the right to freedom of religion or the right to freedom of conscience would need to satisfy this two stage test. Where the religious right and the right of conscience may impact on one another, there could be a case for prescribing limitations by law to protect the other group's rights."

3.10 The Minister says that an Impact Assessment will be provided next spring, and will include a full consideration of the financial implications. She adds that, although informal consultation was undertaken with key stakeholders in response to emerging proposals and the Commission's requests for information, a formal consultation exercise will now be undertaken and used to inform the Impact Assessment. She also believes that little progress is likely in the Council until the Swedish Presidency in the second half of 2009.

Conclusion

3.11 **This proposal clearly makes some significant amendments to the current Community legislation governing the ways in which animals killed are for food production purposes, and, as such, it raises, not only the usual questions regarding the relative costs and benefits, but also some potentially controversial human rights issues. For that reason, we may well wish in due course to recommend it for debate in European Committee. However, given that an early decision in the Council appears unlikely, we think it would be sensible to defer a final view on this until we have received the promised Impact Assessment from the Government. In the meantime, we are drawing the proposal to the attention of the House.**

4 Financial services

(29873) 12149/08 + ADDs 1–2 COM (08) 458	Draft Directive on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS)

Legal base	Article 47(2) EC; co-decision; QMV
Document originated	16 July 2008
Deposited in Parliament	25 July 2008
Department	HM Treasury
Basis of consideration	EM of 18 September 2008
Previous Committee Report	None
To be discussed in Council	Not known
Committee's assessment	Politically important
Committee's decision	Not cleared; further information awaited.

Background

4.1 The 1985 Directive on undertakings for collective investment in transferable securities, as amended, commonly referred to as the UCITS Directive, sets out common rules for investment funds in the Community. Funds which meet these rules may be sold freely in any Member State on the basis of a single national authorisation.

4.2 In November 2006 the Commission published a White Paper about possible amendments to the UCITS Directive.[7]

The document

4.3 The Commission's draft Directive would implement small targeted reforms to the UCITS Directive to further the aim of developing a true single market in investment funds. It includes the following specific provisions:

- simplification of the notification procedure — making it easier for UCITS funds to start marketing in new Member States, by removing a host regulator's right to vet funds before they start marketing;
- mergers — ensuring that UCITS funds can merge within a country and cross borders. The aim is to allow the Community UCITS market, which is currently highly fragmented, to consolidate and thus cut costs;
- pooling — allowing master/feeder structures, where one or more feeder funds invest into a single master, allowing greater exploitation of economies of scale;

7 (28062) 15484/06 + ADDs 1–2: see HC 41–vii (2006–07), chapter 9 (24 January 2007).

- simplified prospectus reform — improving the quality of pre-sale information for investors by replacing it with reformed rules on "Key Investor Information"; and
- supervisory cooperation — measures to improve and intensify cooperation between UCITS supervisors.

4.4 The Commission's proposal:

- would also consolidate the existing legislation and these amendments into one Directive; and
- includes a large number of small technical amendments linked to this process.

4.5 The Commission's accompanying Impact Assessment, as well as foreseeing significant net regulatory benefits from the proposal, explains the Commission's decision not to include provision for a "management company passport" in the present draft Directive. This would allow UCITS funds to be managed remotely by management companies in other Member States. The Commission cites concerns about the potential costs and practicalities of maintaining proper supervisory oversight of fund managers which split their operations in such a way. It has asked the Committee of European Securities Regulators[8] for advice on this issue by 1 November 2008 with a view to introducing provisions for a passport based on that advice during negotiations on the draft Directive.

4.6 The Impact Assessment alludes to the difficulty of discovering the views of investors, that is consumers, during consultations on financial services, particularly on a subject as technical as UCITS. But the Commission says that it has worked closely with the Financial Services Consumer Group and FIN-USE.[9]

The Government's view

4.7 The then Economic Secretary to the Treasury (Kitty Ussher) says the Government strongly supports the Commission's proposal, noting that it has been closely involved in the development of the proposals and welcomes the outcome. She continues that:

- the proposals for simplification of the notification procedure should represent a major step towards a genuine single market in investment funds by allowing managers to access foreign markets without significant cost or administrative burdens;
- the proposed new rules on mergers should help the UCITS industry to better exploit economies of scale, allowing it to move towards the lower cost and price levels seen in the more consolidated US market;

8 This is a Lamfalussy committee: see http://www.cesr-eu.org/index.php?page=cesrinshort&mac=0&id= .

9 The Financial Services Consumer Group is a sub-group of the European Consumer Consultative Group. Its objective is to see that consumer interests are taken into account properly in Community financial services policy development. FIN-USE is the Forum of user experts in the area of financial services. See http://ec.europa.eu/internal_market/finservices-retail/fscg/index_en.htm and http://ec.europa.eu/internal_market/fin-use_forum/index_en.htm.

- the proposals on pooling of assets should also allow exploitation of economies of scale;
- however, the Government believes significant simplification of this proposal, by removing a number of the additional regulatory requirements proposed for funds opting for this structure, would be beneficial. In general, the existing rules governing the operation of UCITS should be sufficient to ensure investor protection without adding a significant volume of additional rules for funds adopting a master/feeder structure; and
- the proposals to replace the simplified prospectus could help improve potential investors' understanding of the costs, benefits and risks of investing in UCITS funds.

4.8 The Minister also tells us that:

- the Government notes the Commission's arguments for not including provision for a management company passport and welcomes its decision to ask the Committee of European Securities Regulators for further guidance on this issue;
- it strongly supports the introduction of a full management company passport, allowing the passporting of all aspects of UCITS management company activity, and is committed to working with the Committee of European Securities Regulators, the Commission and other Member States to develop proposals which deliver the desired single market freedoms without compromising effective supervisory oversight and investor protection;
- the Government broadly supports the Commission's Impact Assessment;
- an assessment of regulatory impact in the UK will be completed when the proposals are ready for implementation and the Financial Services Authority will consult on UK implementing measures;
- the Government maintains regular and close contact with the investment funds industry on this issue, including hosting regular roundtable meetings for firms and representative bodies to collate industry views;
- the Government's approach to the negotiations has the support of the UK investment funds industry;
- in order for the draft Directive to be adopted without a significant delay it would be necessary for the Council to reach an agreement with the European Parliament before the latter rises for elections around March 2009; and
- the Government believes that meeting this deadline is an important objective.

Conclusion

4.9 **This draft Directive would make important changes to the regulatory regime for UCITS and we note that the Government and the UK UCITS industry are supportive of**

the proposals. However, before considering the proposal further we should like to hear from the Government about both:

- **developments on a management company passport following the awaited advice from the Committee of European Securities Regulators; and**
- **in the light of the Commission's comments about consumer views, what information the Government has about the views of UK consumers.**

4.10 **Meanwhile, the document remains under scrutiny.**

5 Pollution caused by ships

(29560) 7616/08 COM(08) 134	Draft Directive amending Directive 2005/35/EC on ship-source pollution and on the introduction of penalties for infringements

Legal base	Article 80(2) EC; co-decision; QMV
Department	Ministry of Justice
Basis of consideration	Minister's letter of 4 October 2008
Previous Committee Report	HC 16–xxi (2007–08), chapter 8 (14 May 2008), and see (24535) 7312/03: HC 42–ix (2003–04), chapter 12 (4 February 2004), HC 42–xiv (2003–04), chapter 3 (24 March 2004), HC 42–xxii (2003–04), chapter 8 (9 June 2004) and HC 42–xxvi (2003–04), chapter 3 (7 July 2004)
To be discussed in Council	No date set
Committee's assessment	Legally and politically important
Committee's decision	Not cleared; but agreement need not be withheld pending scrutiny

Background

5.1 In 2003 the Commission presented a draft Directive, based on Article 80(2)EC, on pollution caused by ships ("ship-source pollution"). The proposal, as it then stood, sought to apply at Community level some of the requirements of the 1973 International Convention for the Prevention of Pollution from Ships and its 1978 Protocol (often referred to as MARPOL 73/78) and to ensure that any person who caused or contributed to a pollution incident through deliberate or grossly negligent behaviour was made subject to criminal sanctions.

5.2 The previous Committee identified two main issues. The first was the degree to which the Directive was consistent with the regime established by MARPOL 73/78 and with the

United Nations Convention on the Law of the Sea (UNCLOS), notably on the question of liability where the discharge of polluting substances is the result of damage to a ship or its equipment (e.g. following a collision). MARPOL 73/78 contains an exception for discharges resulting from damage to a ship or its equipment, so that the owner or master is to be held responsible only if he acted with intent to cause damage to the ship or where he acted recklessly and with knowledge that damage would probably result, but the Directive limited the exception to international straits, the Exclusive Economic Zone of a Member State and the high seas.[10] As the then Minister commented at the time, this introduced a conflict with UNCLOS, which requires coastal States to comply with international rules and standards, such as MARPOL, when dealing with foreign ships outside their territorial sea. The second main issue was the inclusion by the Commission of criminal law measures in a Directive proposed under the EC Treaty. A number of Member States, including the UK, objected to these provisions on the grounds that the Community lacked competence to prescribe criminal law rules. In the light of this objection, the Commission revised its proposal for a Directive and submitted an accompanying EU Framework Decision to specify criminal penalties for the acts prohibited by the Directive.

5.3 The Commission continued to argue that the Community did have the necessary competence and brought proceedings for the annulment of the Framework Decision, shortly after it was adopted in 2005. In its ruling on the Commission's application in Case C-440/05 *Commission v. Council* and annulling the Framework Decision, the ECJ found that the Community was competent to require Member States to introduce criminal sanctions in support of EC transport policy, but that the Community was not competent to determine the type and level of those criminal penalties.

5.4 The Commission subsequently proposed an adaptation of Directive 2005/35/EC[11] which would incorporate the relevant provisions of the annulled Framework Decision. When we considered this proposal on 14 May we noted the Government's comment that the Commission's approach to seeking to add a criminal law element to the 2005 Directive had the effect of distorting the overall scheme of the instrument and of creating a few potentially significant problems. One of these was that simply replacing the word "infringement" with "criminal offence" in the Directive would oblige Member States to apply the criminal law to discharges of polluting substances into the seas to the exclusion of any alternative administrative or civil sanctions. Another was that the proposed new Article 4(1) (which required Member States to criminalise discharges of polluting substances into any of the areas mentioned in Article 3(1))[12] could create a very broad obligation which could require Member States to ensure that the discharge of polluting substances in the high seas was treated as an offence under national law whatever the nationality of those responsible or the flag State of the vessel.[13] Further issues were the new Article 4, which took insufficient account of the exceptions under the existing Directive for

10 The exception did not, therefore, apply to internal waters or the territorial waters of a Member State, these being referred to separately in Article 3(1)(a) and (b) of Directive 2005/35/EC. International straits, the Exclsuive Economic Zone and the high seas are covered by Article 3(1)(d) and (e).

11 OJ No. L 255, 30.09.05, p.11.

12 I.e. internal waters, territorial sea, international straits, exclusive economic zones and the high seas.

13 A prescriptive jurisdiction on this wide basis appears to raise questions of compatibility with the United Nations Convention on the Law of the Sea (UNCLOS) which, save for a limited number of exceptions, reserves jurisdiction to the flag State over incidents occurring on the high seas (cf.UNCLOS Article 92(1)). It also appears that MARPOL 73/78 does not authorise the assertion of jurisdiction over vessels on the high seas by a non-flag State.

discharges from any warship, naval auxiliary or other State-owned ship used only on government non-commercial service. Finally, in cases where damage to the ship or its equipment results in the discharge, the exception for crew members was wider under Article 2(2) of the annulled Framework Decision than it is under Article 5(2) of the Directive.[14]

The Minister's letter

5.5 In her letter of 4 October 2008 the Parliamentary Under-Secretary of State at the Ministry of Justice (Bridget Prentice) informs us of the latest developments on the proposed amending Directive and supplies us with a copy of the latest Presidency working text.

5.6 The Minister explains that the latest text "reflects UK drafting suggestions on key measures". A drafting structure has been adopted which is more in keeping with the draft Directive on the protection of the environment through criminal law, so that the obligations concerning criminal offences are added without altering the basic provisions in the Directive on polluting infringements. The Minister explains that the Government believes that these changes, and the inclusion of a recital making clear that the Directive imposes no obligation to apply penalties in any particular case, "satisfactorily ensure that the criminal obligations do not exclude the possibility of Member States employing alternative administrative solutions where appropriate". The Minister also explains that the new structure removes the need further to clarify the exceptions relating to warships, naval auxiliaries, and State-owned ships.

5.7 The Minister adds that the latest text contains updated cross-references to the MARPOL exceptions, notably in relation to cases where damage to the ship or its equipment results in a discharge. The Minister refers, in this regard, to the removal of the ambiguous reference to the crew having to be "acting under the master's responsibility" in order to be exempted (a qualification which is not made in the MARPOL Convention). The Minister explains that the new text "does not achieve parity" with the MARPOL exceptions themselves, but that it goes further than the provision of the annulled Framework Decision which it replaces, in that it applies to all the infringements referred to in the 2005 Directive, not merely those which were made criminal under the Framework Decision. The Minister concludes that the Government "is satisfied that this amounts to the best achievable balance between respecting the international standards whilst establishing an effective EU regime".

5.8 The Minister adds that the French Presidency wishes to seek agreement to the amended text so that it may form a mandate for negotiations with the European Parliament, but that it is not clear when the latter will commence its consideration of the proposal.

14 The Directive introduces the further qualification that the crew must have been acting under the master's responsibility in order to qualify for the exception from liability.

Conclusion

5.9 **We thank the Minister for her letter and for sending us a copy of the latest Presidency text. It is apparent from this that a number of useful improvements have been made to the proposal and that the points we raised have been substantially addressed.**

5.10 **In view of the likely opening of negotiations with the European Parliament, we will hold the document under scrutiny but we are content to indicate to the Minister that she may agree to the text going forward as a basis for those negotiations. We shall look forward to an account, in due course, of the outcome of those negotiations.**

6 Merger reporting requirements

(29986) 13548/08 + ADDs 1–2 COM(08) 576	Draft Council Directive amending Directives 77/91/EEC, 78/855/EEC and 82/891/EEC and Directive 2005/56/EC as regards reporting and documentation requirements in the case of merger and divisions.

Legal base	Article 44(2) EC; co–decision; QMV
Document originated	24 September 2008
Deposited in Parliament	30 September 2008
Department	Business, Enterprise and Regulatory Reform
Basis of consideration	EM of 14 October 2008
Previous Committee Report	None
To be discussed in Council	No date fixed
Committee's assessment	Legally and politically important
Committee's decision	Cleared

Background

6.1 In 2006 the Commission launched a broad simplification programme with a view to measuring administrative costs and reducing administrative burdens on companies in the areas of company law, accounting and auditing. This initiative is a key part of the wider better regulation/simplification agenda aimed at removing burdens that unnecessarily hamper economic activity within the EU. The programme which aims to reduce administrative burdens in the areas mentioned by 25% by the year 2012, was formally endorsed by the European Council in March 2007. In 2007 the Commission adopted a Communication setting out proposals for simplifying the areas of company law, accounting and auditing. The simplification measures set out in the proposed directive were identified during the consultation on the July 2007 Communication.

The document

6.2 This proposal for an amending directive contains measures designed to simplify or reduce reporting requirements in the case of company mergers and de–mergers. They would amend the third company law directive on company mergers (78/855/EEC) and the sixth company law directive on company divisions (82/891/EEC). These directives currently contain a number of detailed reporting requirements that companies involved in mergers and divisions have to comply with and which impose considerable costs and administrative burdens. Furthermore, the means provided in the directives to inform shareholders about the details of the transaction were designed 30 years ago and do not take account of technological change. Finally, changes in directives over time have led to inconsistencies between directives, and the proposed directive tries to address some of these inconsistencies. This proposal is an important part of the first stage of the EU simplification programme.

6.3 The proposed Directive focuses on the reports required in the case of a company merger or division: a management report, an independent expert's report and a supplementary accounting statement. In some cases it relaxes the requirement for these reports and it also aligns reporting requirements (where this is not already the case) between relevant provisions in the 2nd (Capital maintenance) and Cross–Border Mergers Directives. The specific measures for reducing administrative burdens in the proposed Directive include:

- abolition of the requirement for a management report explaining the terms of the merger and a supplementary accounting statement if all shareholders agree they are unnecessary, and not to require companies to draw up a supplementary accounting statement in cases where an issuer of listed securities publishes half–yearly financial statements, in accordance with the rules of the transparency directive;

- simplification of reporting requirements in the case of mergers and divisions between parent and subsidiary companies;

- an option for companies to use their websites for the publication of the draft terms of mergers and divisions and of other documents that have to be made available to shareholders and creditors in the process;

- for the purposes of consistency, the application of standardised creditor protection requirements in the Second Directive in the case of a merger or division; and

- to exempt companies from the requirement in the Second Directive for an independent expert's report — in cases where an independent expert's report has been produced for a merger or division — or to provide that both reports may be drawn up by the same expert.

The Government's view

6.4 In his Explanatory Memorandum of 14 October 2008, the Economics and Business Minister at the Department for Business, Enterprise and Regulatory Reform (Ian Pearson) welcomes the Commission's proposal in the following terms:

"The Government is strongly in favour of simplification and welcomes the benefits that the simplification of reporting requirements will bring to all Member States. The 3rd and 6th Directives regulate purely domestic mergers and divisions and as a rule UK companies tend not to use these provisions to reconstruct their companies, tending to favour the takeover route administered by the Takeover Panel. There were 3 notifications of mergers/divisions using the Directive provisions in the UK in 2005/6. In our response to the Commission on their simplification proposals in October 2007, we expressed a view that from a UK perspective the 3rd and 6th Directives could be repealed a they are rarely used and because proposals to simplify may add complexity. However, we recognise that these provisions are utilised by other Member States and are supportive of simplification proposals in this respect.

"At the request of the European Parliament the Commission invited comments from stakeholders on simplification proposals and received contributions from eighteen Member States, 110 stakeholders from 23 countries (22 Member States) including the UK. One of the options on which comment was invited was a repeal of the 3rd and 6th Directives. In our response to the Commission in October 2007 the UK supported the proposals to repeal of the 3rd and 6th Directives on the grounds that they failed to serve a cross border purpose and because UK companies used alternative procedures of national law. However we recognised that other Member States make more use of these directives and would support simplification rather than a full repeal of them. The proposed directive reflects the outcome of those discussions.

"An impact assessment has not been prepared as there are no costs and only minimal benefits for business in the UK. An impact assessment will be produced when we consult UK stakeholders on the proposals. The proposals will reduce administrative burdens for those companies who choose to use them. The impact assessment produced by the Commission indicates that the proposals will reduce the costs of administrative burdens across the EU by around €172 million [£136.5 million] per year."

Conclusion

6.5 **We thank the Minister for his summary and comments on the simplification proposal by the Commission. We welcome the proposed amendments on the grounds that they reduce administrative and financial burdens without apparently compromising the substance of existing accountability requirements. Accordingly we clear the document from scrutiny.**

7 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 10th European Development Fund

Legal base	Article 300(2) EC; QMV
Document originated	25 September 2008
Deposited in Parliament	1 October 2008
Department	International Development
Basis of consideration	Minister's letter of 21 October 2008
Previous Committee Report	HC16–xxxi (2007–08), chapter 4 (15 October 2008)
To be discussed in Council	Sometime before 27 October 2008
Committee's assessment	Politically important
Committee's decision	Cleared

Background

7.1 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.

7.2 At our previous meeting, we considered a proposal which, as explained by the Minister of State at the Department for International Development (Mr Gareth Thomas) in his Explanatory Memorandum of 10 October 2008, concerned the provision of an allocation for Somalia from the 10th European EDF. He explained 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." He notes that:

— in December 2001, the ACP-EC Council of Ministers agreed to allocate an amount of €150 million to Somalia under the 8th and 9th EDF. In May 2007, the allocation was further increased by €39 million from the 9th EDF;

— in August 2007, the European Commission made an indicative allocation for Somalia of €212 million for programmable activities and €3.8 million for unforeseen needs from the 10th 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.

7.3 The Commission, he explained, had proposed 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.

7.4 The Minister supported this proposal, welcoming the "the Commission's intention to support Somalia in its efforts towards institution building and economic and social development activities", which he said were in line with UK policy. He said that he would "continue to work in partnership with the Commission to support these activities" and further noted that:

— there had been no external consultation by DFID on this proposal;

— there were no direct financial implications for the UK arising from this proposal, the funds proposed to be allocated to Somalia being made available from within the agreed overall funding ceiling for the 10th EDF; and

— this proposal needed to be considered by the Council before 27th October in advance of the ACP-EC Committee of Ambassadors on 30th October.

7.5 We had 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 was both notable and important. What we were told — that Somalia cannot sign the Cotonou Agreement because of the lack of established institutions — coincided with a general impression of factionalism and lawlessness. Significant sums of money were involved, to be spent over six years via a "Special Support Programme": but no information was given about what this was, or how the Commission would ensure that money is spent both properly and effectively over a long period of time. We asked the Minister for satisfactory and reassuring answers to these questions, and retained the document under scrutiny.[15]

The Minister's letter of 21 October 2008

7.6 The Minister responds under three headings

— Information about the present situation in Somalia;

— Information on what the Special Support Programme entails; and

— How the Commission will ensure that money is spent both properly and effectively.

15 See headnote.

7.7 On the first, he says that the conflict is intensifying in Central and Southern Somalia (particularly Mogadishu); that the UN judges that 3.2m people, from a population of approximately 7m, require humanitarian relief, and that one in six children is starving, in some areas more; that the total Internally Displaced Persons population is now estimated at around 1 million; and that there are nearly 400,000 Somali refugees in neighbouring countries. He continues thus:

> "The international community, including the EC, is providing political support and financial support to enable all parties to participate in the peace process initiated in Djibouti (Djibouti Agreement)[16] in June 2008. The EC, along with other donors, have provided financial and technical support to the Transitional Federal Institutions,[17] to promote security, reconciliation and political progress through UNDP.
>
> "Somaliland remains relatively stable. Local and Presidential elections are planned for early 2009 and are to be funded by the EC and other donors. The EC's development assistance programme in Somaliland has resulted in, for example, health professionals being trained and recruited, school exam centres being set up, and technical assistance being provided to the Somaliland authorities on public management."

7.8 The overall objective of the 10th EDF Special Support Programme is, the Minister says, "to help establish a peaceful and secure environment throughout Somalia, and to reduce poverty by providing basic social services and increasing economic activity." He explains that the Special Support Programme has two funding envelopes — A and B:

7.9 The Minister says that *Envelope A* (€212 million; £167.5 million) will cover the following "long-term programmable development operations":

- €60 million (£47 million) for the *governance sector* which includes assistance to promote security and support to reconciliation through dialogue and peace building at political and community levels;
- €55 million (£37 million) to the *education* sector including education services (including Islamic education) accessible to the entire population;
- €55 million (£37 million) to *economic development* and *food security* including support to rehabilitation of feeder roads and technical education; and support to sustainable management of natural resources;
- €27 million (£21 million) to *non-focal sectors* such as air transport services from Nairobi to Somalia for the implementation of EC and Member States and Norwegian aid programmes to Somalia; and

16 Signed in Djibouti, on 19 August 2008, between the Transitional Federal Government (TFG) of Somalia and the Alliance for the Re-Liberation of Somalia (ARS), and welcomed by the African Union (AU) as "a very significant step in the efforts being made towards the promotion of lasting peace and reconciliation in Somalia". For further information, see http://allafrica.com/stories/200808210860.html.

17 The Transitional Federal Institutions of Somalia are the key government institutions created in October–November 2004 at a conference held in Nairobi, Kenya. They include: the Transitional Federal Government, which is the present internationally recognised government of Somalia; the Transitional Federal Charter; and the Transitional Federal Parliament, as an interim Parliament of Somalia.

- €15 million (£11.8 million) as a *reserve budget*, to cover insurance, cost increases and contingencies.

7.10 The Minister says that "all of the above will be implemented through different instruments such as a multi-donor sector mechanism, multi donor co-financing[18] or through direct project support", the details of which "will be outlined in the Annual Action Plan".[19]

7.11 The allocation of €3.8 million (£3 million) set aside under *envelope B* will, the Minister says, provide for unforeseen needs such as emergency assistance.

7.12 With regard to how the Commission will ensure that money is spent both properly and effectively, the Minister says:

> "The EC will monitor results and evaluations of impact through guidelines which will be outlined under each activity and through independent external evaluations. DFID will monitor progress through regular discussions at the EDF Committees." [20]

7.13 Finally, the Minister says that the proposal needs to be considered by the Council before 27 October in advance of the ACP-EC Committee of Ambassadors, which he is "advised will be held 30th October."

Conclusion

7.14 **We are grateful to the Minister for this further information, which now explains clearly what this expenditure is designed to achieve, and why. It explains less clearly than we would have liked what the mechanisms will be to ensure that it is spent effectively. However, we accept that the circumstances in Somalia are both very pressing and particularly challenging, and that it is thus correspondingly difficult to provide the sort of assurances that might otherwise be expected.**

7.15 **We now clear the document.**

7.16 **In so doing, we ask the Minister to ensure that any future such Explanatory Memoranda live up to their title by containing the sort of necessary information that was lacking in his first Explanatory Memorandum.**

18 multi-donor sector support normally entails an overall plan for each sector, which outlines the Government priorities and is agreed by government and donors; donors customarily agree to the plan and identify which components they will support and how they will provide the resources to take it forward; the plan should contain a common planning and monitoring framework. This multi-donor approach is designed to minimise the duplication of individual donor projects , in line with commitments on Aid Effectiveness .

19 the Annual Action Plan provides the detailed work programme over the year in question, and is issued after the agreement of the Support Strategy (which provides the broad direction over the period of the six years) . The AAP is discussed in country with the partner government and other donors and provides more specific detail as to the proposed actions and how the money will be allocated over the course of the year. The 2008 AAP is likely to be presented at the EDF Committee in November.

20 The Support Strategy outlines monitoring and evaluation mechanisms only in broad terms. The monitoring of results and evaluations of impact of the activities under the programme would customarily be undertaken in line with the detail outlined in the subsequent AAP; and would customarily include country level evaluations undertaken jointly with EU Member States in-country and possibly with other donor agencies, in addition to independent external evaluation.

8 Rail freight services

(29955) 12974/08 COM(08) 536	Commission Communication: *The quality of rail freight services*

Legal base	—
Document originated	8 September 2008
Deposited in Parliament	17 September 2008
Department	Transport
Basis of consideration	EM of 29 September 2008
Previous Committee Report	None
To be discussed in Council	Not known
Committee's assessment	Politically important
Committee's decision	Cleared

Background

8.1 The Community's First Railway Package was intended, amongst other things, to open up more than 50,000 kilometres of the trans-European rail freight network to international goods services in 2003, with the entire network following in 2008. The Commission's 2001 White Paper, "European Transport Policy for 2010: time to decide", proposed, amongst other things, construction of a legally and technically integrated European railway area. The Second Railway Package was designed to provide for the establishment of that integrated European railway area. The White Paper and the two packages were all discussed in European Standing Committee A.[21]

8.2 In March 2004 the Commission presented the Third Railway Package, which aimed to revitalise the international rail passenger market by extending competition and establishing a harmonised system of minimum passenger rights, improve the interoperability of the European rail system and enhance the performance and size of the Community rail freight market. One of the four legislative proposals in the package was a draft Regulation on contractual quality requirements for rail freight services. This package was also discussed in European Standing Committee A.[22]

8.3 In October 2007 the Commission published its Communication: *Towards a rail network giving priority to freight*,[23] as part of its "Freight Transport Agenda" package. The package was discussed in European Committee.[24]

21 See *Stg Co Deb*, European Standing Committee A, 10 March 1999, cols. 1–42; *Stg Co Deb*, European Standing Committee A, 13 March 2002, cols. 3–28; and *Stg Co Deb*, European Standing Committee A, 8 May 2002, cols. 3–24.

22 (25436) (25437) (25438) (25439) (25455) (25456) 7170/04 7147/04 7172/04 7149/04 7148/04 7150/04: see HC 42–xvii (2003–04), chapter 3 (21 April 2004), HC 42–xxx (2003–04), chapter 4 (9 September 2004), HC 42–xxxii (2003–04), chapter 8 (13 October 2004), HC 38–ii (2004–05), chapter 3 (8 December 2004) and HC 38–iv (2004–05), chapter 3 (19 January 2005) and *Stg Co Deb*, European Standing Committee A, 9 March 2005, cols. 3–18.

23 (29017) 14165/07 + ADD3: see HC 16–iv (2007–2008), chapter 5 (28 November 2007).

24 *Stg Co Debs*, European Committee, 4 February 2008, cols. 3–28.

The document

8.4 The Commission's purpose with this Communication is to provide an analysis of the quality of European rail freight services and of the effectiveness of the agreements and voluntary measures implemented in the sector. It sets out broad recommendations for Community action in this area in the form of on-going and future rail initiatives.

8.5 In the Communication the Commission says that:

- due to the heterogeneity of existing submarkets within the rail freight market, it appears difficult to establish a clear hierarchy of quality criteria for all customers;
- despite constant improvements by rail freight operators in the provision of customer information and commercial responsiveness, rail freight customers' overall assessment of service quality varies considerably;
- the quality of service offered by the railways still seems to be inferior to what the road sector can now deliver, in particular on market segments where, in theory, the railways have major advantages over road transport;
- availability and reliability of information on rail freight quality is limited, but, and despite overall progress having been made, quality improvement in the rail freight sector has been insufficient;
- information about the quality of freight services is at best sporadic and not sufficiently representative to allow a reliable assessment to be made of the effectiveness of voluntary sectoral initiatives in the form of quality declarations and certification; and
- punctuality, by no means the only quality indicator, appears to be good in a domestic context (up to 90% in some Member States), however, punctuality levels in international rail freight traffic, which accounts for 50% of Community rail freight, are poor or very poor.

8.6 In the Communication the Commission withdraws its draft Regulation on contractual quality requirements for rail freight services, which was rejected by both the Council and the European Parliament. It says that, instead, it intends to address the problems identified by a number of measures aimed at developing competition, improving the use of, and investment in, infrastructure and ancillary services, promoting increased cooperation between infrastructure managers, and promoting greater transparency of information and the management of the performance of the railway system. Some of the initiatives outlined by the Commission are ongoing, others are in preparation, for example the recast of the First Railway Package and the creation of a European network giving priority to freight — the subject of the Communication *Towards a rail network giving priority to freight*.

The Government's view

8.7 In her Explanatory Memorandum of 29 September 2008, the then Minister of State, Department for Transport (Ms Rosie Winterton) says first that:

- the Government considered that the draft Regulation on contractual quality requirements for rail freight services was unlikely to deliver any significant benefit to the rail freight industry or its customers additional to that which was delivered by the complete opening of the market for freight service provision by 2007 under existing Community law;
- the uniform regime for customer quality contracts that was being proposed for all Community rail freight traffic did not reflect the diverse needs of freight customers;
- it was likely to reduce rather than increase rail freight volumes in many markets, because additional net costs would be incurred which would be passed on to customers in the form of higher prices or a reduced service offer; and
- the Government supports the Commission's withdrawal of the draft Regulation.

8.8 The Minister, noting the initiatives the Commission talks of in its Communication, says the Government supports the Commission's efforts to make international rail freight more attractive and competitive and to achieve fair and equal access to rail infrastructure and ancillary services for international freight in Member States. She observes that as the initiatives develop they may lead to legislative proposals which will be subject to parliamentary scrutiny.

Conclusion

8.9 **We draw this short Communication to the attention of the House as an indication of the Commission's continuing efforts to promote more effective and efficient, and therefore more widely used, rail freight. As the Minister notes we may, as a result of these efforts, have in due course related legislative proposals to scrutinise and report. Meanwhile this document is cleared.**

9 Industrial property

(29897) 12267/08 COM(08) 465	Commission Communication: *An industrial property rights strategy for Europe*

Legal base	—
Document originated	16 July 2008
Deposited in Parliament	7 August 2008
Department	Innovation, Universities and Skills
Basis of consideration	EM of 31 August 2008
Previous Committee Report	None; but see (28530) 8302/07: HC 41–xxii (2006–07) chapter 14 (16 May 2007)
To be discussed in Council	No date set
Committee's assessment	Legally and politically important
Committee's decision	Cleared

Background

9.1 The protection of industrial property (such as patents, trademarks, designs and geographical indications of origin) and of intellectual property (copyright and related rights) has long been the subject of international agreements[25] which have ensured both a minimum level of protection and respect for the principle of national treatment i.e. that industrial or intellectual property originating in another State which is party to a relevant international convention should benefit from the level of protection available in the first State.

9.2 Within the European Community, a number of measures have been adopted for the protection of industrial property, including trade marks,[26] design rights,[27] registration systems for geographical indications for agricultural products and plant variety rights. At European (as opposed to Community) level, patents have been the subject of the European Patents Convention, with the European Patent Office being created in 1977 with authority to grant patents on behalf of Contracting States (now 32 in number including all the EU Member States). The creation of a Community patent was first proposed in 1975, with renewed efforts to reach agreement in 2000 as part of the Lisbon Strategy. The Council reached a common political approach in 2003 on the creation of the Community patent but this agreement has been criticised by users for providing an overly centralised and inadequate regime for jurisdiction. The language regime is also considered unsatisfactory in that it still requires patent claims to be translated into 23 languages.

25 See Paris Convention for the Protection of Industrial Property Rights 1883, last revised in Stockholm 1967. Berne Convention for the Protection of Literary and Artistic Works 1886, last revised in Paris 1971 and amended in 1979.

26 Council Regulation (EC) 40/94 ON THE Community trade mark OJ No. L 011, 14.1.94, p.1.

27 Directive 98/71/EC on the legal protection of designs OJ No. L 289, 28.10.98, p.28–35.

9.3 When we considered the Commission's Communication of 2007 on enhancing the patent system in Europe,[28] we noted that Contracting States to the European Patent Convention had adopted a European Patent Litigation Agreement setting up a single European patent court to rule on disputes over patents issued by the European Patent Office, but that (as the then Minister informed us) further work on the Agreement had been "largely stalled" since 2004, due to objections by the Commission over the competence of Member States to conclude it and potential conflicts with the Community patent.

The Commission's Communication

9.4 The Communication seeks to set out an industrial[29] property rights strategy for the European Union. The first part of the Communication is taken up with a discussion of the role of industrial property rights on the economy . In the Commission's view, intellectual property systems should continue to "act as a catalyst for innovation and contribute to the overall Lisbon strategy" with the criteria for such systems being "**high quality**, featuring tough examination standards;[30] affordable, balancing cost with quality and legal certainty; **consistent**, with a common interpretation of laws and unified court proceedings; and **balanced**, between rewarding valuable intellectual creation and ensuring the easy circulation of ideas and innovation".

9.5 The Commission notes that the present communication is intended to complement its Communication on enhancing the patents system in Europe (which we considered on 16 May 2007). The Commission comments that, although a regulatory framework already exists for a number of industrial property rights at EU level, in relation to patents the situation is "very different" and argues that "it is clear that affordability, consistency and balance between rewards to inventors and the circulation of ideas would be greatly improved by the adoption of a Community patent and EU-wide patent jurisdiction".

9.6 The Communication then sets out a discussion on the quality of industrial property rights. In relation to patents, the Commission notes that the quality of patents in Europe is generally perceived to be high. It also notes that the volume of applications to the European Patent Office (EPO) has doubled in past 20 years, with the number of applications filed exceeding 200,000 for the first time in 2006. The Commission draws attention to the "raising of the bar" by the EPO in encouraging patent offices to work together to maintain high quality rights and to avoid patents being granted in fields which are not patentable such as software and business methods. The Commission indicates that it will launch a comprehensive study on patent quality and on the extent to which unused patents are a problem and will invite Member States with utility models and patents which do not require examination for an inventive step to assess the contribution these make to innovation.

28 See headnote.

29 The Communication refers to "intellectual property" as being divided into two main categories, namely industrial property and copyright. "Industrial property" refers to patents, trade marks, designs, plant rights and geographical indications. The term "intellectual property" is used in the parts of the Communication concerning enforcement and appears to apply both to industrial property and copyright and related

30 This criterion would not seem to be relevant to copyright, where no registration or examination requirements can be applied as a condition of copyright protection under the Berne Convention.

9.7 In relation to trade marks, the Communication refers to a user satisfaction survey conducted by the Office for the Harmonisation of the Internal Market (OHIM)[31] which shows an increase in overall satisfaction of agents and proprietors, with fewer complaints and greater efficiency in dealing with them. The Commission nevertheless intends to evaluate the overall functioning of the Community and national trade mark systems.

9.8 In relation to other industrial property rights, the Communication refers to Council Regulation (EC) 6/2002 on Community designs, which it describes as providing a route to protection in third countries following the accession of the Community to the Geneva Act of the Hague Agreement concerning the International Registration of Designs. Given the relatively recent adoption of these measures, the Commission states that it does not currently envisage conducting an evaluation of the design system. In relation to geographical indications and Community plant variety rights, the Communication explains that the Commission is currently carrying out an evaluation of the system for geographical indications for agricultural products and that the Community Plant Variety Office is commissioning an evaluation of its own role and activities.

9.9 A section of the Communication is then devoted to support for small and medium-sized enterprises (SMEs). The communication notes that, although SMEs account for 99% of all enterprises and employ around 85 million people, they appear to make less use of formal industrial property rights. The Commission considers that there is a "vast potential for improvement by a cost-effective, accessible Community patent" which it claims has been demanded by SMEs in consultation on the 'Small Business Act'. The Commission also discusses measures to improve dispute resolution for SMEs, including alternative dispute resolution (ADR) and a patent arbitration and mediation centre at Community level.

9.10 The Communication also considers the enforcement of industrial property rights. It describes Directive 2004/48/EC on the enforcement of intellectual property rights as the "cornerstone" of the EU's contribution to the fight against counterfeiting and piracy. The Commission considers that Member States need to put criminal law measures in place for the protection of intellectual property rights. The Commission also draws attention to the use of customs control to prevent the importation of infringing goods and to increase awareness of the health and safety risks attached to counterfeit goods and the involvement of criminal organisations in their trade.

9.11 Finally, the Communication refers to international developments, including the WIPO[32] Singapore Treaty of the Law of Trademarks. The Commission explains that it will prepare the ground for EC accession to the Singapore Treaty and encourages Member States also to ratify the Treaty . The communication also indicates that the Commission will work with the Member States towards ensuring patent law harmonisation in the negotiations in WIPO for a Substantive Patent Law Treaty.

31 OHIM is based in Alicante, and considers trade mark applications made under the Community Trade Mark Regulation.

32 World Intellectual Property Organization, a UN specialised agency.

The Government's view

9.12 In her Explanatory Memorandum of 31 August 2008 the Parliamentary Under-Secretary of State for Intellectual Property and Quality at the Department for Innovation, Universities and Skills (Baroness Delyth Morgan) welcomes the Communication as a coherent work programme for the Commission on intellectual property rights and their enforcement, which should have a generally beneficial effect on European competitiveness. However, the Minister also explains that further consideration of some of the proposed activities will be needed to gauge which are appropriate for progression at Community level and which are more suitable to be taken forward by the Member States.

9.13 Commenting on the detail of the Communication, the Minister states that the Government is sceptical about the benefits to SMEs of a reduced patent fee structure, pointing out that UK fees are currently among the lowest in the EU and that they represent only a small proportion of total patenting costs. The Minister adds that the Government would recommend a full investigation of the range of incentives proposed for SMEs in the strategy, including tax incentives and state aid for research and development as these may prove more attractive, and that careful consideration would need to be given to the effects on the European Patent Office, which is suffering significant financial problems.

9.14 The Minister recommends mediation as the first option for parties in dispute, wishing to achieve a quick, simple and inexpensive solution, but the encouragement of such means of dispute resolution does not need to be restricted to patents or industrial property rights. The Government considers that any implementation of mediation in a European patent litigation system should build upon existing provision in the Member States and should not create unnecessary institutions. The Minister points out that the Intellectual Property Office in the UK maintains a list of accredited mediators and believes that an essential part of the process is that parties should have the freedom to choose their own mediator without being constrained by a Community list.

9.15 The Minister further explains that the UK is particularly supportive of proposals to tackle counterfeiting and piracy, but finds the suggestion by the Commission that Directive 2004/48/EC is the "cornerstone" of the EU fight against counterfeiting and piracy to be misleading, since the Directive deals with civil matters, whereas counterfeiting and piracy are criminal offences. The Minister explains that the Commission has proposed a Directive on criminal measures for the enforcement of intellectual property rights, but the need for this has been questioned, as has the question of whether the Commission has the necessary legal powers to make the proposal, following the judgment of the ECJ in Case C-440/05 *Ship source pollution*. The Minister adds that there has been no discussion of this proposal in the Council following the ECJ judgment.

9.16 The Minister notes that the Communication includes an ambition by the Commission to broker inter-industry agreements between right holders and internet service providers on such issues as "peer-to-peer" (P2P) filesharing and online sales of infringing goods. The Minister points out that action is already being taken in the UK with regard to illicit P2P filesharing, with the announcement in July of a voluntary Memorandum of Understanding between music and film right holders, internet service providers and the Government. The Minister points out that the differing legal situation within Member States and the diverse

range of industry interests may mean that national action and agreements on such matters as P2P sharing may be more appropriate.

9.17 In relation to trade marks the Minister explains that the Government welcomes the proposal to review national and Community trade mark systems and cooperation between national trade mark offices and OHIM . The Minister refers to quality issues associated with OHIM and to the fact that OHIM has a large surplus of fees and adds that a major part of any review of OHIM must be to consider how this surplus should be reassigned to the benefit of users. Finally, in relation to the WIPO Singapore Treaty on the Law of Trade Marks, the Minister informs us that the UK has signed the Treaty and is looking to ratify it in the near future.

Conclusion

9.18 **We thank the Minister for a particularly informative and helpful Explanatory Memorandum. We agree with the points which have been made by the Minister, notably in relation to the need to ensure that activities are carried out at the right level. In this regard, we would be concerned if the successful operation of the European Patent Convention and of the European Patent Office were to be marginalised by action at Community level.**

9.19 **The Communication makes no legislative proposals, and we are content to clear it in the light of the Minister's full explanation of the UK position.**

10 ESDP: Piracy off the coast of Somalia

(30040) — —	Council Joint Action: EU Military operation to contribute to the deterrence and repression of acts of piracy and armed robbery off the coast of Somalia

Legal base	Articles 14, 25(3) and 28(3) EU; unanimity
Department	Foreign and Commonwealth Office
Basis of consideration	Minister's letter of 14 October 2008 and EM of 17 October 2008
Previous Committee Report	None; but see (29953) —: HC16–xxxiii (2007–08), chapter 19 (8 October 2008)
To be discussed in Council	To be determined
Committee's assessment	Politically important
Committee's decision	Cleared, but further information requested

Background

10.1 International concern over the problem of piracy off the coast of Somalia has increased in 2008. The United Nations Security Council adopted Resolution (UNSCR) 1816 (2008) in June which encouraged "States interested in the use of commercial maritime routes off the coast of Somalia, to increase and coordinate their efforts to deter acts of piracy and armed robbery at sea". Then, on 7 October, the Security Council unanimously adopted UNSCR 1838, which was initiated by France and co-sponsored by 19 countries (Belgium, Croatia, the US, UK, Italy, Panama, Canada, Denmark, Spain, Greece, Japan, Lithuania, Malaysia, Norway, the Netherlands, Portugal, Korea and Singapore). According to the French government, it "underscores the growing threat of pirates acting off the Somali coast using increasingly sophisticated and violent means, expanding the scope of their actions and affecting commercial shipping, pleasure boating and now fishing [and] the need for the international community to act, and on the basis of SCR 1816 and the Law of the Sea, to use force if necessary to counter such acts", and "stresses the need for the international community to implement resolutions 1814 and 1816 and hails the EU's efforts to establish a unit to coordinate European national forces in the area within the framework of the ESDP."[33]

10.2 On 8 October we cleared a draft Joint Action designed to facilitate EU Military Coordination Action in support of United Nations Security Council Resolution 1816 (2008). That Joint Action recalled that on 26 May the Council noted the adverse effects of the increase in piracy along the Somali coast not only upon humanitarian but also on general international maritime traffic, as well as upon the effectiveness of UN arms embargoes in the region, and endorsed initiatives by certain Member States in offering protection to the UN World Food Programme; and on 5 August subsequently endorsed the notion of an EU "crisis management" contribution in support of UNSCR 1816.

10.3 The outcome — the previous Joint Action on Military Coordination Action — establishes a military coordination cell (four military officers working from Brussels) tasked to assist Member States' activities in support of UNSCR 1816: Member States would notify the cell of ships or other assets that they will send to the waters off Somalia (or which may already be there), and the cell would work to coordinate the effect that those assets can deliver, while the Member States retain individual national control of anything they decide to provide.

10.4 The primary objective of the coordination cell was described in an Explanatory Memorandum of 16 September 2008 by the then Minister for Europe (Mr Jim Murphy) as being to coordinate ships from EU Member States escorting World Food Programme (WFP) shipping bringing humanitarian aid to Somalia. The coordination cell would also be tasked to liaise with the United Nations, as well as other international organisations and actors in the region, in order to secure and provide information on complementary activity. The WFP had made it clear that they would be unable to continue their assistance without such EU support. The then Minister regarded the cell (€15,000 per month, from

33 See http://www.diplomatie.gouv.fr/en/france-priorities_1/organized-criminality_1935/maritime-piracy_6553/adoption-of-unscr-1838–07.10.08_11982.html

the existing CFSP budget) as "a low cost and effective way to support delivery of humanitarian assistance".

10.5 In clearing the Joint Action, we noted that, in separate letters to us prior to and after the 15 September GAERC, the Minister mentioned, first, that "the Council will also discuss potential next steps on EU activity to tackle piracy more generally in the region" and, then, that as well as agreeing, "in conjunction with UNSR 1816, to establish a coordination unit in Brussels to support EU Partners' activities carried out off the Somali coast", the Council also "approved a strategic military option for a possible European Union naval operation in the future." We accordingly asked to be given an indication of what those potential next steps might be and what the "strategic military option" might entail.[34]

The Minister's letter of 14 October 2008

10.6 The new Minister for Europe at the Foreign and Commonwealth Office (Caroline Flint) begins her response by referring to the planning of potential EU activities towards a counter piracy operation off the coast of Somalia, "in the light of the worrying increase in the number of incidents of piracy and armed robbery at sea in the region and the consequent rapid pace of developments within the EU in response". Against this background, the Minister says that the UK remains committed to international action to counter piracy effectively in the region, and continues as follows:

> "In addition to existing and ongoing consultation with maritime organisations, effective prevention measures (for example urging the importance of compliance with notices to mariners) and our existing contribution to counter-piracy activity by the multinational Combined Task Force 150[35] in the Gulf of Aden, the UK continues its effort to tackle on land the causes of piracy in Somalia, the only long term solution to this problem.
>
> "But more now needs to be done. In the light of recent developments in the region, and also in response to UN Security Council Resolutions 1816 and 1838, EU member states have agreed that planning should proceed towards a potential operation on the basis of a mission designed to protect shipping in the region, including World Food Programme shipping to Somalia, other humanitarian shipping to Somalia, European flagged ships in the Area of Operations and other flagged ships, as well as creating an additional presence in the Gulf of Aden for deterrence and surveillance of piracy. The operation would be envisaged to last for one year from launch, starting once EU planning has finished — possibly as early as December, but subject to final ministerial decisions."

34 See headnote: (29953) —: HC16–xxxiii (2007–08), chapter 19 (8 October 2008)

35 Combined Task Force 150 is described US Naval Forces Central Command as "established near the beginning of Operation Enduring Freedom, conducts Maritime Security Operations (MSO) in the Gulf of Aden, Gulf of Oman, the Arabian Sea, Red Sea and the Indian Ocean. MSO help develop security in the maritime environment, which promotes stability and global prosperity. These operations complement the counterterrorism and security efforts of regional nations and seek to disrupt violent extremists' use of the maritime environment as a venue for attack or to transport personnel, weapons or other material. Since its inception, CTF 150 has been commanded by France, Netherlands, UK and Pakistan and Canada. Danish Royal Navy Commodore Per Bigum Christensen currently commands CTF 150." See http://www.cusnc.navy.mil/command/ctf150.html for full information.

10.7 The Minister says that, since her predecessor's letter of 16 September on the 15 Sept GAERC, EU military planners conducted a fact finding mission to the region and "refined the Military Strategic Option to which he referred", which "has given EU Member States sufficient confidence to agree to move forward to the next stage of planning". She explains that the Military Strategic Option will be developed into an operational plan once the Operation Commander has been appointed and his Operations Headquarters established:

> "To be clear, no Council decision to implement the operation will be taken until after the Operation Commander's proposed Operation Plan is agreed and sufficient forces to implement the operation have been generated."

10.8 The Minister also notes that:

> "Our support for further planning, with full co-ordination and co-operation with other international and national actors in the region (for example CTF 150 and now probably also NATO for an interim period until the EU operation begins), will be dependent upon the need for the smallest possible scale command structure, not least to ensure that the operation is affordable and constructed in a cost effective way to ensure it remains that way."
>
> "To signal the UK's commitment to making a success of this operation, MOD Ministers have agreed that the UK should offer to provide the Operation Commander and Operation Headquarters, at the multinational facilities alongside PJHQ at Northwood",[36] which offer was subsequently accepted by the Political and Security Committee.

10.9 The Minister concludes by undertaking to continue to keep the Committee updated on the progress of planning and preparations for this potential operation.

The further Joint Action

10.10 In the meantime, having noted in her letter that the next stage of planning activity — the appointment of an Operation Commander and Operation Headquarters — requires a Joint Action, the Minister has now forwarded the initial outline draft, which she says has just been made available, with an accompanying Explanatory Memorandum of 17 October 2008. She says that, although only the initial draft is currently available, and further details need to be added, she does not expect radical changes in the overall content.

10.11 The Minister reiterates the background to, purpose and proposed nature of the operation on the same lines as in her letter. The first draft of the Joint Action was, she says, circulated on 13 October, in French only, and that there have not yet been any further versions; that to maintain momentum in the planning process and to maintain the possibility of a launch of the operation in December, the Presidency wishes to agree the Joint Action as soon as possible; that this document therefore outlines the key features of

36 The Permanent Joint Headquarters (PJHQ) was established in April 1996 to enhance the operational effectiveness and efficiency of UK-led joint, potentially joint and multi-national operations, and to exercise operational command of UK forces assigned to multinational operations led by others. See http://www.mod.uk/DefenceInternet/AboutDefence/WhatWeDo/DoctrineOperationsandDiplomacy/PJHQ/ for full information.

the Joint Action; and that an updated version of the draft will be forwarded as soon as possible. She further notes that the current draft does not yet include any financial details or the names of the Operation Headquarters or Operation Commander:

> "Of foremost importance, the Joint Action will cover two key aspects to enable planning for the operation to proceed to the next stage: the appointment of the Operation Headquarters and the Operation Commander, and the costing ceiling for the planned ESDP mission."

The Government's view

10.12 The Minister again notes the considerable international concern over the problem of piracy off the coast of Somalia, reflected by the UN Security Council Resolutions, the earlier EU coordination action and limited counter-piracy activity undertaken within available capacity by the multinational coalition Combined Task Force 150, based in Bahrain. As of 1 October, she says, 15 ships and 350 hostages had been taken off the coast of Somalia. She again refers to the signal of the UK's commitment to making a success of the ESDP operation and deal effectively with piracy denoted by the offer to provide the Operation Commander and Operation Headquarters at the multinational facilities alongside the Permanent Joint Headquarters (PJHQ) at Northwood. Once appointed and his Operation Headquarters established, the Operation Commander will take forward detailed operational planning and then force generation: again the Minister emphasises that "No Council decision to begin the operation will be taken until after the Operation Commander's proposed Operational Plan is agreed and sufficient forces to implement the operation have been generated".

10.13 On the financial implications, the Minister says that

> "The initial financial costings estimates have not yet been made available by the Secretariat, but the UK has made clear already that it will accept only minimal common costs for an operation of this nature. On the basis of initial consultations, we expect that that the UK share of common costs for this financial year will be less than £1million. We will provide financial estimates once these have been established."

10.14 Finally, the Minister says that she expects the Joint Action to be adopted by written procedure no later than 24 October.

Conclusion

10.15 **We are grateful to the Minister for this information, limited as it is by the fact that the text available to us is in French. We look forward to having from the Minister the earliest possible agreed version, in English, and then a fuller explanation of what has been agreed at this stage. We should particularly like to know if the offer to provide the Operation Commander and Operation Headquarters at the multinational facilities alongside the Permanent Joint Headquarters (PJHQ) at Northwood has been accepted by the Council, who has been made Operation Commander and what figure has been agreed for the Common Costs and for the costing ceiling for the planned ESDP mission.**

10.16 **We should also like to know when the Minister expects the Operational Plan to be agreed, and when she thinks she will be able to let us have details and her views of it.**

10.17 **We should particularly like to know precisely what command and control arrangements are proposed, and how they will interact with national command structures as well as those of the CTF 150 and NATO. We should also like to know what UK and other military assets are likely to be involved, and what the proposed rules of engagement are, particularly with regard to the pirates' equipment and to the treatment of captured pirates. If answers to any of these questions can be provided ahead of the depositing of the Council Decision itself, we encourage the Minister to let us have them.**

10.18 **We also note that the French government website refers to France, in conjunction with the United States, "having begun discussions this week in the UNSC aimed at adopting, as quickly as possible, a resolution specifically dedicated to combating piracy", which "first aims to organize, from the high seas, a right of pursuit into territorial waters of signatory states, when caught in the act", and which might include "the possibility of having a dissuasive approach, in the form of patrols through those areas most exposed to piracy."[37] We should be grateful if the Minister would let us have the Government's views of these wider issues relating to piracy that this prospective further resolution would seem to be seeking to address.**

10.19 **Looking ahead, we also expect that, the Presidency's desires "to maintain momentum" notwithstanding, the draft Council Decision will be submitted, in English and in good time for proper scrutiny, with a full explanation of what is then proposed and, at least, firm estimates of the overall cost of the operation and of UK participation.**

10.20 **In the meantime we clear the document.**

37 See http://www.diplomatie.gouv.fr/en/france-priorities_1/organized-criminality_1935/maritime-piracy_6553/index.html

11 EU Drugs Action Plan 2009–12

(29982) 13407/08 COM(08) 567	Commission Communication on an EU Drugs Action Plan for 2009–12
+ ADD 1	Commission staff working document: summary of impact assessment
+ ADD 2	Commission staff working document: impact assessment of the proposed Action Plan
+ ADD 3	Commission staff working document: report on the final evaluation of the EU Drugs Action Plan 2005–08

Legal base	—
Document originated	18 September 2008
Deposited in Parliament	29 September 2008
Department	Home Office
Basis of consideration	EM of 13 October 2008
Previous Committee Report	None
To be discussed in Council	December 2008
Committee's assessment	Politically important
Committee's decision	Cleared; further information requested

Background

11.1 Member States have the primary responsibility for the control of drugs and the promotion of public health. But Article 152 of the EC Treaty provides a legal base for the Community to "complement the Member States' action in reducing drug-related health damage" and to foster cooperation on public health between Member States and between them and third countries. And Articles 29 and 31(1)(e) of the EU Treaty make it an objective of the EU to provide citizens with a high level of safety through, for example, police and judicial cooperation to counter illicit trafficking in drugs.

11.2 Cooperation between Member States on drug policies goes back to 1990. The Council adopted the first EU Drugs Strategy in 1995. The current Strategy was endorsed by the European Council in December 2004 and covers the period 2005 to the end of 2012.[38] The Strategy makes proposals under the following five main headings:

- the reduction of demand for drugs;
- the reduction of the supply of drugs;
- international cooperation;

38 (26513) 15074/04: see HC 38–i (2004–05), chapter 31 (1 December 2004).

- information, research and evaluation; and
- coordination.

The European Council agreed that the Strategy should be given effect through EU Drugs Action Plans for 2005–08 and 2009–12.[39]

The document

11.3 The document sets out the Commission's draft of an EU Drugs Action Plan for 2009–12. The JHA Council will probably be asked to approve it in December, after it has been considered in detail by a Working Group of officials from the Member States.

11.4 The draft Plan is supported by Commission staff working documents which:

- assess the impact of the Plan and two alternatives to it (do nothing or renew the 2005–08 Plan); and
- report on the evaluation of the 2005–08 Plan.

11.5 The Commission says that the draft Plan takes account of the findings and recommendations in the report on the evaluation of the present Plan. The report is based on information and views provided by the Member States, the European Monitoring Centre for Drugs and Drug Addiction, Europol and the Civil Society Forum on Drugs. It comments on the extent to which each of the objectives and actions contained in the 2005–08 Plan have been achieved.[40]

11.6 The Commission notes that:

- The use of drugs in the EU remains high: "Available data suggest that the use of heroin, cannabis and synthetic drugs has stabilised or is declining but that cocaine use is rising in a number of Member States".[41] It is estimated that at least 12 million people in the EU use cocaine;
- Consumption of cannabis, cocaine and amphetamines in the EU is significantly lower than in the USA and so is the number of reported HIV infections related to drug injections;
- Member States' drugs policies are converging; and
- There is now better coordination of EU positions in international gatherings, such as the UN Committee on Narcotic Drugs.

11.7 The evaluation report makes recommendations for the Action Plan for 2009–12. For example, it says that the next Plan might benefit from having fewer objectives and actions than the Plan for 2005–08, which had 46 objectives and 88 actions.

39 The previous Committee considered the draft of the Action Plan for 2005–08: (26382) 6464/05: see HC 38–xi (2004–05), chapter14 (15 March 2005).

40 See pages 98 to 147 of ADD 3.

41 Draft Action Plan, page 2, final paragraph.

11.8 The draft Plan does not propose additional EU expenditure and would not be binding on Member States. It is structured under the five headings used in the Drugs Strategy for 2005–12. Its purpose is to help Member States to cooperate, pool their resources and coordinate their positions in their dealings with international organisations and third countries. It proposes 23 objectives and 62 actions to achieve them, together with the timetable for action, the body responsible for it and performance indicators.

11.9 For example: objective 15 of the draft Plan is "To reduce the impact on society of organised crime active in drug production and trafficking". Two actions are proposed to achieve the objective:

- the first is "To facilitate the confiscation and recovery of the proceeds of drug-related crime across the EU by strengthening the policies on confiscation and asset recovery at EU and national level"; this would be completed in 2012 by Member States, the Commission, the Council and the European Parliament; and the performance indicators would be the publication of a Commission Communication, the adoption of the necessary legislation and assessments of the assets seized; and

- the second proposed action is "To support the establishment of effective Asset Recovery Offices in the Member States through the creation of an informal platform [and] To support investigations through … Europol's Criminal Assets Bureau". The action would be "ongoing"; it would be taken by Member States, the Commission and Europol; and the performance indicators would be "platform established and working effectively", an increase in the number of investigations related to asset tracing and identification and an increase in the number and value of assets and cash confiscated.[42]

11.10 The Commission says that:

> "There is evidence to suggest that one or more of the more (cost-) effective approaches to deal with drug use is for public services engaged in prevention, treatment, harm reduction and law enforcement, to work together in partnership with voluntary organisations and service providers. In other words, an alliance between citizens and institutions created by them and for them.
>
> "It is time to put the people of Europe at the centre of policy in this field and to get Europe's citizens more involved. As a first step, the Commission helped set up the European Civil Society Forum on Drugs, in 2006. To support the implementation of the EU Action Plan on Drugs, the Commission will during the life of the next Action Plan, examine ways to mobilise all those who wish to take part for a fomal commitment to do what is necessary at their level and with the means at their disposal to reduce the harm that drugs do to people. An idea to develop in this respect is the formulation of a 'European Alliance on Drugs'. This would be a public

42 See pages 12 and13 of the draft Action Plan.

> commitment that could be made by any citizen or group of citizens to raise awareness of the risks of taking drugs and support best practices in this field."[43]

The Government's view

11.11 The Parliamentary Under-Secretary of State at the Home Office (Mr Alan Campbell) tells us that the Government welcomes the draft Action Plan as a useful tool in encouraging operational cooperation between Member States in their efforts to reduce the supply of drugs and to help them find solutions to common problems. He says that the Government will "seek to ensure that the Action Plan delivers:

- greater commitment to intelligence-led law enforcement activity;
- better integration of EU-wide intelligence databases;
- improvement and more coherence across the EU in the analysis and operational use of evidence from seizures;
- greater commitment to improving the range and effectiveness of treatment options;
- improved treatment outcome measurability;
- better and better coordinated operational and political responses to emerging threats;
- encouragement of greater coherence in European research effort with a focus on what works in reducing drug misuse and trafficking."

11.12 It seems likely that following discussion of the draft Plan between Member States and the Commission, a revised draft will be presented in time for consideration by the Council in December.

Conclusion

11.13 **While there is no room for complacency, the EU Drugs Action Plan for 2005–08 appears to have made a useful contribution to Member States' efforts to reduce both the supply of drugs and the demand for them. It also appears to us that the Commission's draft of the Plan for 2009–12 has benefited from the recommendations in the report on the evaluation of the Plan which will expire at the end of this year.**

11.14 **We note that the next Action Plan will not be binding on Member States. We believe this reflects a proper recognition of the competences of the Commission and the Member States for drugs control and public health. We also share the Minister's view about the value of the Action Plan.**

43 See last two paragraphs of page 3 of document13407/08 and page 4.

11.15 **For these reasons, and because it appears likely that a revised draft of the Plan will be deposited, we are content to clear the present draft on the understanding that the Minister will keep us informed of progress in the negotiations.**

12 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

(29990) 13631/08 COM(08) 586	Commission Report on subsidiarity and proportionality (15th report on Better Lawmaking, 2007).
(30018) 12561/08 COM(08) 531	Draft Council Regulation amending Council Regulation (EC) No. 682/2007 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain prepared or preserved sweetcorn in kernels originating in Thailand.
(30024) — —	Draft Council Regulation amending Regulation (EC) No. 2505/96 opening and providing for the administration of autonomous Community tariff quotas for certain agricultural and industrial products.
(30034) — —	Draft Council Regulation amending Regulation (EC) No. 1255/96 temporarily suspending the autonomous common customs tariff duties on certain industrial, agricultural and fishery products.

Cabinet Office

(29994) 13644/08 COM(08) 583	Draft Decision on interoperability solutions for European public administrations (ISA).

Department for Energy and Climate Change

(29918) 12514/08 COM(08) 507	Commission Communication on a negotiation mandate authorizing the Commission to negotiate an agreement between the European Atomic Energy Community (Euratom) and the Department of Energy of the United States of America (USDOE) in the field of nuclear security research and development. Draft Council Decision on a negotiation mandate authorizing the Commission to negotiate an agreement between the European Atomic Energy Community (Euratom) and the Department of Energy of the United States of America (USDOE) in the field of nuclear security research and development.
(30000) 13721/1/08 —	Special Report No. 7/2008 on Intelligent Energy 2003-2006

Department for Environment, Food and Rural Affairs

(29946) 12720/08 COM(08) 539	Draft Council Regulation fixing the fishing opportunities and associated conditions for certain fish stocks and groups of fish stocks applicable in the Baltic Sea for 2009.
(29976) 13294/08 COM(08) 560	Commission Report on the implementation of Regulation (EC) No. 1830/2003 concerning the traceability and labelling of genetically modified organisms and the traceability of food and feed products produced from genetically modified organisms and amending Directive 2001/18/EC.
(29996) 13704/08 COM(08) 585	Draft Council Regulation amending Regulation (EC) No. 40/2008, as regards management measures adopted in the Indian Ocean Tuna Commission and in the South Pacific Regional Fisheries Management Organisation.
(29998) 13720/08 COM(08) 589	Commission Report on the 1st financial report on financial implementation of the European Agricultural Fund for Rural Development (EAFRD) — 2007 financial year.
(30005) 13533/08 COM(08) 595	Draft Council Regulation fixing for 2009 and 2010 the fishing opportunities for Community fishing vessels for certain deep sea fish stocks.
(30012) 13529/08 COM(08) 613	Draft Council Regulation fixing the fishing opportunities and the conditions relating thereto for certain fish stocks applicable in the Black Sea for 2009.

Foreign and Commonwealth Office

(29995) 13700/08 COM(08) 592	Commission Report on Annex XII to the Staff Regulations
(30035) — —	Council Joint Action amending and extending Joint Action 2005/889/CFSP on establishing a European Union Border Assistance Mission for the Rafah Crossing Point (EUBAM Rafah).
(30039) — —	Common Position concerning the temporary residence by member states of the European Union of certain Palestinians.

Department for Transport

(29926) 12470/08 COM(08) 510	Communication on the scope of the liability of air carriers and airports in the event of destroyed, damaged or lost mobility equipment of passengers with reduced mobility when travelling by air.
(29997) 13717/08 COM(08) 582	Third Commission Report on the implementation of Regulation (EC) No. 2320/2002 establishing common rules in the field of civil aviation security.

HM Treasury

(29993) 13617/08 + COR 1 COM(08) 575	Draft Council Directive determining the scope of Article 143(b) and (c) of Directive 2006/112/EC as regards exemption from value added tax on the final importation of certain goods on the common system of value added tax (codified version).

Formal minutes

Wednesday 22 October 2008

Members present:

Michael Connarty, in the Chair

Mr James Clappison
Mr Greg Hands
Keith Hill
Kelvin Hopkins
Mr Anthony Steen

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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.

Paragraphs 1 to 12 read and agreed to.

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

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

[Adjourned till Wednesday 29 October at 2.30 p.m.

Standing order and membership

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

a) to report its opinion on the legal and political importance of each such document and, where it considers appropriate, to report also on the reasons for its opinion and on any matters of principle, policy or law which may be affected;

b) to make recommendations for the further consideration of any such document pursuant to Standing Order No. 119 (European Standing Committees); and

c) to consider any issue arising upon any such document or group of documents, or related matters.

The expression "European Union document" covers —

i) any proposal under the Community Treaties for legislation by the Council or the Council acting jointly with the European Parliament;

ii) any document which is published for submission to the European Council, the Council or the European Central Bank;

iii) any proposal for a common strategy, a joint action or a common position under Title V of the Treaty on European Union which is prepared for submission to the Council or to the European Council;

iv) any proposal for a common position, framework decision, decision or a convention under Title VI of the Treaty on European Union which is prepared for submission to the Council;

v) any document (not falling within (ii), (iii) or (iv) above) which is published by one Union institution for or with a view to submission to another Union institution and which does not relate exclusively to consideration of any proposal for legislation;

vi) any other document relating to European Union matters deposited in the House by a Minister of the Crown.

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

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

Current membership

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