House of Commons

European Scrutiny Committee

Thirty-eighth Report of Session 2007–08

Documents considered by the Committee on 5 November 2008, including the following recommendations for debate:

Financial Management

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 Financial management

(a) (29875) 12156/08 + ADDS 1–2 COM(08) 475	Commission Report: *Protection of the Communities' financial interests: Fight against fraud — Annual report 2007*
(b) (29913) 12471/08 + ADD1 COM(08) 499	Commission Communication: *Annual report to the discharge authority on internal audits carried out in 2007*
(c) (29914) 12472/08 + ADD 1 COM(08) 515	Commission Communication: *Progress report as at 31 March 2008 on the modernisation of the accounting system of the European Commission*
(d) (29987) — —	European Anti-Fraud Office: *Eighth activity report, for the period 1 January 2007 to 31 December 2007*

Legal base	—
Documents originated	(a) 22 July 2008 (b) 30 July 2008 (c) 13 August 2008
Deposited in Parliament	(a) 25 July 2008 (b) and (c) 22 August 2008 (d) 30 September 2008
Department	HM Treasury
Basis of consideration	(a) EM of 9 September 2008 (b) EM of 25 September 2008 (c) EM of 25 September 2008 (d) EM of 16 October 2008
Previous Committee Report	None
To be discussed in Council	Not known
Committee's assessment	Politically important
Committee's decision	For debate in European Committee, together with the 2007 Annual Report of the European Court of Auditors, once received

Background

1.1 The Commission is required to report annually on protection of the Communities' financial interests and on the fight against fraud. These reports are to cover measures taken by Member States as well as by the Commission.

1.2 The Commission's Internal Audit Service is required to submit an annual report to the Discharge Authority (the European Parliament and the Council).

1.3 In 2002 the Commission announced its plans for modernisation of the accounting system of the European Communities. The project was to address three main issues:

- compliance with internationally-accepted accounting principles for the public sector, especially regarding accrual accounting (the recording of accounting events when they occur, not when cash is received or paid at the year end);
- integration of financial and accounting systems held on different IT platforms; and
- meanwhile improving the performance of the IT system SINCOM2, particularly concerning security and consistency of data from different sources.[1]

The Commission has reported several times on progress in implementing its proposals, most recently in June 2007, for the period up until 31 March 2007.[2]

1.4 The Director of the European Anti-Fraud Office (commonly referred to as OLAF, from its French title) is required to make regular reports to the European Parliament, the Council, the Commission and the European Court of Auditors (the Court) "on the findings of investigations carried out" as stipulated in the Regulations establishing it in 1999.

The documents

1.5 Document (a) is the Commission's annual report for 2007 on protection of the Communities' financial interests and on the fight against fraud. It is prepared by OLAF and examines the actions taken by Member States and the Commission to protect the Communities' financial interests in areas of shared responsibility. The report gives a statistical overview of all irregularities notified to the Commission by the Member States and indicates those cases where fraud is suspected. It sets out the existing fraud control measures and highlights the most significant steps taken by the Member States and the Commission in 2007 to improve prevention and the fight against fraud. The report is divided into five sections.

Section 1: statistics on fraud and other irregularities

1.6 This section notes that:

1 (24144) 15872/02: see HC 63–x (2002–03). chapter 11 (29 January 2003) and *Stg Co Deb*, European Standing Committee B, 26 February 2003, cols. 3–24.

2 (28740) 11320/07: see HC 41–xxxi (2006–07), chapter 11 (18 July 2007).

- the number of irregularities across all Community expenditure decreased to 6,123 compared to 6,860 in 2006, while the total estimated financial impact of these irregularities, including suspected fraud of €209 million (£164.90 million), increased from €804 million (£634.36 million) to €1,084 million (£855.28 million);
- gives more detailed figures in relation to traditional own resources, agriculture, structural measures, pre-accession funds, expenditure centrally managed by Commission staff and OLAF's investigations. This latter sub-section records that the number of fraud investigations opened by OLAF was 210 in 2007 (compared with 194 in 2006) and that 408 investigations were in progress at the end of 2007 (compared with 431 in 2006);
- the number of irregularities reported decreased in every area apart from that of structural measures;
- although the estimated financial impact of the irregularities has increased in every sector it remains fairly stable in budget percentage terms;
- most irregularities are notified to the Commission within the established time-limits, however, some Member States often notify their irregularities well after the event, which hampers an effective follow-up;
- the number of Member States reporting electronically, in particular those using the electronic form for agriculture and the structural funds is on the rise; and
- efforts of national authorities in briefing and training of staff responsible for reporting and the increased use of electronic modules has improved the quality of notifications in all sectors.

Section 2: major developments in 2007

1.7 This section reports on:

- progress in the customs field, including amendment of first pillar legislation on mutual assistance, and developments on third pillar conventions on mutual assistance and cooperation between customs administrations, and on the use of information technology for customs purposes;
- efforts to combat the smuggling and counterfeiting of cigarettes with agreements between the Community and Phillip Morris International (PMI) and Japan Tobacco International (JTI). These provide for financial contributions from them towards the cost of combating smuggling and counterfeiting in the Community and procedures that will monitor and trace products in order to determine the point at which cigarettes of the PMI and JTI brands are diverted from the legal supply chain and into the hands of smugglers;
- irregularities and suspected fraud in the area of "direct expenditure", with the Commission's departments now being required to provide more information about the findings and corrections made in the Commission's Accrual-Based Accounting System;

- a new approach to fraud proofing, based on exploiting the results of investigations conducted by OLAF and which allows operational experience to be used in a more structured way and shared more effectively with the other Commission departments, Community bodies and institutions;

- protection of the Euro against counterfeiting, with the Commission continuing measures taken under the *Pericles* Programme to promote cooperation between national, Community and international authorities responsible for combating the counterfeiting of the Euro. Around 211,000 Euro coins were withdrawn from circulation (29% more compared to 2006), due largely to the increased cooperation between Member States in 2007;

- the *Hercule II* Programme, set up to promote activities aimed at protecting the financial interests of the Community, was extended for the period 2007–13 with a budget increased by €6 million (£4.70 million) a year. The 2007 budget of €13.57 million (£10.71million) made it possible to co-finance 15 projects in the education field, 21 projects in the field of technical assistance and 10 actions in the field of legal research; and

- other measures taken in 2007, including two Regulations which placed an obligation on Member States to publish lists of the beneficiaries of the agricultural funds and the European Fisheries Fund, together with amounts received; a Commission Communication containing key elements to combat VAT fraud, in particular missing trader fraud and Commission signature of administrative cooperation arrangements with certain third countries in order to combat fraud, corruption and any other illegal activity that affects the financial interests of the Community or of the signatory third country, and ongoing negotiations with other third countries that receive financial assistance from the Community.

Section 3: checks to detect fraud and other irregularities largely in the field of structural funds and especially its management checks

1.8 The responsibility for carrying out checks to identify fraud and other irregularities in the collection of the Community's own resources and in those areas where Member States implement the budget is shared between the national and the Community authorities. This section briefly describes the conduct and results of these checks:

- checks under the Structural Funds — improvement of the control framework was implemented and reporting of management checks by Member States in relation to the European Regional Development Fund revealed that the largest numbers of irregularities were generally detected during desk-based administrative checks, but the proportion of irregularities detected during on-the-spot checks remained significant (between 20% and 50%). The most frequent cases of detected irregularities concerned ineligible expenditure, missing or incomplete supporting documents and non-compliance with horizontal rules and/or terms of grant agreements and the most frequent causes of irregularities were unclear eligibility rules, lack of guidance, and staff issues;

- the framework for checks in the agricultural sector — in relation to controls by national authorities and the Integrated Administration and Control System, new procedures introduced in 2007 are designed to strengthen the chain of responsibility between Member States and the Commission and controls by the Commission led to it excluding approximately €686.60 million (£541.25 million) from Community financing on grounds of non-compliance with Community rules;

- control of traditional own resources — in its 32 inspections in 2007 the Commission detected 114 anomalies but, as in previous years, only a very limited number of anomalies had to be treated as infringements (no new files were opened in 2007 and currently 31 files are pending); and

- on-the-spot checks and inspections under Regulation (Euratom, EC) No 2185/96 — since 1 June 1999 OLAF, on behalf of the Commission, has carried out on-the-spot checks and inspections in Member States and, in accordance with cooperation agreements, in third countries. In 2007, OLAF carried out 74 on-the-spot checks (compared to 72 in 2006), including 25 relating to agriculture, 26 relating to structural policies, 21 relating to direct expenditure and external aid and two relating to internal investigations. OLAF is preparing a report on implementation of the Regulation outlining good practices for each stage of on-the-spot checks, which would be adopted in 2008 together with a new set of guidelines.

Section 4: limitation periods for proceedings concerning irregularities

1.9 Member States are responsible for bringing proceedings, penalties and administrative measures against those responsible for irregularities committed in areas covered by shared management and traditional own resources. The limitation periods provide legal certainty, but when passed, an irregularity cannot be proceeded against or a penalty applied. In order to identify which national laws make provision for longer limitation periods and the ones that apply in cases not regulated by Community law, Member States were surveyed through a questionnaire concerning administrative procedures only. The responses are summarised in this section:

- limitation period for proceedings concerning irregularities — the legislation defines a normal limitation period of four years from the time when the irregularity is committed. However some member States provide for longer periods or for grounds for interruption of the period;

- limitation period for implementing a decision establishing an administrative penalty — the legislation lays down a limitation period of three years for implementing a decision establishing an administrative penalty, but 15 Member States reported longer periods ranging from four to ten years; and

- limitation period for implementing a decision establishing an administrative measure (recovery) — although Community legislation does not provide for a limitation period for implementing a decision taken in national proceedings establishing an administrative measure, the period is of importance for the success of recovery procedures. 21 Member States indicated that they had national

provisions which differed considerably, with time limits ranging from three to 20 years.

Section 5: recoveries made in all budget areas

1.10 Member States have the responsibility, under shared management and for traditional own resources, for the recovery of amounts from final beneficiaries. At Commission level, authorising officers have sole responsibility for financial follow-up. OLAF contributes solely to financial follow-up activities directly linked to operational activity. However, where the Structural Funds are concerned, OLAF contributes, during a transitional period as part of a phasing out of its activities in this area, to the follow-up of irregularities notified by Member States relating to the 1994–99 programming period. It is expected that a new electronic system will establish a direct link between each authorising officer's data warehouse and the register of notifications of irregularities. In relation to recovery activity in 2007 this section says:

- agriculture — a new clearance mechanism for unsuccessful recoveries of unduly paid amounts which automatically charges 50% of non-recovered amounts to the Member States' budget if they fail to recover unduly paid amounts from beneficiaries within four years of the primary administrative or judicial finding (or, in the case of proceedings before national courts, within eight years), was first applied in April 2007. It resulted in the clearance of all pending non-recovered cases dating from before 2003 or 1999 (cases that were four or eight years old respectively), by charging €131.70 million (£103.90 million) to Member States. A further €100 million (£78.90 million) may be charged to Member States by subsequent Commission decisions clearing the accounts for the 2006 financial year. For the 2007 financial year, Member States recovered €154.30 million (£276 million), with the outstanding amount yet to be recovered reported to be €1.44 billion (£1.13 billion), which will ultimately impose financial consequences of €137.60 million (£108.60 million) on Member States in the April 2008 accounts clearance decision and €165 million (£130 million) will be debited to the Community budget for cases reported irrecoverable during the 2007 financial year;

- Structural Funds — for the 1994–99 programming period Member States communicated 11,647 cases of irregularities (74 in 2007) corresponding to a financial impact estimated at €1.52 billion (£1.20 billion) for the Community contribution (€68 million (£54 million) for 2007). Of these cases, 5,686 have been closed definitively at Commission level and an amount of €630 million (£497 million) was taken into account during final payment or decommitted after closure or reimbursed to the Community budget. Member States indicated that administrative and judicial procedures had been finalised at national level in 1,610 cases, with a financial impact of €101 million (£80 million) for the same period. For the 2000–06 programming period Member States have so far communicated 12,161 cases of irregularities (3,428 in 2007) with a financial impact of approximately €1.79 billion (£1.41 billion) for the Community contribution (€630 million (£497 million) for 2007). Administrative and/or judicial procedures have been finalised at national level for 4,471 of these cases and some €509 million (£402 million) has been recovered. Financial corrections concerning the 1994–99 and

2000–06 programming periods were €2,141 million (£1,689 million) (€176 million (£139 million) in 2007) and €1,569 million (£1,238 million) (€220 million (£174 million) in 2007) and were as a result of audits by the Commission and the Court of Auditors, OLAF investigations and the closure procedure for programmes from the 1994–99 periods;

- own resources — the sum to be recovered following irregularities detected in 2007 amounted to approximately €377 million (£297 million). At present, the recovery rate for irregularities occurring in 2007 is 40% (approximately €150 million (£118 million)) compared to the rate recorded for 2006 (32%). Over the last decade the recovery rate has varied between 40% and 55%. In 2007, the Commission refused Member States' write-off requests in 16 cases worth €28 million (£22 million), because it deemed that non-recovery was attributable to the Member States. Moreover, certain Member States were held financially responsible for a total of over €20 million (£16 million) because they did not establish customs debts where they should have done so;

- direct expenditure — where funds are managed directly by Community institutions, amounts unduly paid are recovered directly by them, without the intervention of the Member States. In those cases where recovery orders were launched during the course of 2007, full or partial recovery were announced for 226 reported cases. The Commission recovered €3.70 million (£2.90 million). In 184 cases the full irregular amount has been recovered and in 223 cases the amount to be recovered has yet to be determined. An amount of €10.70 (£8.40 million) still remains to be recovered, concerning 204 cases; and

- recovery following an OLAF case — where the final report of an OLAF case concludes that certain sums have probably been paid to a beneficiary against the rules, or that sums that should have been collected have not been, the relevant authorities (generally in the Member States or third countries concerned) must recover the amounts in question. In 2007 OLAF formally closed the financial follow-up for more than €203 million (£160 million). €197.67 million (£155.91 million) was recovered in the field of the Structural Funds following the closure of 53 cases of which 35 were part of the backlog of old cases. Substantial amounts were also recovered in 2007 in connection with cases not yet closed.

1.11 Two detailed Commission working documents — *Statistical evaluation of irregularities 2007* and *Implementation of Article 280 of the Treaty by the Member States in 2007* (which lays duties on Member States in relation to the prevention of fraud and other illegal activities against the financial interests of the Community) accompany the Commission's Report.

1.12 Document (b) is the Commission's annual report for 2007 to the Discharge Authority on internal audits carried out that year. The document summarises the audits carried out and the findings made by the Internal Audit Service. Details of the objectives and scope of each audit and statistics showing the number of recommendations accepted by those audited are in the accompanying staff working document.

1.13 In 2007 the Internal Audit Service carried out 58 audits and reviews. In all 269 audit recommendations were made, 265 (99%) were accepted and 4 (1%) rejected. Findings were summarised under twelve headings:

- Annual Activity Report assurance process;
- handling of sensitive and classified data and physical security;
- monitoring implementation of Community law;
- ex-post controls;
- fraud prevention in Structural Funds;
- procurement;
- controls over payments of pensions;
- implementation of Accruals Based Accounting (ABAC);
- executive agencies;
- Financial and Administrative Framework Agreement with the UN;
- financial and grant management; and
- follow-up to outstanding recommendations from 2006.

1.14 On the basis of the report the Internal Auditor of the Commission draws conclusions:

- overall progress has been made, but more improvements are needed;
- information security warrants particular attention;
- policy Directorate-Generals have front-line responsibility for fraud prevention;
- the Annual Activity Report assurance process is being steadily improved; and
- there has been some progress in follow-up but some areas are lagging behind.

1.15 The Communication, document (c), is the Commission's latest report for the year to 31 March 2008 on modernisation of its accounting system. The Communication, noting that the main objectives of the modernisation project are carried out through a rolling two year action plan, first summarises implementation in the year under review, saying that:

- in relation to improving the reliability of the accounts, the aim of the Directorate-General for the Budget is to improve controls in respect of accounting activities during the year and the closure of each year's accounts — respect by the financial systems of the authorising services for criteria aimed at ensuring the timeliness, accuracy and completeness of accounting data and the systems of all but two Directorates-General had been verified by 31 March 2008. The Directorate-General for the Budget has a network of Accounting Officers of the Agencies and

the other Institutions which is designed to promote high quality in the Communities' consolidated accounts;

- in relation to developing and extending the IT system, all Commission services are now connected to the ABAC system and this is also being extended more widely, for example to all Executive Agencies; and
- in relation to developing financial reporting, a single data warehouse went into production in July 2007 and has been used to prepare the annexes to the 2007 Annual Activity Reports and the information on payments communicated to Member States' supreme audit institutions.

1.16 The following six sections of the report cover:

- implementation of the modernised accounting system in the Commission, discussing use of the new system in 2005 and 2006 and training;
- the accounting control environment and validation of local systems, discussing an accounting quality project, risk management and how accounting officers validate local systems;
- IT developments for the General Budget, discussing three new ABAC modules to enhance functionalities supporting budget execution and management of the general accounts, to implement support for the amended Financial Regulation and to gradually recast the technical foundations on which ABAC is built and development of an integrated supply and assets management module;
- the European Development Fund, discussing modernisation of the IT platform for the accounts of the Fund, which differ from those of the General Budget the delay in the full introduction of ABAC and the probability that 2008 will be the final year for which European Development Fund accounts are drawn up from records which do not comply with international standards; and
- implementation of ABAC by the other institutions and agencies, noting that, although other institutions and agencies have the autonomy to chose between ABAC or another system, for those choosing ABAC a dedicated project team supervised by the Commission's Accounting Officer plans, analyses and co-ordinates all activities accompanying the roll-out of ABAC.

1.17 The Communication concludes that:

- the new accounting system has allowed the Commission to meet the statutory deadlines set for the preparation of annual accounts prepared on an accruals basis and which comply in all material respects with internationally accepted accounting standards;
- the accounting and financial processes must continue to be improved and developed further;
- immediate challenges which remain are to continue making the necessary improvements to the systems to ensure that all accounting transactions are

recorded accurately by the Directorates-General; to complete the validation of the systems of the two outstanding Directorates-General (External Relations and Education and Culture); to incorporate the European Development Fund accounts in ABAC and to train staff in 46 Delegations; to optimise the integration of the IT systems, integrating, where possible, the Commission's accounting processes into a single platform; to enhance financial and management reporting and to provide the same level of service to new clients;

- the project plan for the next two years addresses these aims and the Commission remains committed to achieving high standards of accounting in the public sector;
- the Directorate-General for the Budget recognises that its current accounting system has reached its limits in how it records and reports the expenditure and income of the General Budget and that it needs to push ahead with its plan to manage the General Budget on a single and standard platform using software which can be readily maintained by its supplier; and
- this change will challenge the current way of accounting for Commission operations and will require an open and flexible approach to ensure that the Commission is at the forefront of public sector accounting under International Public Sector Accounting Standards.

1.18 Document (d) is OLAF's annual report which summarises activities and progress in its eighth business year. The report includes a number of investigative case studies and numerous statistical tables as well as examples of the work that OLAF carried out throughout the year within and outside the European Union (EU). The report has six sections:

- OLAF's mission and working methods, noting that its primary objective is to protect the financial interests of the Community against fraud, corruption and any other illegal activity against the financial interests of the Community and to protect the reputation of the Community's institution and covering OLAF's main powers, responsibilities and resources (467 staff on 31 December 2007 and a total budget for 2007 of €72.60 million (£57.30 million)), the work of the Operations Executive Board in relation to investigations, the Case Management System (CMS) and implementation of recommendations made by the European Court of Auditors in its special report on OLAF;[3]
- statistical trends in operational activities (2003 — 2007), including general trends and analysis and noting that the proportion of cases closed with follow-up has continued to increase (65% in 2007 compared to 61% in 2006 and 41% in 2003), the majority of which concerned financial recovery and judicial follow up (jointly 75% of total follow up activities) and that in 2007, over €478 million (£379 million) was recorded as recovered from OLAF's cases;
- operational activities in 2007, covering incoming information, general statistics on case records and investigative activity, case records and investigative activity by

3 (26727) 11216/05: see HC 34–vi (2005–06), chapter 2 (19 October 2005) and *HC Deb*, 7 March 2006, cols. 747–793.

area (that is internal investigations, direct expenditure (excluding external aid), pre-accession funds, external aid, structural actions and customs, alcohol, cigarettes, precursors and VAT), follow-up activity (including fraud proofing and judicial and disciplinary follow up) and monitoring development of proceedings conducted in Member States;

- operational support, covering intelligence activity and legal and judicial advice;
- cooperation with OLAF's partners, covering cooperation with Member States, use of the IT systems AFIS (Anti Fraud Information System) and CIS (Customs Information System, development of FIDE (File Identification Database), preparing Candidate Countries, mutual administrative assistance, agreements with cigarette manufacturers (PMI and JTI), cooperation with bodies in charge of police and judicial cooperation, Europol, protection of the Euro, external activities and internal training (including conferences and the Hercule programme) and information and communication (including the Data Protection Officer, the European Ombudsman and OLAF's website); and
- some detail of the OLAF budget.

The Government's view

1.19 In relation to document (a), the annual report on combating fraud, the then Economic Secretary to the Treasury (Kitty Ussher) says in her Explanatory Memorandum of 9 September 2008 that the Commission's report is comprehensive and informative and demonstrates the Commission's drive to improve the management of Community funds and implement preventative measures to reduce fraud and irregularity against the budget. She also says that:

- the Government supports the efforts of OLAF and the cooperation of Member States in the detection of fraud and welcomes the measures noted in the report;
- it is disappointing that the total estimated impact of irregularities has increased but it is noteworthy that, in budget percentage terms, the estimated impact of irregularities remains fairly stable;
- the Government welcomes the efforts being made to recover unduly paid amounts;
- while any level of fraud is unacceptable, the Government notes that as a proportion of total Community budget expenditure the level of suspected fraud remains constant and relatively low at 0.2%; and
- the Government welcomes the decrease of the financial impact of suspected fraud as a proportion of total own resources (revenue) from 0.94% to 0.62%.

1.20 The Minister concludes that Government will continue to press for higher standards of financial management and action to combat fraud against the Community budget. In this connection she draws attention to the first UK consolidated statement on the use of

Community funds,[4] saying that this will strengthen the audit and Parliamentary scrutiny of the UK's use of Community funds and help detect any weaknesses in their management so that these can be more effectively and rapidly tackled.

1.21 In relation to document (b), the annual report on internal audits, the Minister says in her Explanatory Memorandum of 25 September 2008 that:

- the Government considers that this report provides a useful summary of the work of the Internal Audit Service and shows that it has an important role to play in improving the Commission's governance and internal control;
- although it is encouraging to note that 99% of audit recommendations were accepted, the report raises some concerns over the slow rate of implementation of recommendations;
- the Government urges the Commission to take action to ensure audit recommendations are implemented more quickly; and
- the Government notes also that the report raises concern over the safeguarding of sensitive information, particularly the need to reinforce database security controls in order to avoid information leaks and unauthorised access.

1.22 In relation to document (c), the progress report on modernisation of the Commission's accounting system, the Minister says in her Explanatory Memorandum of 25 September 2008 that the Government welcomes the continued effort and progress made by the Commission in implementing its accruals based accounting system and agrees that accounting processes must continue to be improved and developed further.

1.23 In relation to document (d), the OLAF activity report, the Economic Secretary to the Treasury (Ian Pearson) in his Explanatory Memorandum of 16 October 2008 says that the report has no new policy implications for the UK. He comments that:

- the Government welcomes the report as comprehensive and informative, with useful statistical data and case studies that highlight the work and investigations that took place during the period;
- the Government welcomes the cooperation of Member States and the public and the considerable amount recovered by OLAF in the course of the operational year;
- the increased level of information received by OLAF is a good indicator of the increased degree of confidence in OLAF as an institution; and
- the Government supports OLAF's emphasis on lowering the duration of cases, presently averaging 27 to 28 months — a lower turnaround time would give a better picture of the level of fraud and its financial impact on Community finances.

4 See HC 619.

Conclusion

1.24 **The Commission's annual report on the fight against fraud, document (a), is a useful basis for regular consideration of how matters stand on improving management of the Community's financial resources and as is our custom we recommend that it should be debated in European Committee, together with the annual report of the European Court of Auditors, once that is received.**

1.25 **As for the two Communications, documents (b) and (c) and the OLAF report, document (d), these provide additional information relevant to better management of the Community's financial resources and we recommend that they should also be debated with the annual report of the European Court of Auditors in European Committee.**

2 Maternity leave

(30022) 13983/08 COM(08) 637	Draft Directive amending Council Directive 92/85/EEC on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding
+ ADD 1	Commission staff working document: summary of impact assessment
+ ADD 2	Commission staff working document: impact assessment

Legal base	Articles 137(2) and 141(3) EC; co-decision; QMV
Document originated	3 October 2008
Deposited in Parliament	13 October 2008
Department	Business, Enterprise and Regulatory Reform
Basis of consideration	EM of 27 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 requested

Background

2.1 Under Article 2 of the EC Treaty, the Community's task includes promoting a high level of employment and social protection, equality between men and women and raising standards of living and the quality of life. The Treaty contains specific powers and duties for Community action to achieve these objectives. For example, Article 137(1) requires the Community to support and complement the activities of Member States on such matters as

working conditions and equal treatment of men and women at work and in employment opportunities. Article 137(2)(b) gives the Council power to adopt Directives setting minimum requirements for those matters.

2.2 Article 141(3) of the EC Treaty requires the Council to adopt measures to ensure that the principle of equal opportunities and equal treatment of men and women are applied in matters affecting employment and occupation.

2.3 In 1992, the Council adopted a Directive ("the Pregnant Workers Directive") on measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding.[5] Among other things, the Directive established minimum entitlements to maternity leave and maternity pay and prohibited dismissal during the period from the beginning of a pregnancy until the end of maternity leave (save in exceptional cases not connected with the workers pregnancy).

2.4 Paragraph 1 of ILO Maternity Protection Recommendation 2000 (No.191) says that:

> "Members should endeavour to extend the period of maternity leave … to at least 18 weeks".

2.5 In 2008, the European Council agreed that:

> "Efforts should be pursued to reconcile work with private and family life for both women and men".[6]

The document

2.6 The Commission's Explanatory Memorandum says that the draft Directive takes account of the Commission's consultations in 2006 and 2007 with European organisations representing employers and employees, Member States, the EC Advisory Committee on Equal Opportunities for Women and Men, the EC Advisory Committee on Safety and Health at Work and others. In the Commission's view, amendments to the Pregnant Workers Directive to increase the minimum period for maternity leave, increase maternity pay and give pregnant workers additional protection are proportionate ways to improve the health and safety of women, help them reconcile their work and family obligations and promote equal opportunities between men and women in employment. Accordingly, the Commission proposes this draft Directive.

2.7 It provides for the replacement of Article 8 (Maternity Leave) of the Pregnant Workers Directive by a new Article, the main provisions of which:

- require Member States to take the measures necessary to ensure that a worker who is pregnant, who has recently given birth or who is breastfeeding is entitled to a continuous period of maternity leave of at least 18 weeks (rather than 14 weeks, as at present);

5 Council Directive 92/85/EEC: OJ No. L 348, 28.11.92, p.1.

6 European Council meeting on 13–14 March 2008, Presidency Conclusions, page 10, paragraph 16, penultimate sentence.

- require that those 18 weeks include compulsory leave of at least six weeks after childbirth;
- require Member States to ensure that women can choose when to take the non-compulsory portion of maternity leave;
- require the pre-natal period of maternity leave to be extended by any period between the expected date and the actual date of childbirth, if later; and
- require Member States to ensure that additional maternity leave is granted in the event of premature childbirth, hospitalisation of the baby at birth, multiple births or birth of a baby with disabilities.

2.8 The draft Directive proposes the replacement of Article 10 (Prohibition of Dismissal) of the Pregnant Workers Directive with a new Article which:

- prohibits *preparations* (our emphasis) for the dismissal of a worker as well as the actual dismissal of a worker between the beginning of her pregnancy and the end of her maternity leave, save in exceptional circumstances not connected with her pregnancy; and
- retains the present requirement for the employer to give in writing "duly substantiated grounds" for a worker's dismissal during her maternity leave and adds a requirement for employers, at the request of the worker, to provide written substantiation if she is dismissed within the six months of her return from maternity leave.

2.9 The draft Directive also proposes amendments to Article 11 (Employment Rights) of the Pregnant Workers Directive. The main amendments are as follows:

- when she returns from maternity leave, the worker would be entitled not only to go back to her old job, or an equivalent one, on terms and conditions which are no less favourable, but also to benefit from any improvements in terms and conditions to which she would have been entitled if she had not taken maternity leave; and
- the amount of monthly maternity pay should guarantee the woman an income equivalent to her month salary in the month before her maternity leave begins (or her average monthly salary) subject to any lower amount set by the Member State in national legislation so long as the lower amount is not less than the payment the woman would receive if she were on sick leave.

In its Explanatory Memorandum, the Commission says that, according to the case law of the European Court of Justice, it is acceptable for EC legislation based on Article 137 to regulate questions of pay.[7]

2.10 The draft Directive also requires Member States take such measures as are necessary:

7 Commission's explanatory memorandum, page 9, first full paragraph.

- to ensure that a women worker is able during maternity leave, or on return, to ask for changes to her working hours and that her employer is obliged to consider the request taking the employer's and employee's needs into account;
- to ensure that in civil court proceedings where a woman worker alleges that there has been a breach of her rights under the Directive, the onus is placed on the respondent to prove that there has not been a breach;
- to protect individuals from victimisation by their employer or any one else as a consequence of a claim that their rights have been breached; and
- to establish effective, proportionate and dissuasive penalties for breaches of the national legislation to give effect to the Directive.

2.11 Member States would be required, within two years of the adoption of the Directive, to bring into effect the national legislation necessary to comply with its provisions.

The Government's view

2.12 In his Explanatory Memorandum of 27 October 2008, the Minister for Employment Relations at the Department for Business, Enterprise and Regulatory Reform (Mr Pat McFadden) tells us that the Government agrees with the Commission's aim of ensuring that parents have the support they need to reconcile their work and family responsibilities. To that end, the UK has built on the minimum requirements specified by the Pregnant Workers Directive. He says that:

> "Supporting parents in reconciling their work and family responsibilities also helps to support the businesses that employ them. It is important that measures are developed in line with Better Regulation principles and designed to minimise burdens on employers, including small business. The UK's provisions have been carefully developed in close consultation with parents and their employers and have been implemented through a step-by-step, evidence-based approach. This has enabled the UK to build on the EU's firm baseline and ensure the UK's provisions are tailored to the UK's conditions and have the buy-in of employers. Any action at EU level should respect these principles and protect the domestic agreements we have reached in consultation with workers and employers.
>
> "The current UK provisions for maternity pay have developed to help mothers take time off work and recognise their special position in the workforce. In the UK, Statutory Maternity Pay (SMP) is paid at 90% of earnings with no upper limit for the first 6 weeks, and a maximum of £117.18 for the remaining 33 weeks. State paid Maternity Allowance (MA) is similar but with a maximum of £117.18 throughout the 39 weeks of payment. The level of UK maternity pay is well above the minimum level of statutory sick pay set by the original directive and the evidence shows that our current system works as the majority of women (around 88%) take all their paid maternity leave. The proposal for the revised directive is to require the payment of full pay during maternity leave albeit subject to a cap. The potential of full pay is a significant spending risk and is at variance with the UK's general scheme of benefit payments — basic flat rate benefits topped up according to individual family need by

a system of means-tested benefits and tax credits. While a mandatory move to full pay during maternity leave is not the Commission's intention and pay may be subject to a ceiling, the UK will be seeking further legal clarity in this area.

"The UK has had in place a right for employees to request flexible working since 2003 and its introduction has been a great success — it has contributed towards a cultural change where working patterns are discussed more openly and freely. The UK right allows mothers and fathers of young or disabled children and carers of adults to request a flexible working pattern. This is due to be extended to those with parental responsibility for children aged 16 and under. Experience in the UK has shown that over 90% of requests from working parents and carers are granted. The majority of requests are made informally and the law offers a fallback. The UK is concerned that the draft does not allow requests to be refused on grounds of business needs alone. We are also concerned that enshrining a right to request flexible working within the pregnant workers directive will reinforce the view that flexible working is a women's issue.

"In the UK all employed women are entitled to one year's maternity leave, although they may return earlier if they wish. Having a fixed maternity leave period which applies to all women enables women and their employers to know from the outset how much maternity leave mothers will be entitled to; giving them both the information they need to plan. The length of the leave available in the UK ensures that a mother has sufficient leave to take account of her needs if her child is premature or hospitalised, or she has a multiple birth. The proposal to allow mothers to take additional leave in these types of situations would increase the administrative burden for employers managing maternity absence and create uncertainty for mothers and their employers about the overall length of maternity leave, reducing their ability to plan. The Government will be seeking clarity about how to reconcile the objectives of the Commission proposal with the reality of a much higher maternity leave provision.

"In the UK women have the freedom to choose to take their maternity leave any time from the 11th week before their baby is due. The UK is concerned that Article 8.2 as proposed, in providing complete flexibility to a woman in when to take her non-compulsory maternity leave could mean that in the UK a mother could take the majority of her maternity leave prior to confinement, by choosing to start their maternity leave early in their pregnancy. This contradicts the aim of the proposal to provide additional health protections following the birth of the child."

2.13 Finally the Minister tells us that the provisions of the draft Directive, if given effect, would add to employers' costs and increase the UK's social security expenditure. The Government will prepare its own Impact Assessment of the proposals. It will also hold public consultations on them.

Conclusion

2.14 **Maternity leave is a matter of much political importance. The aims of the proposed Directive appear reasonable; and the legal bases for it seem to be appropriate.**

2.15 **On the other hand, the Government has a number of questions and doubts about the draft Directive which appear to us to be legitimate. It will, therefore, be seeking clarification from the Commission. Accordingly, we ask the Minister for progress reports on the negotiations and on his Department's public consultations. Meanwhile, we shall keep the document under scrutiny.**

3 Consumer rights

(30036) 14183/08 COM(08) 614	Draft Directive on consumer rights
+ ADD 1	Commission staff working document: Impact Assessment
+ ADD 2	Commission staff working document: summary of Impact Assessment
+ ADD 3	Commission staff working document: annexes to the Impact Assessment

Legal base	Article 95 EC; co-decision; QMV
Document originated	8 October 2008
Deposited in Parliament	16 October 2008
Department	Business, Enterprise and Regulatory Reform
Basis of consideration	EM of 28 October 2008
Previous Committee Report	None
To be discussed in Council	December 2008
Committee's assessment	Politically important
Committee's decision	Not cleared: further information requested

Background

3.1 In February 2007, the Commission published a Green Paper on its review of eight Directives on consumer rights.[8] In the light of the responses it received, the Commission proposes the repeal of four existing Directives and their replacement by one new one.

3.2 Article 95 of the EC Treaty requires the Council to adopt measures for the approximation of the laws of Member States which have, as their objective, the establishment and functioning of the EC's internal market.

8 (28372) 6307/07: see HC 41–xii (2006–07), chapter 11 (7 March 2007).

The document

3.3 The draft Directive proposes the repeal of four Directives:

- the Doorstep-Selling Directive (Council Directive 85/577/EEC: OJ No. L 372, 31.12.1985, p.31);
- the Unfair Contract Terms Directive (Council Directive 93/13/EEC: OJ No. L 95, 21.4.1993, p.29);
- the Distance-Selling Directive (Directive 97/7/EC: OJ No. L 144, 4.6.1997, p. 19); and
- the Sale of Consumer Goods Directive (Directive 1999/44/EC: OJ No. L 171, 7.7.1999, p.12).

3.4 All four Directives set minimum standards for the protection of consumers. Some Member States have set their own much higher standards. Some consumers are deterred from buying goods and services from traders in other Member States because they do not understand the consumer protection legislation of the Member State of origin or fear that the standard of protection there is lower. Moreover, the inconsistencies between Member States' standards cause confusion and extra compliance costs for producers. The EC's legislation has not kept up with the rapid development of new products and technologies; for example, the legislation does not cover on-line auctions. As a result of the present fragmentation of the EC's regulatory framework, there are unjustified barriers to the free movement of goods and services within the single market.

3.5 The Commission proposes this new Directive. Its objective is to improve consumers' confidence in the internal market and reduce the reluctance of businesses to make cross-border contracts with consumers for the supply of goods and services. The Commission says that:

> "This overall objective should be attained by decreasing the fragmentation, tightening up the regulatory framework and providing consumers with a high common level of consumer protection and adequate information about their rights and how to exercise them."[9]

3.6 Article 2 of the draft Directive defines terms used in the proposal. For example, it provides that:

- "consumers" are natural persons who are not acting for the purposes of their trade, business, craft or profession;
- " traders" are natural or legal persons who are acting for such purposes;
- "a sales contract" is a contract for the sale of goods by the trader to the consumer, and (unless otherwise provided) includes "mixed purpose" contracts for both goods and services;

9 Commission's explanatory memorandum, page 2, final full paragraph.

- “a service contract” is a contract for the trader to provide a service to the consumer;
- “distance contract” means a sales or goods contract where the trader, in concluding the contract, makes exclusive use of one or more means of distant communication (such as the telephone or internet); and
- “off-premises contract” means a contract for goods or services which is negotiated or concluded in the physical presence of the trader and consumer but away from the trader’s premises.

The Directive would apply to both to domestic and cross-border contracts.

3.7 Article 4 of the draft Directive is intended to overcome the obstacles to the functioning of the internal market which arise from the present Directives. They establish minimum requirements for consumer protection but give Member States discretion to set more stringent standards if they wish. Article 4 would prohibit Member States from maintaining or introducing provisions in their domestic law which diverge from the proposed Directive, whether those provisions contain more or less stringent consumer protection requirements.

3.8 Chapter II of the draft Directive would require the trader, before the conclusion of a contract for either goods or service, to give the consumer all the information listed in Article 5. Traders would be required to provide information about, for example, the main characteristics of the product; the arrangements for payment, delivery and complaints handling; and the duration of the contract.

3.9 Chapter III applies only to distance and off-premises contracts. Articles 9 and 11 specify the information the trader must give the consumer both before the conclusion of a distance contract and in the contract itself. Article 10 specifies the information to be given to the consumer in the order form for off-premises contracts for goods or services. In both cases, the trader would be required to provide information in addition to what would be required by Article 5.

3.10 Article 12 provides that, subject to certain exceptions, the consumer must be allowed 14 days, rather than the present seven, to withdraw from a distance or off-premises contract.

3.11 Chapter IV of the draft Directive makes provisions specific to sales contracts. They include provisions requiring the trader to deliver to the consumer goods which conform with the sales contract and remedies for lack of conformity. In particular, Article 26 provides that, where goods do not conform, the trader may provide a remedy by repairing or replacing the product. In certain circumstances — for example, if the trader refuses to remedy the lack of conformity or fails to do so in a reasonable time — the consumer would be entitled to have the price reduced or rescind the contract and claim damages.

3.12 Chapter V contains provisions on contract terms drafted in advance by the trader and to which the consumer has agreed without the option of influencing the terms. Article 34 provides that Member States should ensure that the contract terms listed in Annex II of the Directive are considered unfair in all circumstances (the list could be amended only by the Commission, assisted by a Committee of representatives of the Member States). Annex II

includes, for example, a contract term excluding or limiting the trader's liability for the consumer's death or personal injury as a result of an act or omission by the trader or a term giving the trader the right to decide whether the goods or services conform with the contract.

3.13 Article 35 would require Member States to ensure that the contract terms listed in Annex III are considered unfair unless the trader has proved that they are fair to the satisfaction of the competent national authority. Annex III includes, for example, a term requiring a consumer who fails to fulfil his or her obligations to pay the trader compensation which significantly exceeds the harm suffered by the trader or a term allowing the trader to terminate the contract where the same right is not granted to the consumer.

3.14 Chapter VI of the Directive contains general provisions on, for example, enforcement of compliance with the Directive, the penalties for non-compliance and a requirement for Member States to transpose the Directive into domestic law within eighteen months of the measure coming into effect.

The Government's view

3.15 In his Explanatory Memorandum of 28 October, the Minister for Trade and Consumer Affairs at the Department for Business, Enterprise and Regulatory Reform (Mr Gareth Thomas) tells us that the Government agrees with the Commission that the existing consumer rights Directives need updating to meet the aims of simplification and Better Regulation and to improve the functioning of the internal market. The Government will shortly publish a consultation paper about the draft Directive, inviting comments within three months. The Law Commission is holding separate consultations on proposed changes to the law on consumer remedies. The Government will take account of the responses to both consultations in deciding its negotiating position on the draft Directive.

3.16 The Minister tells us, however, that the Government has already identified four matters about which it has concerns. They are about:

- "full harmonisation";
- the restricted scope of Chapter IV;
- the proposed loss of the consumer's "right to reject" faulty goods; and
- distance and off-premises contracts.

3.17 *Full harmonisation*: Article 4 of the draft Directive says that Member States may not maintain or introduce, in their national law, provisions diverging from those laid down in the Directive. If this provision were adopted, Member States would have to repeal any existing legislation which exceeds (or falls below) the level of consumer protection provided by the Directive. The Minister notes that this should increase legal certainty and confidence for both consumers and producers when making and implementing cross-border contracts. On the other hand, full harmonisation would have a significant impact on some Member States and some of them will be concerned about the reduction in protection for their consumers.

3.18 *Scope of Chapter IV*: Article 21 says that the provisions of Chapter IV apply only to contracts for the sale of goods. The provisions concern traders' obligations to deliver goods, conformity with contracts and remedies for non-conformity. The Minister says that by restricting the scope of the Chapter in this way, so that it would not apply to "mixed contracts" for services and goods, the Commission is unlikely to achieve its goal of fully harmonising the key aspects of consumer contract law and boosting consumers' understanding of their rights.

3.19 *Loss of the right to reject faulty goods*: full harmonisation, coupled with the provisions of Article 26 of the draft Directive, would require the UK to repeal consumers' existing right, in domestic law, to reject faulty goods. Consumers in the UK would then not have a legal right to reject goods of unsatisfactory quality and get their money back. Moreover, the draft Directive would entitle the trader, not the consumer, to decide whether non-conforming goods should be repaired or replaced. The Minister tells us that:

> "Our initial view is that this change will amount to a reduction in consumer protection for UK consumers which is unlikely to be acceptable. It would have an impact on the balance of power between the consumer and the trader reducing the bargaining position of the consumer … ."

3.20 *Distance and off-premises contracts*: the Minister broadly welcomes the provisions in Chapter III on these contracts. New UK Regulations on Doorstep Selling came into force on 1 October and the Government wants the proposed Directive to reflect those provisions.

3.21 The Minister notes that the Commission proposes that the rules on off-premises sales should apply to all contracts, regardless of their value. Currently, under UK law, there is a threshold of £35 below which the rules do not apply. He says that:

> "It is our strong view that imposing information requirements on traders and introducing a right of withdrawal for off-premises contacts worth less than £35 would place a disproportionate burden on traders. The consultation on the recent UK Regulations found that there was little evidence of consumer detriment relating to these low value contracts and therefore no justification for removing the threshold."

3.22 The Minister encloses with his Explanatory Memorandum a copy of his Department's preliminary draft of an Impact Assessment of the draft Directive. It will be issued with the Department's consultation paper and revised in the light of respondents' comments.

3.23 Finally, the Minister tells us that the Commission hopes that the European Parliament will approve the draft Directive by March 2009 and that this will coincide with agreement to it in the Council. The Government thinks that this timetable is optimistic and that it is unlikely that agreement on the proposal will be reached before the European Parliament elections in the summer of next year and the appointment of the new Commission in the autumn.

Conclusion

3.24 **We share the Government's reservations about important aspects of the draft Directive. In particular, we are concerned that the protection of consumers in the UK would be weakened if they lost the right to return faulty goods. We should be grateful, therefore, if the Minister would send us:**

- **progress reports on the negotiations;**
- **his Department's consultation paper and, in due course, a summary of the responses to it:**
- **the Law Commission's consultation paper; and**
- **the revised Impact Assessment.**

Meanwhile, we shall keep the draft Directive under scrutiny.

4 Control of ozone depleting substances

(29949) 12832/08 + ADDS 1–3	Part I: Commission Communication on completing the phase-out of substances that deplete the ozone layer
COM(08) 505	Part II: Draft Regulation on substances that deplete the ozone layer (recast)

Legal base	Part I: — Part II: Articles 133 and 175(1)EC; co-decision; QMV
Document originated	1 August 2008
Deposited in Parliament	16 September 2008
Department	Environment, Food & Rural Affairs
Basis of consideration	EM of 15 October 2008
Previous Committee Report	None, but see footnote 1
To be discussed in Council	No date set
Committee's assessment	Politically important
Committee's decision	Not cleared; further information awaited

Background

4.1 Because of the consequential health and environmental risks, the production and use of substances which deplete the ozone layer has, since 1987, been subject to international control under the Montreal Protocol. These substances include chlorofluorocarbons (CFCs), used in areas such as refrigeration and air conditioning plants; halons (used in fire extinguishers); carbon tetrachloride (used in medicines, pesticides and certain paints);

1,1,1-trichloroethane (used as a cleaning solvent); methyl bromide (used as a fumigant to kill agricultural pests); hydrobromofluorocarbons (HBFCs), possible replacements for halons; and hydrochlorofluorocarbons (HCFCs), substitutes for CFCs, especially for refrigeration purposes.

4.2 The Community subsequently enacted legislation to enable it and Member States to fulfil — and, in some cases to exceed — their obligations as parties to the Protocol. Initially, this provided for the phasing out of the production and consumption of CFCs and carbon tetrachloride by the end of 1994, and of 1,1,1-trichloroethane and HBFCs by the end of 1995; for a 25% cut in the production of methyl bromide by the end of 1997, as compared with the 1991 level; and for the use of HCFCs to be reduced in stages (and to cease by the end of 2014).

4.3 However, as a previous Committee noted,[10] the Commission put forward in August 1998 a proposal enabling the Community to implement the more stringent controls agreed at meetings of the parties to the Montreal Protocol in 1995 and 1997 (and indeed, to again exceed in certain respects what has been agreed internationally). That proposal was eventually adopted as Regulation (EC) No 2037/2000,[11] which:

- bans the sale and use of those substances whose production had already been prohibited (CFCs, halons, carbon tetrachloride, 1,1,1-trichloroethane, and HBFCs);
- makes further staged reductions in the production and use of methyl bromide, leading to a total prohibition after 31 December 2004, though these would not apply where it is used for quarantine or pre-shipment treatment; and
- makes further cuts in the production and consumption of HCFCs, but with the eventual phase-out date deferred until the end of 2025, whilst imposing tighter controls over their use (for example, in aerosols, solvents, refrigerants or air conditioning equipment, or the production of foams).

However, the above restrictions do not apply when the substance in question is to be placed on the market for destruction by approved technologies, for use as a feedstock or processing agent, or to meet licensed requests for essential or critical uses where no adequate alternatives are available, or to respond to an emergency.

4.4 In addition, the Regulation imposes severe restrictions on the export of ozone depleting substances, and on the import and export of products containing them (requiring the Commission to licence any such imports and authorise any such exports); extends trade controls with states not party to the Protocol to include methyl bromide and HCFCs; and specifies measures for the recovery, recycling or reclamation of used substances, and in relation to leakages, in order to reduce emissions.

10 (19389) 10902/98: see HC 155–xxxviii (1997–98), chapter 8 (28 October 1998) and HC 34–iv (1998–99), chapter 8 (16 December 1998).

11 OJ No. L 244, 29.9.00, p.1.

The current document

4.5 The current document is in two parts. Part I is a Commission Communication, which reviews the progress in the 20 years since the Montreal Protocol was agreed; analyses the current situation; and suggests a number of further steps which should be taken.

4.6 The Commission says that the Protocol has been highly successful, in that its 191 Parties have achieved a 95% reduction[12] in the consumption of ozone depleting substances, and the production and consumption of the most harmful known substances should be almost completely banned in industrialised countries by 2010. As a result, the ozone layer is recovering, albeit somewhat more slowly than indicated by earlier projections.[13] The Commission adds that, in addition to reducing significantly the number of fatal and non-fatal skin cancers, the measures taken will have avoided emissions of greenhouse gases equivalent to more than 100 billion tonnes of carbon dioxide[14] between 1990 and 2010 (thereby delaying the overall growth in greenhouse gases by 7–12 years), with ozone depleting substances accounting for less than 5% of global carbon dioxide emissions in 2010, compared with nearly 50% in 1990. It also highlights the Community's contribution to this achievement, where it expects consumption of ozone depleting substances in 2010 to be a few hundred tonnes, compared with a baseline figure of 400,000 tonnes, and the remaining production (for exempt and non-controlled uses, and HCFCs) to be around 4,000 tonnes, compared with a baseline of 700,000 tonnes.

4.7 However, the Commission notes that a Scientific Assessment Panel set up under the Montreal Protocol has said that, despite these successes, a number of key challenges remain. These include:

- ozone depleting substances which remain stored or "banked" in products and equipment (such as building insulation foams, refrigerators and air conditioning systems), which it is suggested could give rise to annual emissions within the Community of up to 24,000 tonnes over the period 2005–15 (equivalent to 170 million tonnes of carbon dioxide), and adding up overall to around 200,000 tonnes;
- emissions arising as a result of the various uses exempted under the Protocol, which the Panel believes should be reduced significantly from their present annual level of about 20,000 tonnes, in order to prevent any further slippage in the timetable for the recovery of the ozone layer; and
- new ozone depleting substances, not currently covered by the Protocol, the marketing of which is, in some cases, growing rapidly.

4.8 Against this background, the Commission has set out in Part II of this document a number of revisions to Regulation (EC) No. 2037/2000. Some of these would be aimed at better regulation objectives, in that they would simplify the measure, reduce administrative costs and facilitate enforcement by removing a number of obsolete provisions and

12 According to the Commission, there was a 99.2% reduction in industrialised countries and an 80% reduction in developing countries.

13 Average Arctic levels are now expected to recover by 2050, and those in the Antarctic between 2060 and 2075.

14 Ozone depleting substances have a very high global warming potential, some of them being more than 14,000 times more potent than carbon dioxide.

procedures, and streamlining labelling and reporting requirements. The proposal would also align the Regulation with the recent decision by the Parties to the Protocol to bring the phase-out of HCFCs forward from 2025 to 2020, and introduce a number of measures to reduce the risk of their illegal trade and use including more targeted inspections, clearer labelling, and increased monitoring of imports and exports.

4.9 In addition, it would include three measures, going beyond the current provisions in the Protocol, which address the concerns identified by the Scientific Assessment Panel. These would:

- reduce the current limit on the use of methyl bromide for quarantine and pre-shipment purposes, with a full phase-out by 2015, whilst in the meantime making its recapture mandatory;
- tackle the problem of ozone depleting substance banks by tightening up the provisions on the recovery and destruction of such substances contained in products and equipment: in particular, the Commission would be given powers to introduce legislation setting out those products and equipment for which recovery and destruction is considered to be technically and economically feasible, and hence mandatory; and
- identify new substances with an ozone depleting potential which should be subject to production and marketing controls, as well as those where producers and importers would be required to report the volumes traded: again, the Commission would be given the power to add any further substances identified by the Panel as having a significant ozone depleting potential.

4.10 The Commission also intends to take further action to achieve a complete phase-out of ozone depleting substances. It says that this will focus first and foremost on improving the implementation and enforcement of the waste policy framework, notably the Waste from Electric and Electronic Equipment (WEEE) Directive,[15] in order to address the issue of ozone depleting substances in refrigerators and air conditioning equipment, but it will also focus on identifying appropriate incentives to increase significantly the amount of ozone depleting substances contained in foam products, notably demolition waste, presented for recovery, recycling or destruction within the Community, which it says is by far the greatest source of concern. It suggests that these measures — which would be pursued in close cooperation with Member States and stakeholders — could potentially yield further environmental benefits of up to 80,000 ozone depleting tonnes (or 640 million tonnes of carbon dioxide equivalent).

4.11 The Commission says that it will also work in parallel at international level with the Member States and other Parties to the Protocol to continue to bring down remaining uses and emissions of ozone depleting substances, and to encourage all concerned to sign up to the amendments to the Protocol. Its priorities include ensuring that the global phase-out of HCFCs leads to the introduction of climate-friendly alternatives; tackling ozone depleting substance banks in developing countries; reducing the use of methyl bromide for quarantine and pre-shipment purposes; and monitoring global controls over new ozone

15 Directive 2006/12/EC OJ No. L 114, 27.4.06, p.9.

depleting substances (reinforcing these, if necessary, where no adequate alternatives are available). The Commission will also continue to promote technology and knowledge transfer through targeted workshops and knowledge-sharing activities.

4.12 The Commission summarises its proposals by suggesting that the most tangible environmental benefits would be related to policy action on banks of ozone-depleting substances in products, installations and equipment, and from reduced consumption of methyl bromide for quarantine and pre-shipment and increased recovery (which it believes could add up to a net gain of 16,000 ozone-depleting tonnes (or the equivalent of 112 million tonnes of carbon dioxide) over the period 2010–20. It estimates that the overall reductions in administrative costs over that same period will total nearly €3 million, with about €2 million accruing to industry (particularly small and medium-sized enterprises), €0.7 million to Member State authorities, and the remainder to the Commission itself. The Commission estimates that the cumulative additional direct economic impact is expected to stay below €13 million, mainly related to measures to reduce methyl bromide use for quarantine and pre-shipment purposes, but it has yet to present a detailed analysis of the technical and economic feasibility of recovery and destruction of ozone-depleting substances in demolition waste.

The Government's view

4.13 In his Explanatory Memorandum of 15 October 2008, the Minister for Sustainable Development, Climate Change Adaptation and Air Quality at the Department for Environment, Food and Rural Affairs (Lord Hunt of Kings Heath) draws attention to the proposal enabling the Commission to list products, installations and equipment for which recovery of ozone-depleting substances is mandatory if it is considered to be "technically and economically feasible". He points out that these obligations, which would be proposed by the Commission and voted on by Member State representatives under the standard comitology procedures after the regulation has come into force, could lead to significant new obligations for the construction industry and its customers if it became mandatory to recover and destroy ozone-depleting substances in insulation foam in all buildings in the UK when they were demolished or redeveloped.

4.14 The Minister adds that, while the volumes of ozone-depleting substances in the UK in building insulating foams are likely to be significant, no assessment has been presented by the Commission of the likely costs across the Community or in individual Member States. He believes that the Commission should be required to carry out a more detailed analysis of technical and economic feasibility and overall environmental impacts (including carbon dioxide from incineration plants and transport to such plants), in order to justify giving itself this far-reaching power of proposal to create new obligations on Member States. He says that, at the very least, the Commission should be under a duty not to propose any new recovery/destruction obligations after the regulation has been agreed without a comprehensive analysis of costs and benefits, taking account of the differing circumstances of individual Member States.

4.15 The Minister says that the tightening up of existing export bans on products and equipment containing or relying on controlled substances also needs further consideration, in that it would, for example, appear to apply to exports of second hand commercial

refrigeration and air-conditioning equipment in the UK. (He notes that there would be derogations for particular exports where a prohibition would place a disproportionate burden on the exporter, but suggests that these could be limited if most UK equipment proves to be too old to be worth exporting.) He adds that the Government will also want to consider the more minor proposals on their merits, to see if they really do result in simplification or a reduction in administrative burdens, or address other future policy challenges; to see that any cost impacts are commensurate with the benefits, taking account of UK stakeholder views; and to ensure that they do not lead to perverse consequences.

4.16 Finally, the Minister says that the measures to phase out use of methyl bromide for quarantine and pre-shipment purposes by 2015 and require mandatory recovery in the meantime may have limited impact in the UK. In addition, methyl bromide has been the subject of a risk assessment conducted under the review programme of the Plant Protection Products Directive (91/414/EEC), as a result of which Member States will be required to withdraw authorisations of methyl bromide for plant protection uses. He therefore considers the proposals for methyl bromide in this document are likely to be pre-empted by action driven by Community pesticides legislation.

4.17 The Government intends to provide further information on the proposal's impact in a Supplementary Explanatory Memorandum by December 2008.

Conclusion

4.18 **In many ways, the improvements in the ozone layer achieved by the action taken under the Montreal Protocol, both by the Community and more widely, represents a remarkable achievement, and we are glad to note that these latest proposals would bring the Community into line with the most recent changes made to the Protocol, as well as simplifying the way in which the relevant legislation is implemented by Member States.**

4.19 **Having said that, we do have a number of significant concerns. First, we note that the proposal would give the Commission potentially far-reaching legislative powers to identify products and equipment for which recovery and construction is considered to be technically and economically feasible and hence mandatory. Secondly, we share the Government's particular concerns about the way in which this provision might be used as regards demolition waste, and at the absence of any assessment by the Commission of the likely costs and benefits. Consequently, we strongly endorse the Government's view that, before any such measure is brought forward, a much more powerful justification should be provided: indeed, if such a step were to be proposed, we question whether it ought not to be the subject of legislation by the Council and European Parliament, rather than the Commission. Thirdly, although the Commission has provided a plethora of figures showing the possible impact of the various steps it has advocated, these — as so often is the case with documents of this kind — lack any coherent focus, and provide a confusing mix of impacts at world and Community level, annual and cumulative impacts, and impacts over different periods of time. For that reason, we particularly welcome the fact that the Government will shortly be providing its own Impact Assessment, and we hope that this will clarify some of these issues, at least in relation to the UK.**

4.20 **In the light of these concerns, we propose to hold the document under scrutiny pending receipt of that Assessment, but we are in the meantime drawing it to the attention of the House.**

5 Food prices: the EU and developing countries

(29865) 11983/08 COM(08) 450	Draft Regulation: *Facility for rapid response to soaring food prices in developing countries*

Legal base	Art 179 and 251 EC; QMV; co-decision
Deposited in Parliament	23 July 2008
Department	International Development
Basis of consideration	Minister's letter of 31 October 2008
Previous Committee Report	HC 16–xxix (2007–08), chapter 4 (10 September 2008)
To be discussed in Council	To be determined
Committee's assessment	Politically important
Committee's decision	Not cleared; further information requested

Background

5.1 Encouraged by the European Council and the European Parliament, and fearful of the impact not only on the developing countries themselves but also on the prospects of achieving the UN Millennium Development Goals, the Commission proposed in July a two-year facility to help those countries combat soaring food prices. The Commission reckoned that high food prices would contribute to a €1 billion (£0.789 billion) CAP under-spend in 2008 and 2009. Using UN figures, the Commission estimated that the financing need for 2008–9 will be €18 billion (£14.2 billion); given the Community average of financing 10 per cent of worldwide development cooperation, the Community would finance €1.8 billion (£1.42 billion). With €800 million currently available from other instruments, it was envisaged that the remaining €1 billion would come from the CAP under-spend.

5.2 In his covering Explanatory Memorandum of 28 August 2008, the Secretary of State (Mr Douglas Alexander) supported the principle of collective EU action to address the situation but not the proposal in its current form. He welcomed the objective of encouraging a positive supply response from farmers in developing countries in the short to medium term. But, as well as acting to prevent loss of life of the most vulnerable, the Secretary of State also believed that investing in agriculture and rural development was essential.

5.3 Moreover, the Government also objected to the proposed use of under-spend for this purpose on Budget discipline grounds. Noting that under-spend was normally returned to

Member States, and arguing that the budget margins should be kept for unforeseen needs or programmes in-year and not used for new proposals that are not programmed into the Financial Framework, the Secretary of State said that several other Member States, including Germany, the Netherlands and Sweden, shared UK concerns; he would work with other Member states to ensure that alternative proposals and financing mechanisms were fully explored to allow for a collective EU response that would include additional resources as part of an overall increased effort to ensure the MDGs are met; the government would also continue to argue — "as asserted by the Chancellor and a number of Finance Ministers at ECOFIN in July" — that financial aspects of any new proposals with important cost implications for Member States should be fully discussed and agreed by Finance Ministers in ECOFIN before a final decision on proposals as a whole could be taken.

5.4 Recalling the Government commitment to UK aid reaching 0.7% of Gross National Income by 2013, with part of this to be spent on food and agriculture, the Secretary of State also noted that any UK share of a Commission or similar proposal would come from DFID's existing, enhanced, budget allocation. If an alternative proposal for a food facility were to be developed which would be effective in leveraging additional resources from others as part of an overall increased effort to ensure the MDGs were met, without compromising the principle that EC Budget under-spend should normally be returned to Member States, he said that he might support it; but he would need to be convinced that using existing aid programme funds for this purpose would deliver better development outcomes than alternative uses of these resources. The Secretary of State further noted that the proposed use of budget under-spend would represent a cost to Member States, the UK share of which would be around 15% or about £120 million (spent over three years, from DFID's existing budget allocation).

5.5 Finally, on the timetable, the Secretary of State said that in order to use the unspent funds, the Commission required the regulation to come into force by end 2008; and that co-decision would require agreement at first reading by November 2008.

5.6 The Secretary of State having clearly outlined his objections to the proposal in its current form, and noting that deliberations on the Regulation would begin on 25 August in the EP Development Committee and among Member States on 4 September, the Committee said that it would not expect him to agree any revised proposal without further scrutiny, asked that he keep the Committee informed of the progress of these discussions, and in the meantime retained the document under scrutiny.[16]

The Secretary of State's letter

5.7 In his letter of 31 October 2008, the Secretary of State for International Development says that it now looks unlikely that the original plan to use CAP surpluses will be approved given Member States' opposition, and that "Council committees continue to look for ways to find the necessary funds including through contingencies reserves and reprioritisation of existing budgets". Meanwhile, he says:

16 See headnote: HC 16–xxix (2007–08), chapter 4 (10 September 2008).

> "… discussions continue around the best way to programme the resources to meet needs. HMG believes that to ensure sustainability, the €1 billion (£0.79 billion) should be used on a mix of immediate measures (e.g. seeds & fertilisers) and other complementary measures which support medium and long-term sustainability."

5.8 The Secretary of State goes on to say that the European Parliament has suggested a number of substantive amendments to the original proposal:

> "… including the setting of firm criteria for the choice of countries to benefit. HMG agrees with this amendment as it would indicate which countries were eligible and add flexibility whereby some countries would move out — graduate from needing support — and others could move in when they need support. Principles and indicators for setting the criteria should be tight so politicised choices are easily taken out of discussion. However, as long as a fixed list of criteria is agreed, HMG does not see a need to set an arbitrary limit to the number of countries which could be eligible for assistance under the facility, as proposed by the European Parliament."

5.9 The Secretary of State agrees with the European Parliament's amendment that proposes the broadening of the number of channels and beneficiaries:

> "HMG believes that these should include channels such as the World Bank, international NGOs and good Direct Budget Support where the Governments concerned explicitly identify strategies for addressing high food prices and targeting the vulnerable. The criteria for choosing the channels for distributing the funds should be the potential for effective and efficient implementation. Therefore HMG does not support European Parliament's further amendment of imposing an arbitrary 40% limit on the level of support channelled through international organisations."

Conclusion

5.10 **The Secretary of State makes no mention of the future timetable. Any revised proposal would presumably need to be agreed by ECOFIN. The main objection no longer obtains. But the Secretary of State nonetheless makes plain his objections to certain aspects of the EP amendments.**

5.11 **Moreover, it is also not clear at this stage how, and to what extent, the revised proposal meets his main criterion — that an alternative proposal for a food facility should leverage additional resources from others as part of an overall increased effort to ensure the MDGs are met. We ask if the immediate measures consist of expenditure on seeds and fertilisers, or whether some would be spent on food imports, and how much of the €1 billion would come from "contingencies reserves and reprioritisation of existing budgets". We also ask how much would come from "channels such as the World Bank, international NGOs and good Direct Budget Support where the Governments concerned explicitly identify strategies for addressing high food prices and targeting the vulnerable" and if any would come from DFID's budget.**

5.12 **Given this degree of uncertainty, we shall continue to retain the document under scrutiny and would not expect the Secretary of State to agree to any revised proposal**

until he has reported to us again with the answers to these questions and the outcome of the ongoing discussions about funding and the EP's proposed amendments.

6 Term of copyright protection

(29892) 12217/08 + ADDs 1–2 COM(08) 464	Draft Directive amending Directive 2006/116/EC on the term of protection of copyright and certain related rights

Legal base	Articles 47(2), 55 and 95 EC; co-decision; QMV
Document originated	16 July 2008
Deposited in Parliament	7 August 2008
Department	Innovation, Universities and Science
Basis of consideration	EM of 27 October 2008
Previous Committee Report	None
To be discussed in Council	No date set
Committee's assessment	Legally and politically important
Committee's decision	Not cleared; further information requested

Background

6.1 Although copyright in literary and artistic works has been protected internationally since the 19th century,[17] the international protection of rights in sound recordings is more recent and was largely occasioned by the considerable growth in the production and sale of such recordings in the 1950s.[18] The rights in sound recordings are vested in the person making the recording, rather than in the performer of that which is being recorded. At Community level, both performers and record producers enjoy a set of 'related' rights in their performances and the recordings of such performances. Under Directive 93/98/EEC 'related' rights endure for 50 years from the date of the performance or from the publication of the sound recording. The length of protection is the minimum provided for in the 1996 WIPO Performances and Phonograms Treaty.

6.2 The 'related' rights may either be exclusive (in the sense of being a right to prevent others from using the recording or the performance) or they may be limited to the right to receive an equitable remuneration for the commercial use of performances and sound recordings. In practice, a performer's exclusive rights (such as the right of reproduction,

17 Cf. Berne Convention for the Protection of Literary and Artistic Works 1886, last revised in Paris in 1971 and amended in 1979. 'Literary and artistic works' include musical works –see Article 2(1) Berne Convention.

18 See Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations 1961. The rights conferred on such performers and producers are often referred to as 'related rights' or neighbouring rights' in order to distinguish them from 'authors' rights'.

distribution, rental and making available on-line) are usually transferred to the producer of the sound recording, most often for a one-off payment, although more successful performers may be able to negotiate the use of their rights on a royalty basis. Rights to equitable remuneration (for, example, on broadcasting of the performance) are generally exercised by performers by means of collecting societies. The (relatively) limited duration of such related rights[19] has the consequence that the rights in performances given or recordings made in the 1950s and 1960s will soon expire, and will do so well within the expected lifetimes of the performers in question.

6.3 In its explanatory memorandum, the Commission explains that its proposals aim to improve the position of performers, and in particular that of session musicians,[20] since many such performers are increasingly outliving the existing 50 year period of protection for their performances. The Commission also explains that the large scale production of sound recordings is essentially a phenomenon which began in the 1950s and that, if no steps are taken, an increasing number of performances recorded and released between 1957 and 1967 will lose protection with the result that performers will lose all of their income deriving from contractual royalties and remuneration from the broadcasting and public performance of their performances. Since many European performers start their careers in their early 20s the loss of income from expiry of the 50 year period of protection will arise during their retirement. The Commission also points out that the current conditions for the average European performer are "not very rewarding", with only famous performers who have signed royalty contracts with major record labels being able to make a living from their profession.[21] The Commission estimates that, overall, only 5% of performers are able to make a living from their profession.

6.4 In relation to producers of sound recordings, the Commission explains that the principal challenges are the evaporation of CD sales[22] with insufficient replacement from sales of recordings on-line, leading to an overall loss in value of the market of 22% since 2001. The Commission refers to claims by the record industry that it invests around 17% of its revenues in the development of new talent, that this brings uncertain returns (since only around one in eight sound recordings is successful), and that a longer period of protection would generate additional income to help finance new talent and better spread to risk in developing such talent.

6.5 A further issue addressed in the Commission's memorandum is the difference in treatment under the law of Member States of musical works which are co-written (i.e. with music and lyrics composed by different authors). In some Member States, the work remains protected until 70 years after the death of the last surviving author, whereas in other Member States (including the UK) the music and lyrics or libretto are treated as two distinct works. As the Commission points out, the difference in approach can lead to some striking results. One example is the opera "Pelléas et Mélisande" where the composer Debussy died in 1919, but the librettist, Maeterlinck, much later in 1946. In some Member

19 Under Directive 93/98/EEC the term of protection for an author of a literary, artistic or musical work is the author's life plus 70 years.

20 Musicians who are retained to play at a particular recording session, e.g. as a backing group.

21 The Commission refers to the example of the UK where only 5% of performers earned over £10,000 a year in 2001.

22 The Commission refers to a study showing that sales of music CDs peaked in 2000 and have been falling at an annual rate of 6% ever since.

States copyright in the opera will not expire until 2016, whereas in those Member States which treat the opera as two distinct works, copyright in the musical composition expired in 1989. Another example is the popular song "When Irish eyes are smiling" where the entire song (music and lyrics) would be protected until 2043 in some Member States, whereas in others copyright in the musical composition expired in 1997.

The draft Directive

6.6 The draft Directive proposed by the Commission would make two principal amendments to Directive 2006/116/EC.[23] First, it would extend the present duration of the related rights enjoyed by performers and makers of sound recordings from 50 years to 95 years. Secondly, the proposal would introduce a rule whereby copyright in a musical work is to expire 70 years after the death of the author of the lyrics or the composer of the music, whichever is the later. The proposal also makes a number of transitional provisions, including for the creation of a fund for session musicians,[24] and a "use it or lose it" provision which would allow a performer to gain control of the rights in the recording of his performance if the recording has not been published within the 50 year period and would otherwise be in the public domain.

6.7 Accordingly, Article 1 of the draft Directive amends the existing Articles 3(1) and 3(2) of Directive 2006/16 to extend the term of protection for a sound recording (phonogram) and the performance recorded from 50 to 95 years from the time of first lawful publication or communication to the public. The effect of a new Article 10(5) is to provide that the extended term will only apply to recordings and performances which are still within the 50 year period of protection at the date when Member States would be required to transpose the Directive.

6.8 A new Article 10a makes transitional provision in relation to performers so as to ensure they benefit from the proposed extension of the term. In those cases where the performer has agreed to accept a one-off payment for his performance, he will become entitled to claim a yearly payment from a dedicated fund. In order to create and maintain such a fund, producers of sound recordings would be obliged to set aside at least 20% of the revenues accruing from their exclusive rights which would otherwise have expired but for the extension of the term.

6.9 A new Article 10a(6) contains a "use it or lose it" provision. If a producer of sound recordings does not publish the recording within 50 years of first fixation, then the rights of the performer in that fixation are to revert to the performer on his request and the rights of the producer are to expire. Publication for these purposes means the offering of copies of the sound recording to the public in reasonable quantities.

6.10 Finally, the draft Directive adds a new Article 1(7) to provide that the term of protection of a "musical composition with words" shall expire 70 years after the death of the author of the lyrics or the composer of the music, whichever is later.

23 OJ No L 372 of 27.12.2006, p.12. The Directive consolidated an number of amendments which had been made to Directive 93/98/EEC.

The Government's view

6.11 In his Explanatory Memorandum of 27 October the Minister of State for Higher Education and Intellectual Property at the Department for Innovation, Universities and Science (David Lammy) explains that the Government's policy is that performers and other rights holders should be encouraged and rewarded for their creativity, but that any extension of intellectual property rights must be justified and the impact of an extension on users, consumers and the academic field need to be fully considered.

6.12 The Minister recalls that the Gowers Review, published in November 2006, considered extending the term of protection for sound recordings and performers' rights, but recommended that no extension should be introduced. The Minister notes that the Government accepted these findings and has maintained the position that there is no persuasive economic evidence to support an extension. The Minister adds that a report commissioned by the Commission (the Hugenholtz report) also reached the same conclusion.

6.13 The Minister comments further that there are a number of more persuasive arguments relating to the extension of performers' rights, since "some performers find they are unable to release old recordings of their own works as the rights in the sound recording are owned by the record label which is unwilling to release the track". The Minister adds that if performers' rights alone were extended then the performer could release recordings of their own performances once the sound recording copyright had expired, but notes that this option is not being proposed at the moment. The Minister notes that the Commission claims that the proposals will have no financial implications for consumers, but questions how additional revenue can be generated for performers or record producers if there is to be no increase in costs for consumers and users.

6.14 In relation to the proposed creation of a fund for session artists composed of 20% of all revenues during the extended term, the Minister notes that Member States will be permitted to choose not to implement the fund for session musicians with companies with a revenue of less than 2 million euros. The Minister adds that the Government "supports any measure to assist small businesses", but that it will be important clearly to define small businesses in any proposal to ensure the benefits are properly targeted.

6.15 The Minister describes the operation of the so-called "use it or lose it" provision, but confines his comments to the statement that any such option "must be workable in practice".

6.16 The Minister offers more detailed comment on the proposals for extending the term of protection for co-written works. The Minister notes that this would introduce a new type of work, a "musical composition with words" into UK law for the purpose of calculating the term of protection and that the proposal does not define what is meant by a "musical composition with words". The Minister comments that it is not clear that all Member States would adopt the same definition and that this would add another complication to an already complex area of law.

6.17 The Minister makes these further comments:

"The Commission's Explanatory Memorandum accompanying its proposal states that 61% of popular songs released in the UK in the period 1912–2003 were co-written, although it is not clear what definition of 'co-written' was used here. It is likely that at least some of these would have qualified for joint authorship in the UK anyway, so that the copyright in the music and the lyrics are treated as two separate works each jointly owned by the authors. This means that almost 40% were not co-written and we would need to make sure any UK definition allowed for these compositions to be protected, as at present, by separate copyrights in the music and the lyrics each owned by their respective authors.

"The report, 'The Recasting of Copyright and related Rights for the Knowledge Economy', produced at the Institute for Information Law at the University of Amsterdam in November 2006 (Hugenholtz), concluded that any such change should cover all co-written works, not just musical compositions. The Commission offers no impact assessment on this section of the draft Directive. The Hugenholtz report also suggested that the introduction of a term extension that covers only musical compositions with words was not proportionate as it failed to respect the integrity of Member States' legal systems (such as that in the United Kingdom) that do not recognise the concept of collaborative works. It also suggested that the social and economic costs of extending term in this way may not be proportionate."

Conclusion

6.18 **We were grateful for the Minister's detailed comments on the proposal for an extension of the term of protection for performers and producers of sound recordings and on the proposal for the term of protection of a co-written "musical composition with words". We infer from these that the Government does not support these proposals, but we ask if it may also be inferred from the Minister's comments that there may be more sympathy for an extension of the term of performers' rights. We should also be grateful for an assessment, in due course, of the weight of opinion during the consultation now being conducted.**

6.19 **We also ask the Minister if he would comment further on the Government's attitude to the creation of a fund for session artists and the adoption of the proposed "use it or lose it" provision in relation to sound recordings which have remained unpublished.**

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

7 Value added taxation

(29836) 11615/08 + ADDs 1–2 COM(08) 428	Draft Council Directive amending Directive 2006/112/EC as regards reduced rates of value added tax

Legal base	Article 93 EC; consultation; unanimity
Department	HM Treasury
Basis of consideration	Minister's letter of 3 November 2008
Previous Committee Report	HC 16–xxx (2007–08), chapter 9 (8 October 2008)
Discussed in Council	4 November 2008
Committee's assessment	Politically important
Committee's decision	Not cleared; further information awaited

Background

7.1 The general rules on value added taxation are laid down in Council Directive 2006/112/EC, the VAT Directive. A succession of Directives, the current of which is Council Directive 2006/18/EC, allow "experimental" reduced rates for certain labour-intensive services, for example minor repairs of bicycles or shoes; renovation and repairing of private dwellings; cleaning in private households; domestic care services and hairdressing. The experiment was initiated to test the impact of such reduced rates on job creation and combating the black economy. This Directive expires on 31 December 2010.

7.2 Other discrete pieces of VAT legislation allow, normally by way of derogations, certain Member States to apply reduced rates to restaurant services and some further aspects of house building and maintenance. Some of these provisions also expire on 31 December 2010.

7.3 In July 2008 the Commission presented this draft Directive to amend the VAT Directive so as to:

- make permanent, from 1 January 2011, the possibility of reduced rates for labour-intensive and locally supplied services;
- allow Member States to apply reduced rates to any of the listed categories of service;
- extend the scope of reduced rates to certain other specified labour-intensive and locally-supplied services;
- remove arbitrary borderlines of which services would be eligible for reduced rates; and
- expand the reduced rates currently permitted in the housing sector.

7.4 The Commission's impact assessment on these aspects of the draft Directive concluded that applying reduced rates to the specified labour-intensive and locally-supplied services might give rise to various beneficial effects, although this would very much depend on the economic context (and broader tax policies) within each Member State.

7.5 The draft Directive also included what the Commission described as technical amendments to the VAT Directive. These incorporated legal drafting amendments, clarifications and revisions of Annex III of the VAT Directive (which lists the goods and services to which reduced rates may be applied) to take account of technical progress or remove current inconsistencies. The changes included permitting a reduced rate for audiobooks and a rewording of the provision which currently allows Member States to apply a reduced rate to the reception of radio and television broadcasting services.

7.6 When we considered this document, in October 2008, we said that we believed that the increased flexibility for Member States in the application of VAT rates that was the principal purpose of this draft Directive was to be welcomed. However we noted the Government's wish to explore further the so-called technical amendments in the document and shared its regret that this aspect of the proposal was not covered in the Commission's impact assessment.

7.7 Before considering the draft Directive further we asked to hear from the Government:

- about the outcome of its examination of the technical amendments; and
- whether it had had any success in getting an impact assessment on those amendments from the Commission.

Meanwhile the document remained under scrutiny.[25]

The Minister's letter

7.8 In his letter of 3 November 2008, the Financial Secretary to the Treasury (Mr Stephen Timms) tells us that:

- there have been five Council Working Group meetings to discuss the draft Directive;
- several Member States have urged the Commission to produce a new more detailed impact assessment, with full consideration of some of the technical amendments, such as a reduced rate for audiobooks;
- the Commission says that it has followed its impact assessment procedures and no further assessment has been produced;
- discussions of the technical amendments have centred on their potential impacts on the single market and have underlined the importance of legal clarity in order to minimise such impacts, if amendments are agreed;

25 See headnote.

- the Government's final assessment of the technical amendments will be based on the principle of supporting the flexibility of Member States to apply the VAT rates they wish in support of their domestic priorities and social objectives, provided those rates do not materially affect the functioning of the single market;
- following discussion of the general principles of reduced VAT rates at the September and October 2008 ECOFIN Councils the French Presidency plans what the Government expects to be a preliminary political discussion of a compromise proposal by the ECOFIN Council on 4 November 2008; and
- this discussion is expected to be followed by further technical work in preparation for a more comprehensive discussion at the December 2008 ECOFIN Council, at which the Presidency would hope to secure agreement on a general approach.

Conclusion

7.9 **We are grateful to the Minister for this account of where matters stand on the draft Directive. We look forward to hearing in due course more detail about any problematic technical amendments and should like that report to be made to allow time to consider it properly before the December 2008 Council. Meanwhile the document remains under scrutiny.**

7.10 **As for the impact assessment issue we assume that the Commission is unlikely to produce anything further for this proposal. But we urge the Government, as a matter of general principle, to continue pressing the Commission for adequate impact assessments on all legislative proposals**.

8 Financial services

(30003) 13713/08 + ADDs 1–2 COM(08)602	Draft Directive amending Directives 2006/48/EC and 2006/49/EC as regards banks affiliated to central institutions, certain own funds items, large exposures, supervisory arrangements, and crisis management

Legal base	Article 47(2) EC; co-decision; QMV
Document originated	1 October 2008
Deposited in Parliament	7 October 2008
Department	HM Treasury
Basis of consideration	EM of 21 October 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

8.1 Directives 2006/48/EC and 2006/49/EC, known collectively as the Capital Requirements Directive (CRD) introduced, from 1 January 2008, a new framework for the prudential supervision of the capital held by banks and other financial services firms in the Community.[26] This reflected new standards, known as Basel II, agreed internationally in the Basel Committee on Banking Supervision[27] in 2004.

The document

8.2 This draft Directive is to amend the CRD with the aim of:

- strengthening prudential requirements;
- improving supervisory coordination and efficiency of supervision; and
- increasing convergence across the Community.

The Commission notes, in the impact assessment that accompanies the proposal, that the draft Directive has been prompted partly "by the financial market turbulence that started in 2007". The specific amendments relate to the large exposures regime, hybrid capital instruments, supervision and supervisory colleges, requirements for securitisation and risk transfer activities and liquidity.

8.3 The CRD's large exposure regime aims to ensure financial institutions are not exposed too heavily to any single or connected counterparty. The draft Directive would:

- clarify definitions of connected clients;
- simplify the regime into a single exposure limit of 25% of a bank's own funds;
- simplify exemptions from exposure limits;
- extend the current limit for inter-bank exposures to all exposures regardless of maturity;
- set a higher limit, of €150 million, for exposures for smaller banks; and
- exempt investment firms with "limited licence" and "limited activities" from the regime.

8.4 Hybrid capital instruments, capital that is structured as debt but with equity-like features, are subject, because of a lack of Community rules, to a variety of treatment at national level as to whether they are a bank's own funds. Divergence relates both to the eligibility criteria which such instruments should comply with in order to qualify as own

26 (25852) 11545/04 + ADDs 1–3: see HC 42–xxxiii (2003–04), chapter 2 (20 October 2004) and *Stg Co Deb,* European Standing Committee B, 8 November 2004, cols 3–18.

27 The Basel Committee is composed of representatives of the supervisory authorities (and central banks where these are not the same institution) of Belgium, Canada, France, Germany, Italy, Japan, Luxembourg, the Netherlands, Spain, Sweden, Switzerland, the United Kingdom and the United States. The Financial Services Authority and the Bank of England represent the UK at the Basel Committee.

funds for prudential purposes and the quantitative limits for acceptance as firms' original own funds. The draft Directive would:

- provide a common interpretation of the three main eligibility criteria that correspond with "higher quality" capital — permanence, loss absorption and flexibility in payments; and
- establish harmonised quantitative limits for the extent to which such instruments may be accepted as original own funds;

8.5 On supervisory arrangements the Commission aims to reinforce the efficiency and effectiveness of supervision of cross-border banking groups by formalising supervisory colleges, that is the supervisory authorities of the Member States led by the "consolidating supervisor" (the supervisor responsible for the parent institution or holding company). Such colleges would be required to:

- exchange information;
- agree on voluntary entrustment of tasks and delegation of responsibilities;
- determine supervisory examination programmes based on a risk assessment of the group;
- increase the efficiency of supervision by removing unnecessary duplication of supervisory requirements;
- consistently apply the prudential requirements of the Directive across all entities within a banking group;
- take into account the work of other fora that may be established in this area, such as cross-border stability groups;
- have regard to the implication of their decisions on the financial stability in other Member States; and
- agree on such issues for the whole banking group as total capital for the group, the distribution of capital across subsidiaries, liquidity in subsidiaries and branches and reporting requirements. Where agreement is not reached a mediation mechanism is proposed using the Committee of European Banking Supervisors[28] as an advisory body, with the consolidating supervisor taking the final decision.

8.6 In relation to requirements for securitisation[29] and other risk transfer activities the draft Directive would:

- in order to improve risk management, provide for better alignment of potentially misaligned incentives; and

28 This committee is the Level 3 committee in the financial services Lamfalussy process for the banking sector. For a description of the Lamfalussy process see the annex to this chapter.

29 Securitisation is the process of creating asset-backed securities — debt instruments secured against specific assets or cash flows. The originating institution issues debt securities that are repaid using only these cash flows. Investors in these securities normally have no further recourse against the originator if the cash flows prove insufficient. Securitisation can be seen as a way of selling a stream of cash flows and transferring risk.

- impose disclosure and diligence requirements on investors before they can invest and monitoring requirements on an ongoing basis, alongside transparency requirements, on originators before they can sell.

8.7 The draft Directive would make a number of technical amendments including some designed to highlight the need for bankers to set an appropriate level of liquidity risk tolerance and better understand their liquidity risk profile.

The Government's view

8.8 In his Explanatory Memorandum of 21 October 2008, the Economic Secretary to the Treasury (Ian Pearson) first reminds us that the purpose of the CRD was to modernise and update the Community legal framework relating to the prudential supervision of the capital held by banks and other financial institutions in line with the internationally agreed recommendations from the Basel Committee and that it forms a key part of the Community's Financial Services Action Plan for developing a single market in financial services.

8.9 The Minister then comments that the proposed amendments have the potential to deliver significant benefits for the UK in terms of:

- strengthened prudential regulations, through reducing the likelihood of a systemically important institution incurring disproportionately large losses as a result of the failure of an individual client (or group of connected clients) due to the occurrence of unforeseen events;
- improved risk management, through improved transparency and due diligence requirements for securitisations;
- stronger supervision, through closer cooperation and information exchange;
- strengthened financial stability, contributing to the Government's ongoing response to the financial market disruption;
- greater convergence across the Community; and
- improved liquidity management.

He says that the Government fully supports implementation of these amendments and where appropriate will seek adjustments to further improve outcomes, adding that proportionate initiatives to improve risk management, due diligence and transparency should all be welcomed if the UK is to remain a competitive financial centre.

8.10 The Minister also gives us the Treasury's initial impact assessment which concludes:

> "The Proposal has the potential to deliver significant benefits for the UK in terms of strengthened financial stability, more efficient and effective supervision of financial institutions, greater convergence across the EU and a balanced contribution [to] the broader response to the recent financial to the recent financial market disruption. Therefore the UK fully supports the implementation of these Directive amendments and where appropriate will seek adjustments to ensure a more balanced outcome.

> "The proposed date for implementing the amended CRD in the UK is 31 March 2010. We do not currently see any large costs to implementing the Directive that would cause the UK to breach Community obligations by not implementing."

The Minister also tells us that the Commission ran an open consultation for two months between 16 April and 17 June 2008 and published a feedback statement shortly after. It received 118 responses from across the Community, including from each of the UK's major trade associations and a number of individual institutions. Domestically, the Treasury and the Financial Services Authority have held and attended a number of meetings to raise awareness in the industry and to actively encourage responses. This engagement will continue throughout the remainder of the process and the authority will consult ahead of implementation during 2009.

Conclusion

8.11 **Clearly improvement to the Capital Requirements Directive is to be welcomed and we note the Government's general acceptance of the proposals in this draft Directive, which are aimed at such an improvement. We should like to hear in due course from the Government how negotiations on this proposal develop.**

8.12 **Meanwhile we draw the document to the attention of the Treasury Committee in connection with its present inquiry into the banking crisis.**

8.13 **Once we have further information from the Government and have seen the Treasury Committee's report of its inquiry we may recommend this document for debate. Meanwhile it remains under scrutiny.**

Annex

The Lamfalussy process

The Lamfalussy process, introduced in 2001, is a regulatory arrangement for the financial services sector. It is an elaborated version of the comitology procedures used, under a wide range of Community legislation, in relation to the Commission's regulatory and legislative powers.[30] The Lamfalussy arrangements comprise four levels:

- at Level 1 framework Community legislation, setting out core principles and defining implementing powers, is adopted by the Council and European Parliament through the co-decision procedure;

30 Comitology is the system of committees which oversees the exercise by the Commission of legislative powers delegated to it by the Council and the European Parliament. Comitology committees are made up of representatives of the Member States and chaired by the Commission. There are three types of procedure (*advisory, management and regulatory*), an important difference between which is the degree of involvement and power of Member States' representatives. So-called "Regulatory with Scrutiny", introduced in July 2006, gives a scrutiny role to the European Parliament in most applications of comitology.

- at Level 2 technical implementing measures, relating to a Level 1 framework Directive, are adopted by the Commission after being agreed by the relevant comitology committee — the European Securities Committee, the European Banking Committee or the European Insurance and Occupational Pensions Committee, composed of high level representatives of the Member States and chaired by the Commission;

- at Level 3, committees of national supervisors — the Committee of European Banking Supervisors, the Committee of European Insurance and Occupational Pensions Supervisors and the Committee of European Securities Regulators, composed of high level representatives from banking supervisory authorities and central banks, from insurance and occupational pensions supervisory authorities and from securities regulatory authorities. Each committee has a chairman elected from amongst the members and a high level representative from the Commission. The committees act as an advisory group to the Commission in the preparation of Level 2 implementing measures, as well as working to promote the consistent and convergent implementation of Community Directives by securing more effective supervisory cooperation between national supervisory authorities and the convergence of supervisory practices; and

- at Level 4, the Commission enforces the timely and correct implementation of Community legislation into national law (transposition).

9 Improving the work-life balance

(30015) 13977/08 COM(08) 635	Commission Communication: *A better work-life balance: stronger support for reconciling professional, private and family life*

Legal base	—
Document originated	3 October 2008
Deposited in Parliament	10 October 2008
Department	Business, Enterprise and Regulatory Reform
Basis of consideration	EM of 23 October 2008
Previous Committee Report	None
To be discussed in Council	No date set
Committee's assessment	Politically important
Committee's decision	Cleared

Background

9.1 Individuals make their own choices about where to strike the balance between the claims of their employment, their families and their personal lives. The choice is influenced

by the culture and society in which they live and, in particular, by public policies on, for example, equal pay, maternity leave and childcare facilities.

9.2 Member States have the primary responsibility for deciding the public policies on such matters. But the EC also has relevant responsibilities. Article 2 of the EC Treaty expressly provides that the Community's task includes, among other things, promoting a high level of employment and social protection, equality between men and women and raising standards of living and the quality of life. The Treaty contains specific powers and duties for Community action to achieve these objectives. For example, Article 137 requires the Community to support and complement the activities of Member States on, for example, working conditions, the social security and social protection of workers, the integration of people excluded from the labour market and equality between men and women in treatment at work and in employment opportunities. The Article also gives the Council power to adopt Directives setting minimum requirements for those matters. There is extensive EC legislation on the prohibition of gender discrimination in employment and there are also Directives on, for example, maternity and paternity leave.

9.3 Article 138 of the EC Treaty:

- gives the Commission a duty to promote consultation between management and labour ("the social partners") at Community level; and
- requires the Commission to consult the social partners before making proposals on social policy and to consult them about the contents of any such proposals.

Article 139 of the Treaty provides that consultation between the social partners may lead to agreements between them. If an agreement is about a matter covered by Article 137, the social partners may ask the Council to give effect to it by a Decision.

The document

9.4 The Commission's Communication provides an over-view of the legislation it is proposing to improve the conditions for the reconciliation of family and work demands; reports on the discussions between the social partners about family-related leave from employment; and summarises action the Commission will take to improve knowledge about policies on the work-life balance.

9.5 The Communication summarises the Commission's proposal for a Directive to amend the existing EC legislation on maternity leave so as to:

- increase the minimum entitlement to maternity leave from 14 to 18 weeks;
- give women greater rights to decide when to take their maternity leave before or after giving birth; and
- improve employment protection for women when on maternity leave and returning from it.[31]

31 (30022) 13983/08: see chapter 2 above.

9.6 The Communication also refers to the Commission's proposal to repeal the existing Directive on the equal treatment of men and women engaged in a self-employed capacity and to replace it with a new Directive,[32] the main provisions of which would:

- give female self-employed workers and the husbands or life-partners who assist them the same maternity leave entitlement as employees have under EC law; and
- entitle an assisting spouse or life-partner, if recognised in national law, the right to join the same social security scheme as self-employed workers.

The Commission says that the intention of these changes is to lessen the disincentive for women to become self-employed and to reduce the vulnerability of spouses and life-partners who assist self-employed women.

9.7 The Communication reports that, in July 2008, the social partners announced their intention to begin negotiations on better ways to achieve the aims of the Parental Leave Directive.[33] If the social partners reach an agreement and ask the Commission to take action to give effect to it, the Commission will propose a Council Directive for the purpose.

9.8 The Communication summarises the findings of the Commission's report on "*Implementation of the Barcelona objectives concerning childcare facilities for pre-school-age children*.[34] In 2002, the European Council at its meeting in Barcelona urged Member States to remove disincentives to female participation in the labour force by aiming to provide, by 2010, childcare for at least 90% of children aged between three and five and for at least 33% of children under three. The Commission's implementation report finds that:

- most Member States are unlikely to meet the targets;
- where facilities exist, they are often expensive or the opening hours are not compatible with full-time work or jobs with unusual working hours; and
- the quality of the facilities (such as the staff-child ratio) could deter parents from using them.

In the light of the report's findings, the Commission will promote the exchange of good practice on the provision of childcare for pre-school-age children and encourage the development of affordable services of a good quality.

9.9 The Communication says that, in order to improve knowledge about policies on reconciling work and family life, the Commission will continue to develop, with the Member States, comparable statistics about childcare, flexible working-time, the use of family-related leave and other policies to help people reconcile the competing claims on their time.

9.10 The Communication concludes that the legislation the Commission is proposing and the outcome of the social partners' negotiations will enable women to achieve greater economic independence and encourage men to play a greater role in family life. Action by

32 (30021) 13981/08.

33 Council Directive 96/34//EC: OJ No. L 145, 19.6.96, p.4.

34 (30016) 13978/08.

the Community is necessary and appropriate in order to achieve the Community's task of gender equality and the targets of the Lisbon strategy. But Member States have the primary responsibility for helping people strike the work-life balance that suits them. The Commission calls on them to implement the measures necessary to give men and women real choices and, in particular, urges them to meet the targets for the provision of childcare.

The Government's view

9.11 In his Explanatory Memorandum of 23 October 2008, the Minister of State for Employment Relations at the Department for Business, Enterprise and Regulatory Reform (Mr Pat McFadden) tells us that the Government agrees with the Commission that parents should have the support they need to reconcile their work and family responsibilities. He says that:

> "The UK has developed a strong record in bringing forward measures to provide this support to parents, including generous maternity leave and pay provisions, paid paternity and adoption leave and a right to request flexible working."

The Minister's Explanatory Memorandum gives further details about the situation in the UK. For example, it notes that about 13.6 million jobs are currently held by women (about the same number are held by men) and that the participation rate of women in the UK labour market is 70%, substantially above the EC-wide target of 60%.

Conclusion

9.12 **The Communication is for information. It provides a useful overview of the Commission's proposals for further legislation on maternity rights and equal treatment of men and women in self-employment and the current negotiations between the social partners on measures to help people achieve the work-life balance which suits them. We are content to clear the document from scrutiny with this short report to draw its contents to the attention of the House.**

10 Maritime safety

(a) (27324) 6843/06 COM(05) 586	Draft Directive on compliance with flag state requirements
(b) (27271) 5907/06 COM(05) 593	Draft Directive on the civil liability and financial guarantees of shipowners
(c) (29106) 14486/07 COM(07) 674	Amended Draft Directive on the civil liability and financial guarantees of shipowners

Legal base	Article 80(2) EC; co-decision; QMV
Department	Transport
Basis of consideration	Minister's letter of 1 October 2008
Previous Committee Reports	(a) HC 34–xxxiv (2005–06), chapter 3 (5 July 2006) and HC 41–xxiii (2006–07), chapter 5 (6 June 2007) (b) HC 34–xxi (2005–06), chapter 6 (8 March 2006) and HC 16–i (2007–08), chapter 3 (7 November 2007) (c) HC 16–v (2007–08), chapter 3 (5 December 2007) (a)-(c) HC 16–xxviii (2007–08), chapter 4 (22 July 2008) and HC 16–xxx (2007–08), chapter 6 (8 October 2008)
Discussed in Council	9 October 2008
Committee's assessment	Legally and politically important
Committee's decision	Cleared

Background

10.1 In November 2005 the Commission proposed seven discrete legislative measures which it described as the "Third Maritime Safety Package". It is also referred to as Erica III, recalling the sinking of the oil tanker *Erica* in December 1999. Five of the proposals have been cleared from scrutiny:

- a draft Directive to amend Directive 2002/59/EC establishing a Community vessel traffic monitoring and information system — cleared in June 2007;[35]
- a draft Directive on port state control (Recast) — cleared December 2006;[36]

35 (27218) 5171/06: see HC 34–xviii (2005–06), chapter 8 (8 February 2006), HC 34–xxx (2005–06), chapter 2 (24 May 2006), HC 41–xxii (2006–07), chapter 2 (16 May 2007) and HC 41–xxiii (2006–07), chapter 14 (6 June 2007).

- a draft Directive on common rules and standards for ship inspection and survey organizations and for the relevant activities of maritime administrations — cleared November 2007;[37]
- a draft Directive establishing the fundamental principles governing the investigation of accidents in the maritime transport sector and amending Directives 1999/35/EC and 2002/59/EC — cleared May 2007;[38] and
- a draft Regulation on the liability of carriers of passengers by sea and inland waterways in the event of accidents and an amended draft Regulation on the liability of carriers of passengers by sea and inland waterways in the event of accidents — cleared in November 2007.[39]

This chapter deals primarily with the remaining two proposals.

10.2 Flag states, that is states which grant ships the right to fly their flag, have a responsibility as members of the International Maritime Organization (IMO) to comply with the Organization's Conventions to which they are party. They must ensure that ships on their register meet the requirements laid down in those Conventions, which are designed to promote safety of life at sea and protection of the marine environment. The key obligations of flag states are set out in the Code for the Implementation of Mandatory IMO Instruments, adopted in November 2005. Compliance with these obligations is to be tested by means of an IMO Member State Audit Scheme, also adopted in November 2005. Participation in the Audit Scheme is voluntary. Moreover, the IMO has no power of sanction against state parties which do not implement Convention requirements or enforce these on ships that fly their flag.

10.3 The draft Directive, document (a), is intended by the Commission to ensure the compliance of all Member States with the flag state obligations set out in the IMO's implementation code. It would introduce into Community law the main IMO flag state requirements not yet covered in that law and so extend it. The draft Directive would have the effect of bringing into Community law a range of flag state responsibilities covered under international Conventions and thus transfer competence in these areas from Member States to the Community.

10.4 There are four IMO Conventions relating to the liability of shipowners:

- the 1996 Convention on Limitation of Liability for Maritime Claims (LLMC), to which the UK is a state party and which has the force of law in the UK;
- the 1992 International Convention on Civil Liability (CLC) for Oil Pollution Damage and its associated Fund Conventions (IOPCF), to which also the UK is a state party;

36 (27238) 5632/06: see HC 34–xx (2005–06), chapter 8 (1 March 2006) and HC 41–iii (2006–07), chapter 14 (6 December 2006).

37 (27272) 5912/06: see HC 34–xxi (2005–06), chapter 7 (8 March 2006), HC 41–iii (2006–07), chapter 3 (6 December 2006) and HC 16–iv (2007–08), chapter 21 (28 November 2007).

38 (27305) 6436/06 + ADD1: see HC 34–xxiii (2005–06), chapter 6 (29 March 2006) and HC 41–xxii (2006–07), chapter 8 (16 May 2007).

39 (27323) 6827/06: see HC 34–xxxvi (2005–06), chapter 7 (19 July 2006) and HC 16–iv (2007–08), chapter 24 (28 November 2007); and (29040) 14302/07: see HC 16–iv (2007–08), chapter 24 (28 November 2007).

- the 1996 International Convention of 1996 on Liability and Compensation for Damage in Connection with the carriage of Hazardous and Noxious Substances by Sea (the HNS Convention), which the Government aimed to ratify in 2006; and
- the 2001 International Convention on Civil Liability for Bunker Oil Pollution Damage (the Bunker Convention), which the Government also aimed to ratify in 2006.

10.5 The LLMC sets liability limits for two types of claims — claims for loss of life or personal injury and property claims (such as damage to other ships, property or harbour works). The IMO says it provides for a virtually unbreakable system of limiting liability, allowing unlimited liability against a person only if "it is proved that the loss resulted from his personal act or omission, committed with the intent to cause such a loss, or recklessly and with knowledge that such loss would probably result". The other conventions cover or will cover liability for the maritime transport of oil and other dangerous and polluting substances and the fuel oils of ships and require or will require shipowners to sign financial guarantees.

10.6 In 1999 the IMO adopted guidelines recommending that shipowners take out civil liability insurance. And some countries, including the UK, have established obligatory insurance systems.

10.7 The draft Directive, document (b), is intended to introduce a Community-wide civil liability regime governing liability and compulsory third party insurance. It is primarily aimed at shipowners operating ships in and out of Member State ports and terminals. The proposal would:

- require Member States to ratify the LLMC;
- remove in certain cases, including cases of gross negligence, the right of owners of ships of states that are not party to this convention to limit their liability;
- require financial guarantees (such as insurance or bank or other financial institution guarantee) for both Member State ships and for third country ships entering Community waters; and
- introduce a system of mandatory state certification for all ships, placing an obligation on Member States to validate the insurance of every ship on its register and issue a certificate attesting that insurance is in place.

The proposal would not affect liability and compensation arrangements contained in the CLC and the associated IOPCF, the HNS Convention and the Bunkers Convention.

10.8 The amended draft Directive, document (c), takes account, by insertions into the original text, rather than in a complete rewrite, of the European Parliament's first reading amendments to the draft Directive on civil liability, document (b).

10.9 We have considered these documents several times noting significant reservations about them both by the Government and other Member States, reservations which we shared. When we last considered the proposals, in early October 2008, having been reminded that the European Parliament had consistently pressed for all of the maritime

safety proposals to be considered as a package and had been very concerned about the lack of progress on the flag sate and civil liability legislation, we were told that:

- on 24 September 2008 the European Parliament had completed its second reading of the rest of the Erika III package proposals;
- the European Parliament had reinserted most of the amendments from its first reading that were not included in the Council common positions, meaning that conciliation was now the next stage for those proposals; and
- because it had had no assurances that the Council would adopt the flag state and civil liability legislation the European Parliament also had included amendments relating to both draft Directives into their amendments on the draft Directives on vessel traffic monitoring, port state control and ship inspection and survey organizations.

10.10 We recently heard further that the French Presidency had been active in trying to secure a political agreement on both the draft Directives. Following extensive negotiations during September 2008 the Presidency was now seeking agreement at the Transport Council on 9th October 2008 on a "Member State Statement" and political agreement on substantially amended versions of the two draft Directives. On the Statement we were told:

- although not legally binding, it provided a commitment from Member States to ratify certain IMO Conventions, if they had not already done so, undergo IMO audit, improve their position on the Paris Memorandum of Understanding on port state control inspections so that they were on its "white list" by 2012,[40] and adopt the IMO Flag State Code;
- none of these commitments were difficult for the Government to accept;
- it could therefore support the introduction of the Statement;
- essentially, the Statement provided a good deal of the real substance which the Commission originally wanted in the flag state proposal, but which the Member States had been unwilling to sanction due to the significant transfer of competence which would have resulted from the original draft Directive; and
- as it was a "Statement" no competence issues arose and most Member States seemed content to agree, although there were a few outstanding minor points of detail or clarification which needed to be addressed.

10.11 On the flag state draft Directive itself we heard that the latest version of the draft Directive was greatly amended from that rejected by the Council in the Spring of 2008. In order to secure agreement, the Presidency had removed most of the sections which would have increased Community competence and the latest draft required Community flag states to:

40 The Paris MOU ranks flag states according to the detention record of their ships being detained by port state control authorities. Ships on the "'black list" present the greatest safety and environmental risk, while those on the "grey list" experience fewer detentions and those on the "white list" perform best of all.

- follow a consistent Community practice for allowing a ship to operate under its flag, for accepting new vessels on its register and for transferring vessels to another flag state (including providing details of any deficiencies the vessel might have to the new flag state);
- ensure that any detained vessels flying its flag were brought into compliance with the necessary IMO ship safety requirements;
- maintain a database of information about the vessels on its register;
- ensure that every five years they would undergo an IMO Audit or an equivalent independent audit . This requirement might be subject to a "sunset clause" in that it would cease to apply if the IMO Audit Scheme were made mandatory at the global level. This suggestion had been added as a means of trying to persuade Member States to accept the Directive;
- develop and implement a quality management system for its flag state responsibilities; and
- report to the Commission if it appears on the Paris Memorandum of Understanding "grey list" for two successive years.

10.12 The Government advised us that, although this was quite a long list, there was little of genuine substance and the Directive had such limited overall effect that it was quite hard to justify its added value, adding that as redrafted, the proposal did not address the real issue which was the poor performance of non-Community flag states. It continued that:

- it was understood that there was still a blocking majority on the proposal even in its now diluted form;
- however, in view of the efforts being made by the Presidency, the Commission and the European Parliament it seemed increasingly likely that further consideration both before and during the forthcoming Council might enable an agreement to be reached;
- the Government, whilst seeking to minimise the impact of the proposal, was continuing to press for it to be blocked on the grounds that it was not consistent with the principles of better regulation and would not achieve the Commission's stated objective; but
- nonetheless, if a majority of the other Member States indicated their willingness to accept a weakened proposal at the Council, the Government would also be willing to agree to this, subject to securing a satisfactory agreement with the European Parliament on all of the Erica III measures.

10.13 As for the civil liability draft Directive we were told that:

- previous concerns regarding treaty law conflict with the United Nations Convention on the Law of the Sea and the LLMC were negated by the new text;

- the administrative burden on a Member State to issue verification certificates to its merchant fleet and to third country ships calling at the ports of Member States had been removed; and
- the proposal as redrafted was now very close to what the Government could accept as it was limited to a codification of an existing IMO Resolution, A.898, on the responsibility of shipowners to maintain insurance, which the Government had pressed for at the time.

10.14 Finally, it was emphasised to us again that, although a great deal had been achieved, the Government continued to be cautious about both the flag state and civil liability proposals and its possible support for any political agreement would depend upon the outcome of negotiations with the Presidency and European Parliament on the other measures comprising the whole Erica III package.

10.15 On the basis of all this we:

- recognised that, although they remained on the table, progress had been made towards rendering these two draft Directives harmless;
- recognised also that there might be sufficient progress on amending the draft Directives and on securing an acceptable agreement with the European Parliament on the other elements of the Erica III package to persuade the Government to concur in their adoption; and
- although keeping the two proposals under scrutiny pending an account of the outcome of the Transport Council of 9 October 2008, allowed the Government, in accordance with paragraph (3)(b) of the Scrutiny Reserve Resolution and if it became appropriate at that Council, to join in an agreement on the draft Directives.[41]

The Minister's letter

10.16 The Parliamentary Under Secretary of State, Department for Transport (Jim Fitzpatrick) writes now to tell us of the outcome on the two draft Directives of the Transport Council of 9 October 2008. In relation to the flag state draft Directive, document (a), he says that:

- in the last few days before the Council met there were further discussions on the requirement for each Member State to undergo an audit by the IMO;
- Member States agreed that their ability to meet a requirement to undergo an audit by the IMO would be determined by the IMO's available audit resources;
- at the Council, it was agreed therefore that Member States should undergo an IMO audit every seven years, rather than the five years previously suggested, but with a proviso allowing Member States more time if they could provide evidence that the IMO was unable to carry out their audit within the required seven year period;

41 See headnote.

- in view of these further improvements to the IMO audit requirements, and the very substantial amendments which had been made to the draft of the Directive since it was first launched in 2005, the Government agreed to support the proposal at the Council;
- this support was given, however, on condition that the European Parliament accepted the Council text of the flag state Directive and the achievement of satisfactory outcomes with the Parliament on the whole Erica III package; and
- the Council reached a political agreement on the revised draft Directive,[42] and its accompanying Member State Statement,[43] with little discussion.

10.17 Turning to the civil liability draft Directive, documents (b) and (c), the Minister tells us that:

- the Government was successful in ensuring that its key concerns, particularly those relating to the right of innocent passage of ships as allowed under the United Nations Convention on the Law of the Sea, were resolved satisfactorily in the run up to the Council;
- at the Council, the Government raised its only remaining specific concern, which related to a provision enabling Member States to expel an uninsured ship from one of their ports;
- the Government argued that it was better to detain the ship until evidence of adequate insurance in compliance with the Directive was provided to the Member State rather than simply expelling it and allowing it to continue uninsured around the coasts of the Community;
- other Member States supported this view and the Government was therefore able to secure an amendment to the text which resolved its concerns satisfactorily;
- the proposed Directive introduces compulsory insurance provisions and this is a useful addition to maritime safety in the Community;
- in view of the progress the Government had made to minimise the scope of this proposal and the successful negotiations both in the last few days before Council and at the Council itself, it was able to support the revised draft Directive at the Council;
- as with the flag state draft Directive, the Government's support was conditional on the European Parliament accepting the text as drafted and on a swift conclusion to the negotiations on the rest of the Erica III package; and
- following a satisfactory conclusion to the discussions on the expulsion issue, the Council reached a political agreement on the revised text of the Directive.[44]

42 See http://register.consilium.europa.eu/pdf/en/08/st13/st13594.en08.pdf .

43 See http://register.consilium.europa.eu/pdf/en/08/st13/st13596.en08.pdf .

44 See http://register.consilium.europa.eu/pdf/en/08/st13/st13595.en08.pdf .

10.18 The Minister summarises for us the changes in the revised text:

- the title of the Directive has been amended to include the words "the insurance of shipowners for maritime claims" in place of "the civil liability and financial guarantees of shipowners", reflecting the substantive changes;
- definitions of "ship", "civil liability", "financial security" and "IMO resolution 930(22)" have been removed, the definition of "shipowner" has been refined and a new definition of "insurance" has been added. These amendments have provided greater clarity to the text;
- introduction of the concept of "gross negligence" for ships flying the flag of third country states has been dropped. This avoids the introduction of a Community system at variance with the established arrangements set out in LLMC;
- Member States have agreed that the port state control authorities should verify the certificates required by the Directive and that a system of penalties for the breach of this requirement should be introduced;
- the proposal to remove the ceiling of liability as set out in the LLMC has been dropped. If the proposal had been included, Member States would have been obliged by Community law to breach the LLMC limits with a potentially significant impact on the marine insurance market;
- the requirement for the Member States to become a state party to the LLMC has been removed. This avoids the unnecessary interference in Member States' rights under international law;
- "financial guarantee system", "community office", "solidarity fund" and "the right of direct action against provider of the financial security system" proposals were not supported by the Member States. These proposals would have created significant additional requirements and expense for both the insurance industry and Member States without a commensurate benefit; and
- references to the HNS Convention have been removed. Their inclusion would have created potential legal difficulties for Member States in their ratification process of this Convention.

Conclusion

10.19 **We are grateful to the Minister for this account of the latest developments on these two legislative proposals. We endorse the reservations of the Government and like-minded Member States about the flag state draft Directive and the civil liability draft Directive and regret that they were unable to secure rejection of them. But we note that they were sufficiently amended to make their acceptance tolerable as part of a complete Erica III package to be agreed with the European Parliament. We have no further questions to ask and now clear documents (a), (b) and (c).**

11 Quality assurance in vocational education and training

(29613) 8289/08 COM(08) 179	Draft Recommendation on the establishment of a European Quality Assurance Reference Framework for vocational education and training.
+ ADD 1	Commission staff working document: impact assessment
+ ADD 2	Summary of impact assessment

Legal base	Articles 149(4) and 150(4) EC; co-decision; QMV
Department	Innovation, Universities and Skills
Basis of consideration	Minister's letter of 29 October 2008
Previous Committee Report	HC 16–xxi (2007–08), chapter 3 (14 May 2008)
To be discussed in Council	26 November 2008
Committee's assessment	Politically important
Committee's decision	Cleared

Background and previous scrutiny of the document

11.1 When we considered the draft Recommendation last May,[45] we noted that, in 2004, the Education Council endorsed the Common Quality Assurance Framework in Vocational Education and Training (VET) and invited the Commission and Member States to promote its use on a voluntary basis.[46] In October 2005, the Commission established the European Network on Quality Assurance in VET (ENQAVET); most of its members are experts nominated by Member States.

11.2 We also noted that, in the Commission's view, the Common Quality Assurance Framework had been useful, but that the quality criteria and indicators which underpin the Framework should now be made explicit and the status of the Framework strengthened. Accordingly, the Commission had proposed this draft Recommendation. It recommended that Member States:

- use the European Quality Assurance Reference Framework — together with the criteria and indicators in the Annexes to the Recommendation — to reform, develop and improve their VET systems;
- implement the Reference Framework no later than 2010;
- take part in ENQAVET's work on further development of criteria, indicators, and guidelines for quality improvement;

45 See headnote.

46 Council Conclusions on Quality Assurance in vocational education and training, 28 May 2004. The Framework provided common principles and a reference point for the assessment and improvement of VET systems and courses.

- designate a Quality Assurance National Reference Point to bring together everyone concerned with VET, disseminate information about the ENQAVET's activities and promote the national development of the Reference Framework; and
- review the implementation of the Recommendation every three years.

11.3 Annex 1 of the draft Recommendation proposed four common quality criteria for all VET systems and providers. For example, the fourth criterion was whether the VET system or provider has a review stage. Annex 2 proposed ten indicators to support the evaluation, monitoring and quality improvement of VET systems and providers. For example: indicator 2 would be used to help evaluate investment in training of teachers and trainers.

11.4 In his Explanatory Memorandum of 6 May, the then Minister of State for Lifelong Learning, Further and Higher Education at the Department for Innovation, Universities and Skills (Bill Rammell) told us that the Government broadly welcomed the proposal to develop a European Quality Assurance Reference Framework. But there were some important questions arising from devolution of responsibility for VET in the UK. For example, how would the Reference Framework be coordinated across England, Scotland, Wales and Northern Ireland; and how would the recommendation for the appointment of a Quality Assurance National Reference Point apply to the UK? There would be discussions between the Government and the devolved administrations about these questions.

11.5 The Minister added that the Governments of the UK and some other Member States were concerned about developing so many new indicators. Moreover, the UK would press for the European framework to be as consistent as possible with quality assurance arrangements across the UK, and with developments taking place in the UK Vocational Qualifications Reform Programme.

11.6 In the conclusion to our report on the draft Recommendation, we said that we understood why the Government broadly welcomed the Commission's proposal. On the other hand, we could also understand the Minister's concerns. We asked the Minister to keep us informed of the Government's discussions with the devolved administrations and to give us progress reports on the negotiations in the Council and its working groups. Meanwhile, we kept the document under scrutiny.

The Minister's letter of 29 October 2008

11.7 The letter from the Parliamentary Under-Secretary of State at the Department for Innovation, Universities and Skills (Mr Siôn Simon) tells us that:

- The concerns expressed in the then Minister's Explanatory Memorandum of 6 May were shared by the majority of Member States and have been resolved satisfactorily in a revised draft of the Recommendation;
- The revised draft makes it clear that the Common Quality Assurance Framework in VET is not binding on Member States and is to be applied in accordance with national legislation and practice;

- The proposed indicators are to serve as a "toolkit", with Member States deciding which to use in their own circumstances so the UK would not be required to collect a range of new data.
- The Quality Assurance National Reference Point for VET is to be linked to each Member State's arrangements. The Government has agreed with the devolved administrations that the each country should discharge the functions in its area; and one administration will act as the main contact point and forward any questions it receives to the relevant administration; and
- Member States have agreed "to devise an approach" to improving national quality assurance systems within two years of the Recommendation being adopted. There will be no difficulty in preparing a UK approach within that time because there are already systems for quality assurance in each of the four countries.

11.8 The Minister tells us that the Government can fully support the revised proposal. He expects a General Approach on the Recommendation to be agreed at the Education Council on 26 November and hopes that we will feel able to clear the proposal so that the Government can take part in the agreement.

Conclusion

11.9 **We are grateful to the Minister for his helpful letter. It provides the information for which we asked. It is clear that the views of the UK and other Member States have been effective in securing a revised draft of the Recommendation which is proportionate and properly recognises the responsibilities of the Member States for VET and quality assurance of it. We are, therefore, content to clear the document from scrutiny.**

12 European Union military operation in Chad and the Central African Republic

(a) (29396) — —	Council Decision on launching the European Union military operation in the Republic of Chad and in the Central African Republic (operation EUFOR Tchad/RCA)
(b) (29397) — —	Council Decision concerning the conclusion of the Agreement between the European Union and the Republic of Cameroon on the status of the European Union-led forces in transit within the territory of the Republic of Cameroon
(c) (29398) — —	Council Decision concerning the conclusion of the Agreement between the European Union and the Republic of Chad on the status of the European Union led forces in the Republic of Chad

Legal base	Article 17(2) EU; unanimity
Department	Foreign and Commonwealth Office
Basis of consideration	Minister's letter of 30 October 2008
Previous Committee Report	HC16–xiii (2007–08), chapter 12 (6 February 2008); also see (28946) —: HC 41–xxxiv (2006–07), chapter 18 (10 October 2007) and HC 16–i (2007–08), chapter 17 (7 November 2007)
Discussed in Council	28 January 2008 General Affairs and External Relations Council
Committee's assessment	Politically important
Committee's decision	Cleared (reported to the House on 6 February 2008); further information requested

Background

12.1 UN Security Council Resolution 1769 of 31 July authorized the deployment of a 26,000-strong joint UN-AU force, in an attempt to quell the violence in Sudan's western Darfur region, where fighting between pro-Government militias and rebel guerrillas has killed more than 250,000 people since 2003. To be known as UNAMID, it was to have up to 19,555 military personnel, including 360 military observers and liaison officers, a civilian component including up to 3,772 international police and 19 special police units with up to 2,660 officers. An offer of EU supporting action emanated from the July GAERC.

12.2 The Committee cleared the relevant authorising Joint Action on 10 October. In his accompanying EM, the then Minister for Europe explained that following a UN report on the situation in neighbouring Chad — which indicated that the humanitarian situation had

shown no signs of improving since February, with more than 400,000 refugees and internally displaced persons (IDPs) as a result of the fighting and an estimated 700,000 others in host communities also affected — and a UN Security Council Presidential Statement supporting the proposed EU mission, on 25 September UNSCR 1778 authorised deployment of a "multidimensional presence" — a new UN policing-focussed mission in eastern Chad and north-eastern Central African Republic in these two areas, to be known as MINURCAT, and a military force to protect and support the personnel of the UN mission for one year.

12.3 The then Minister said that although the UK had confirmed publicly its strong support for this operation and although a small number of UK personnel were likely to participate in the mission, "other heavy operational commitments" would rule out deploying ground forces; France was likely to provide the largest single contribution to the mission; other likely contributors included Sweden, Belgium and Poland. Financing arrangements would be standard for ESDP operations, with the UK likely to be paying £10–15 million towards the common costs (in line with its standard 17.5% contribution). The EU and UN were keen to deploy the missions as soon as possible: once the rainy season had ended, from mid-October onwards. In the circumstances, the Committee considered this sufficient information to clear the Joint Action, which it reported to the House, given the interest in ESDP and the Darfur crisis.[47]

12.4 In a subsequent response to a request by the Committee for clarification, the then Minister said that the EU military planning documents, which continued to be developed, focussed on the key functions of contributing to: protecting civilians in danger; facilitating the delivery of humanitarian aid and the free movement of humanitarian personnel through improved security; protecting UN and associated personnel — all of which were authorised by UNSCR 1778. The EU mission would therefore be multi-tasked, and prepared and resourced to meet this challenge, which potentially required a wider area of operations than would be necessary just to contribute to protecting UN personnel. On size and composition, it would consist of 3–4000 predominantly French troops. On the financial aspects, the current UK contribution would be £9.9 million, but it would also be called upon at some stage to contribute an estimated additional £4–5 million towards the costs of intelligence/surveillance assets. The Committee reported this additional information on 7 November, and asked the Minister to report in a year's time (i.e., when the mission's term ends) with information on its final size, composition and cost, and his assessment of its effectiveness.[48]

12.5 In further correspondence with the then Minister, the Committee also agreed on 12 December 2007 that, with the Christmas recess imminent and given the overall situation in the region, it would not object were the Minister to agree the consequential Council Decisions (which were all standard for such operations, and based on already-cleared templates) ahead of scrutiny. In subsequent EMs, the then Minister explained that, following approval of the operation plan, rules of engagement and the standard Status of Forces Agreements (SOFA) with host countries and countries through which the troops would travel (Cameroon), the Council Decisions were adopted at the 28 January GAERC

47 See head note: (28946) —: HC 41–xxxiv (2006–07), chapter 18 (10 October 2007).

48 Ditto: HC 16–i (2007–08), chapter 17 (7 November 2007).

(the SOFA with the Central African Republic was not yet ready, but the Central African Republic had made a unilateral declaration on status of EU-led forces, to cover the interim); this allowed EUFOR to be launched, with the expectation of reaching Initial Operational Capability (IOC) by mid-March and Full Operational Capability in May 2008.

12.6 Though no questions arose, the Committee considered that a further Report was warranted for two reasons. Firstly, developments at the time in Chad appeared to be casting further doubt over when the mission would actually be launched. Secondly, when we reported the original Joint Action to the House, we asked the then Minister to write again at the end of the mission's one-year term with information on its final size, composition and cost, and his assessment of its effectiveness; however, he now said that the Joint Action gave EUFOR an end-date of 12 months from the point that it reached IOC, with a review after 6 months to consider UN or other follow up requirements. We therefore asked him, in the first instance, to write at that point, to let us know what that review had concluded and what his views were on those conclusions.[49]

The Minister's letter

12.7 In her letter of 30 October 2008, the Minister for Europe at the Foreign and Commonwealth Office (Caroline Flint) says that the mid-mandate review of EUFOR was published on 7 July. At that time, she says, the review described the political security and socio-economic situation in both Chad and CAR as remaining "fragile" and noted that "the attack on N'Djamena in February coincided with the launch of EUFOR and delayed the start of the operation, though deployment recommenced almost immediately". She continues as follows:

> "The review highlighted the signing of the Dakar Agreement between Chad and Sudan as a significant political development during EUFOR's deployment. Signed on 13 March, the Dakar Agreement commits Chad and Sudan to respecting previous peace agreements, normalising relations and putting a definitive end to disputes between the two countries. The resumption of work on the 13 August Accord, an EU facilitated agreement between the Chadian Government and the Chadian political opposition which had been delayed due to the events in February, was also significant progress. We support continued efforts by the EU, on behalf of the Member States, to increase political dialogue in Chad in parallel with the ongoing ESDP military mission."

12.8 The Minister then says that:

> "The review concluded that governments and international actors, including humanitarian organisations, recognised that EUFOR had delivered improvements to the general security and perception of security of eastern Chad and north eastern CAR. The local population were positive towards EUFOR's presence and had high expectations of what MINURCAT, the UN policing mission in Chad, could deliver in terms of improved human security in camps and surrounding areas. We urge

49 Ditto: HC16–xiii (2007–08), chapter 12 (6 February 2008).

continuing close co-operation between EUFOR and MINURCAT to ensure that the operation is a success.

"Despite sporadic rebel activity, the overall security situation during the period has remained relatively calm. The High Representative[50] identified the principal threats to a safe and secure environment as rebel activity, criminality and banditry, which primarily impact on the civilian population and humanitarian efforts. We support his assessment of the need for a follow on UN force in Chad to address these threats, to avoid the possibility of a security vacuum when EUFOR leaves, to promote long term security and to address the humanitarian situation.

"The High Representative identified that the mid-term evaluation of the EU-UN multidimensional presence in Chad was, at that stage, difficult, given the limited deployment of MINURCAT. The Government, along with the EU, urged the UN to increase the rate of deployment of MINURCAT. President Deby of Chad has now signed a presidential decree authorising the deployment of MINURCAT-trained gendarmes, which should allow the force to deploy."

12.9 The Minister says that she supports this analysis and the main recommendations in Mr Solana's assessment and is "working closely with our EU partners to take a more disciplined and strategic approach to peacekeeping missions."

12.10 The Minister concludes by saying that:

"Since the EUFOR mid-mandate review, the UNSC has renewed the mandate for MINURCAT and expressed its intention to mandate a UN operation to replace EUFOR in Chad and CAR. The UK has raised concerns about the feasibility of and need for the UN military presence in CAR and about the UN's ability to generate sufficient forces for the new UN follow-on operation. We continue to work with UN Department for Peacekeeping Operations and partners on the Security Council to ensure these concerns are addressed."

Conclusion

12.11 **We are grateful to the Minister for this further information, which we are reporting to the House because of the high level of interest in developments in central Africa and in actual and potential further EU involvement in the region.**

12.12 **We note that, because of the limited deployment of MINURCAT so far, the Secretary General/High Representative has not been able properly to evaluate EUFOR'S impact and effectiveness so far, beyond the generalities set out in paragraph 12.8 above. We also note the Minister's somewhat Delphic remarks about "working closely with our EU partners to take a more disciplined and strategic approach to peacekeeping missions", which suggests an absence of such an approach thus far, and her further suggestion that the necessary close co-operation between EUFOR and MINURCAT has also been somewhat lacking hitherto.**

50 The Secretary General of the Council/High Representative for Common Foreign and Security Policy, Javier Solana.

12.13 **We look to the Minister to expand upon these issues more fully at the end of the EUFOR operation, when reporting on the final evaluation of the mission's cost, effectiveness and lessons to be learned.**

13 Amendments to the Rules of Procedure of the European courts and tribunals

a) (30042) 13298/08 — b) (30081) 14418/08 —	13298/08 & 14418/08 — Draft amendment to the Rules of Procedure of the Court of Justice of the European Communities — Election of the President of the Court of Justice (Article 7(3))
c) (30080) 13299/08 — d) (30083) 14420/08 —	13299/08 & 14420/08 — Draft amendment to the Rules of Procedure of the European Union Civil Service Tribunal — Election of the President of the European Union Civil Service Tribunal (Article 6(3))
e) (30077) 13300/08 — f) (30082) 14419/08 —	13300/08 & 14419/08 — Draft amendment to the Rules of Procedure of the Court of First Instance of the European Communities — Election of the President of the Court of First Instance (Article 7(3))
g) (30078) 13301/08 — h) (30084) 14443/08 —	13301/08 & 14443/08 — Draft Decision of the Council amending the Rules of Procedure of the Court of First Instance of the European Communities as regards the language arrangements applicable to appeals against decisions of the European Union Civil Service Tribunal

Legal base	Art 223 EC and Art 139(6) EAEC Treaties Voting: 13298/08, 14418/08; 13299/08,14420/08; and 13300/08, 14419/08 by QMV, and 13301/08, 14443/08: Council approval by unanimity
Deposited in Parliament	(a) 22 October 2008 (b)(c)(d)(f)(h) 30 October 2008 (e)(g) 28 October 2008
Department	FCO
Basis of consideration	EM of 3 November 2008
Previous Committee Report	None
To be discussed in Council	18 November 2008
Committee's assessment	Legally important
Committee's decision	Cleared

Background

13.1 Article 223 EC Treaty grants the Court of Justice the exclusive right of initiative in respect of any changes to its own rules of procedure and those governing proceedings of the Court of First Instance and the Civil Service Tribunal. Any proposed changes require the approval of the Council, generally by qualified majority. Minor amendments to the courts' rules of procedure are a relatively common occurrence.

13.2 On 24 September 2008 the President of the Court of Justice wrote to the President of the Council of Ministers proposing several amendments to the rules of procedure of the European courts.

The documents

13.3 The changes envisaged by the eight proposals may be summarised as follows:

Election of the Presidents of the Court of Justice, Court of First Instance and Civil Service Tribunal

13.4 The current provisions provide that the judges elect a President from among their number by secret ballot. The judge who obtains an absolute majority is elected. If no judge obtains an absolute majority, a second ballot is organised and the judge with the most votes is elected President. If two or more judges obtain the same number of votes, the older judge becomes President.

13.5 The proposed amendment removes the provision favouring the older judge. Instead, it is proposed that the judge who obtains the votes of more than half the judges composing the Court will be elected. If no judge obtains this majority, further ballots will be held until a judge does obtain such a majority. This amendment to the Rules of Procedure is proposed for the Court of Justice, Court of First Instance and Civil Service Tribunal. The changes will also apply to the election of Presidents of the Chambers within the Courts.

13.6 With these amendments, the Courts would ensure that the Presidents are elected by an absolute majority, something the current rules do not guarantee. In addition, reflecting age discrimination considerations, the Court is concerned about the appropriateness of a provision favouring the older judge.

Language arrangements in appeals against decisions of the Civil Service Tribunal

13.7 The amendment proposes a new Article 136a in the Rules of Procedure of the Court of First Instance specifying the language which is to apply to appeals against decisions of the Civil Service Tribunal. It proposes that the language of the appeal be the same as the original case to the Civil Service Tribunal. This mirrors similar provisions already in the Rules of Procedure of the Court of Justice when considering appeals against decisions of the Court of First Instance. This proposal takes the form of a separate Council decision because amendments to the Rules of Procedure relating to languages are subject to a different procedure to other amendments.

The Government's view

13.8 In her Explanatory Memorandum of 3 November 2008 the Minister for Europe (Caroline Flint) welcomes the proposed changes and briefly comments as follows:

> "The Government supports these amendments and considers them uncontroversial.
>
> "The amendments relating to the election of the Presidents of the Courts are in line with the UK's own anti-discrimination legislation. The Government also believes that facilitating election of the Presidents by absolute majority will encourage greater consensus among the judges on his or her election, thereby increasing the President's legitimacy and consequent authority.
>
> "The amendment relating to the language used in appeals to the Court of First Instance is technical and will bring the Rules of Procedure of this Court in line with those of the Court of Justice."

Conclusion

13.9 **We thank the Minister for her brief comments on these uncontroversial changes. We share the Government's support for these measures. Accordingly, we clear the documents from scrutiny.**

14 Marketing of products containing genetically modified soybean

(30074) 14683/08 COM(08) 669	Draft Council Decision authorising the placing on the market of food and feed products containing, consisting of, or produced from genetically modified soybean MON89788 (MON-89788–1) pursuant to Regulation (EC) No. 1829/2003

Legal base	Regulation (EC) No. 1829/2003: QMV
Documents originated	22 October 2008
Deposited in Parliament	28 October 2008
Department	Food Standards Agency
Basis of consideration	EM of 30 October 2008
Previous Committee Report	None
To be discussed in Council	24 November 2008
Committee's assessment	Politically important
Committee's decision	Cleared

Background

14.1 The marketing of genetically modified organisms within the Community is governed by two pieces of legislation — Directive 2001/18/EC,[51] which controls the release into the environment of the genetically modified product itself (typically maize), and Regulation (EC) No. 1829/2003,[52] which authorises the placing on the market of food or feed products containing such material. In the latter case, the initial application is made to the relevant authority in the Member State concerned, which forwards details to the Commission, other Member States and the European Food Safety Authority (EFSA). Once the Authority has given its opinion, the Commission puts a draft Decision to a Standing Committee of Member States' representatives, and the Decision is adopted if it secures the necessary qualified majority: if it does not, the matter is referred to the Council, which then has three months in which to reach a decision, failing which the Commission may adopt its original proposal.

The current proposal

14.2 This document deals with the authorisation of food, feed and other products produced from genetically modified soybean (line MON89788). An application was submitted to the Netherlands, and subsequently received a favourable opinion from the European Food Safety Authority (EFSA), which concluded that it was unlikely that this would have adverse effects on human or animal health or the environment.

51 OJ No. L 106, 17.4.01, p.1.

52 OJ No. L 268, 18.10.03, p.1.

14.3 In the light of that opinion, a draft Commission Decision authorising the marketing of the products in question was prepared, and submitted to the Standing Committee on the Food Chain and Animal Health on 29 September 2008, when 12 Member States (160 votes) were in favour of the proposal, six Member States (69 votes) were against, seven (106 votes) abstained, and two (10 votes) was not represented. Since support for the proposal fell short of the qualified majority required, it has been referred to the Council for a decision under the relevant rules of procedure (see above).

The Government's view

14.4 In an Explanatory Memorandum of 30 October 2008, the Minister of State for Public Health at the Department of Health (Dawn Primarolo) says that the UK accepts the safety advice from the EFSA, and considers that there are no grounds for not supporting authorisation. She adds that the proposal does not seek clearance for genetically modified soybean to be cultivated within the Community, which would require a further application.

Conclusion

14.5 **Although the authorisation of products containing genetically modified crops remains a matter of public interest, the content of this proposal is in line with the advice provided by the European Food Safety Authority, which is supported by the UK. We are therefore clearing it.**

15 Marketing of products containing genetically modified oilseed rape

(30091) — —	Draft Council Decision authorising the placing on the market of products containing, consisting of, or produced from genetically modified T45 oilseed rape under Regulation (EC) No. 1829/2003

Legal base	Regulation (EC) No. 1829/2003: QMV
Department	Food Standards Agency
Basis of consideration	EM of 30 October 2008
Previous Committee Report	None
Discussed in Council	24 November 2008
Committee's assessment	Politically important
Committee's decision	Cleared

Background

15.1 The marketing of genetically modified organisms within the Community is governed by two pieces of legislation — Directive 2001/18/EC,[53] which controls the release into the environment of the genetically modified product itself (typically maize), and Regulation (EC) No. 1829/2003,[54] which authorises the placing on the market of food or feed products containing such material. In the latter case, the initial application is made to the relevant authority in the Member State concerned, which forwards details to the Commission, other Member States and the European Food Safety Authority (EFSA). Once the Authority has given its opinion, the Commission puts a draft Decision to a Standing Committee of Member States' representatives, and the Decision is adopted if it secures the necessary qualified majority: if it does not, the matter is referred to the Council, which then has three months in which to reach a decision, failing which the Commission may adopt its original proposal.

The current proposal

15.2 This document deals with the authorisation of food, feed and other products produced from genetically modified oilseed rape (though its use for food additives and feed materials pre-dates the introduction of Regulation (EC) No 1829/2003, and is thus already permitted). Applications were submitted to the UK, and subsequently received a favourable opinion from the European Food Safety Authority (EFSA), which concluded that it was unlikely that this would have adverse effects on human or animal health or the environment.

15.3 In the light of that opinion, a draft Commission Decision authorising the marketing of the products in question was prepared, and submitted to the Standing Committee on the Food Chain and Animal Health on 14 July 2008, when 10 Member States (146 votes) were in favour of the proposal, 13 Member States (167 votes) were against, and four (32 votes) abstained.

15.4 Since support for the proposal fell short of the qualified majority required, it has had to be referred to the Council for a decision under the relevant rules of procedure (see above). However, notwithstanding the requirement for the Council to act within three months of a proposal being referred to it, we have been told by the Minister of State for Public Health at the Department of Health (Dawn Primarolo) that the matter may be considered by the Council on 24 November: and, since the Commission has yet to put a formal text to the Council, she has supplied us with an Explanatory Memorandum on the basis of the version considered by the Standing Committee, in order to avoid the risk of a scrutiny over-ride.

53 OJ No. L 106, 17.4.01, p.1.

54 OJ No. L 268, 18.10.03, p.1.

The Government's view

15.5 In her Explanatory Memorandum of 30 October 2008, the Minister says that the UK accepts the safety advice from the EFSA, and considers that there are no grounds for not supporting authorisation.

Conclusion

15.6 **Although the authorisation of products containing genetically modified crops remains a matter of public interest, the content of this proposal is in line with the advice provided by the European Food Safety Authority, which is supported by the UK. We are therefore clearing it.**

16 Protecting euro coins

(a) (28956) 13468/07 COM(07) 525	 Draft Regulation amending Regulation (EC) No 1338/2001 laying down measures necessary for the protection of the euro against counterfeiting
(b) (29936) 12586/08 + ADD 1 COM(08) 514	 Draft Regulation amending Regulation (EC) No 2182/2004 concerning medals and tokens similar to euro coins Draft Regulation amending Regulation (EC) No 2183/2004 extending to the non-participating Member States the application of Regulation (EC) No 2182/2004 concerning medals and tokens similar to euro coins

Legal base	(a) Article 123(4) EC; —; QMV (of eurozone members) (b) Article 123(4) EC; —; QMV (of eurozone members) and Article 308 EC; consultation; unanimity
Document originated	(b) 13 August 2008
Deposited in Parliament	(b) 4 September 2008
Department	HM Treasury
Basis of consideration	(a) Minister's letter of 28 October 2008 (b) EM of 20 October 2008
Previous Committee Report	(a) HC 16–xix (2007–08), chapter 4 (23 April 2008) (b) None
To be discussed in Council	(a) Possibly 4 November 2008 (b) Not known
Committee's assessment	(a) Legally and politically important (b) Politically important
Committee's decision	Cleared

Background

16.1 Council Regulation (EC) No 1338/2001 sets out for eurozone Member States the measures necessary for the protection of the euro against counterfeiting. Council Regulation (EC) 1339/2001 extends the effects of that Regulation to those Member States that have not adopted the euro. The draft Regulation, document (a), seeks to make three changes to the measures in Council Regulation (EC) No 1338/2001. First, the present Regulation requires credit institutions and any other related institutions to withdraw from circulation all euro notes and coins received by them which they know or believe to be counterfeit, and to hand them over to the competent national authorities. In 2001 there were no agreed uniform and effective methods for large-scale detection of counterfeits. Consequently, an obligation for these institutions to check for counterfeits was not included. Methods are now available for the institutions to detect counterfeits by

processing notes and coins before they are put back into circulation. Accordingly, the proposed Regulation would now impose an obligation on credit and related institutions to authenticate euro notes and coins before they are put back into circulation.

16.2 Secondly, the procedures in the present Regulation do not permit the transmission of counterfeit notes and coins between competent national authorities, which is necessary for adjustment of equipment used in detecting counterfeits. The proposed Regulation would authorise such transmissions. Thirdly, the present Regulation requires the European Technical and Scientific Centres (ETSC), which were established in 2001 on a temporary basis to analyse and categorise every new type of counterfeit coin, to communicate data to the Commission, as well as to the European Central Bank and to national authorities. However, the ETSC is now permanently established within the Commission and the proposed Regulation would remove the redundant obligation to communicate data to the Commission.

16.3 The proposed Regulation would also apply the changes in Council Regulation (EC) No 1338/2001 to Council Regulation (EC) No 1339/2001.

16.4 When we considered this document we noted the very real concerns about the substance of the proposal which could affect UK firms inappropriately and disproportionately. But we were even more concerned at the possibility that this measure would be imposed on Member States not in the eurozone, including the UK, by a Regulation on which they would have no vote. So we presumed that the Government would insist that only Regulation (EC) No 1338/2001 be amended using Article 123(4) EC and that Regulation (EC) No 1339/2001 be amended by use of Article 308 EC. (These were the legal bases used respectively for Regulations (EC) No 1338/2001 and 1339/2001.) We said that before considering this document further we wished to hear about the success of the Government's efforts to obtain both more acceptable legal bases for the proposed legislation and measures which were clearly appropriate and proportionate to the situation of the UK's financial services. Meanwhile the document remained under scrutiny.[55]

16.5 Council Regulation 2182/2004 aims to protect euro coins against confusion with medals and tokens with designs similar to euro coins. Since adoption the Regulation has contributed to avoiding similarity between euro coins and medals and tokens, as private companies now generally comply with the definitions and the prohibitions established in the Regulation. Council Regulation (EC) 2183/2004 extends the effects of that Regulation to those Member States that have not adopted the euro.

The new document

16.6 The first draft Regulation in document (b) would amend Council Regulation 2182/2004 so as to clarify what designs, words, symbols and marks are prohibited in the production and sale of medals and tokens and which the Commission may use to determine if a medal or token falls within the prohibition. The second draft Regulation would amend Council Regulation (EC) 2183/2004 so as to extend the effects of the amended principal Regulation to those Member States that have not adopted the euro.

55 See headnote.

The Minister's letter

16.7 The then Economic Secretary (Kitty Ussher) tells us that since our report of April 2008 there have been continuing negotiations on the proposal in document (a) (and discussions with interested parties within the UK, including banks and other firms). The negotiations have produced compromise proposals which:

- provide for a second Regulation, to be adopted under Article 308 EC, to apply the new measures to non-eurozone Member States. Apart from meeting the important legal principle, proceeding on the basis of measures addressed separately to eurozone and non-eurozone Member States allows different circumstances to be taken to account with respect to the principle of proportionality;
- adopt a lengthy lead–in period with the measure not taking effect until the end of 2011. As a result, firms will be able to adapt their procedures over time to reflect the terms of the Regulation, without the need for sudden measures or immediate disruption to their business; and
- allow flexibility as to how checks are to be carried out — either by using technology (in the form of approved machines) or by trained staff.

16.8 The Minister comments that the new flexibility will fit well with the two main UK business sectors that may be affected — the large cash processing centres owned and operated by banks, cash-in-transit firms and at least one large retailer, on the one hand, and small bureaux de change, on the other. Cash processing centres already use machines to undertake bulk checking (the Government believes that there are just over two dozen centres of this kind). The alternative procedure will be for trained staff within firms to undertake checks — the Government thinks this model should fit easily with the procedures one would expect to find at any prudently run business that handles foreign currencies. She adds that it will be for the Government to supplement the legislation by taking appropriate measures to ensure it is properly applied in the UK — the Government envisages there will be close discussions with interested parties to ensure that the costs and impacts of the legislation are minimised.

16.9 The Minister concludes that the latest form of the proposal goes a great way to address previous concerns — recognition has been given to the need for a proper legal basis for the measure, the need for proportionality and flexibility and about an adequate lead–in time.

The Government's view of the new document

16.10 In his Explanatory Memorandum of 20 October 2008, the Economic Secretary to the Treasury (Ian Pearson) says that the Government's policy has been to discourage the production of medals and tokens similar to coins on the basis that they could be confused with the coins in question and therefore supports the amendments proposed in document (b) as consistent with this standing policy. He adds that additional costs may be incurred by UK businesses if medals and tokens are confused with coins, so these Regulations should help reduce costs and that there may be some marginal cost to businesses which produce metal medals and tokens as a result of ensuring compliance with the Regulations.

Conclusion

16.11 **We are grateful to the Minister for this account of where matters stand on the proposal in document (a). We note with satisfaction the improvements secured, particularly in relation to the legal base. We have no further questions to ask and now clear the document.**

16.12 **As for the proposals in document (b) we note that the question of legal bases has been addressed properly from the outset and that there appear to be no issues of inappropriateness and disproportion. Thus we have no questions we wish to ask and clear this document also.**

17 Excise duty

(29470) 6615/08 COM(08) 78	Draft Directive concerning the general arrangements for excise duty

Legal base	Article 93 EC; consultation; unanimity
Department	HM Treasury
Basis of consideration	Minister's letter of 30 October 2008
Previous Committee Report	HC 16–xv (2007–08), chapter 3 (12 March 2008)
To be discussed in Council	4 November 2008
Committee's assessment	Politically important
Committee's decision	Cleared

Background

17.1 Council Directive 92/12/EEC sets out the general arrangements for products subject to excise duty and the rules governing the holding, movement and monitoring of such products. In June 2003 Decision No 1152/2003/EC introduced an electronic Excise Movement and Control System (EMCS) to replace the existing paper-based system and which will be operative from 1 April 2009.[56]

17.2 This draft Directive would update and replace Council Directive 92/12/EEC so as to:

- incorporate the necessary legal basis for the introduction of the EMCS;
- update the language used in the Directive to take account of new legislative standards;
- recast the text to provide a more logical structure and remove obsolete provisions;

56 (22989) 14372/01: see HC 152–xv (2001–02), chapter 14 (30 January 2002).

- take account of legal developments and European Court of Justice rulings; and
- simplify and modernise excise procedures, with the aim of reducing obligations for business (in particular those carrying out cross-border business) without compromising controls.

17.3 When we considered this proposal, in March 2008, we commented that clearly introduction of the EMCS and simplification of general excise procedures were important. But we recognised the Government's concerns about where tax would be due in relation to distance purchasing and "gifts" and about facilitating both tax avoidance and tax evasion. And we noted the Government's willingness to veto the proposal if its concerns about "Minimum Indicative Levels" were not met. So we asked to hear, before a Council debate on the proposal due in June 2008, how these matters were developing during Council Working Group consideration of the draft Directive. Meanwhile the document remained under scrutiny.[57]

The Minister's letter

17.4 The Council having, in June 2008, merely taken note of a progress report about Council Working Group discussions,[58] the Financial Secretary to the Treasury (Mr Timms) now tells us that meetings of the Working Group under the French Presidency began in July 2008 and considerable progress has been made on the draft Directive, particularly since September 2008, culminating in a revised text for Council consideration agreed by officials on 29 October 2008. The Minister says that all the matters of concern for the UK have now been resolved satisfactorily, reporting that:

- provisions relating to distance-purchasing of alcohol and gifts of excise goods sent from one Member State to another, under which in both cases tax would be due in the Member State from where the goods were sent, not, as at present, where they were ultimately to be consumed, have been dropped;
- provisions to remove Minimum Indicative Levels, which the Government think an important indicator of whether the amount of excise goods transported by cross-border travellers within the Community is reasonable for personal use, have been dropped;
- the Government has negotiated a number of new or amended provisions which usefully strengthen protection against excise fraud or simplify arrangements for businesses, including clear citation of persons liable for excise duty, particularly in case of irregularity or offence, with provision for joint and several liability if appropriate;
- the Government has resisted changes to arrangements on distance selling of excise goods, which would have increased administrative burdens on businesses;

57 See headnote.

58 See http://register.consilium.europa.eu/pdf/en/08/st09/st09928.en08.pdf.

- the date for the first phase of the EMCS coming into operation has been, as wished by many Member States, including the UK, postponed from 1 April 2009 to 1 April 2010; and
- this will still be very demanding for some Member States, especially if the draft Directive is not agreed soon.

17.5 The Minister also tells us that the French Presidency hopes to have agreed a general approach on the draft Directive at the Council of 4 November 2008. He says that, if other Member States are able to lift their remaining substantive reserves, the Government would be pressured to acquiesce in the general approach. He apologises that in those circumstances the Government would feel obliged to agree even though this document is still under scrutiny. In support of this decision the Minister emphasises the importance of agreeing the proposal as soon as possible, bearing in mind the timetable for implementation of the EMCS, which is expected to be highly beneficial to UK business.

Conclusion

17.6 **We note the considerable improvements to the text of the draft Directive and are now content to clear the document.**

17.7 **We note also, and accept, the Minister's explanation of why the Government might have felt it justifiable to agree to a general approach on this proposal before scrutiny was completed.**

18 Financial assistance for Hungary

(30093) 14949/08 COM(08) 716	Draft Decision granting mutual assistance to Hungary Draft Decision providing medium-term EU financial assistance for Hungary

Legal base	Article 119 EC; —; QMV
Document originated	30 October 2008
Deposited in Parliament	4 November 2008
Department	HM Treasury
Basis of consideration	EM and Minister's letter of 3 November 2008
Previous Committee Report	None
Discussed in Council	4 November 2008
Committee's assessment	Politically important
Committee's decision	Cleared

Background

18.1 Article 119 EC allows the Commission to investigate the situation of a Member State experiencing difficulties with its balance of payments or movement of capital. It can then make recommendations to the Member State to bring the situation to an end. If the actions taken by the Member State or the Commission are insufficient they may make recommendations to the Council to grant mutual assistance. Such assistance may include:

- a concerted approach to international organisations;
- measures needed to avoid deflection of trade (where the Member State has maintained or reintroduced quantitative restrictions against third parties); and
- granting of limited credits by other Member States (subject to their agreement).

18.2 Council Regulation EC 332/2002 established a Community medium-term facility for balance of payments support. Pursuant to Article 119 EC this facility can be activated by the Commission, in agreement with the Member State concerned, or at the direct request of the Member State. The facility can be mobilised when a crisis arises or where there is a "severe threat" that one will arise. The total amount outstanding that can be granted to Member States under this facility is limited to €12.00 billion (£9.66 billion). When agreement has been reached, through a Council Decision, to grant a loan to a Member State, the Commission, through the European Central Bank (ECB), borrows the money on financial markets and lends it on to the Member State, with accompanying economic policy conditions, with a view to stabilising the balance of payments.

The document

18.3 The current global financial market turmoil has begun to place pressure on the economies of new Member States and other emerging market economies around the world. Hungary has become the first Member State to approach the International Monetary Fund (IMF) and the ECB for financial support. As a result, on 16 October 2008 the ECB announced an agreement that it would provide the National Bank of Hungary (NHB) with a facility to borrow up to €5.00 billion (£4.03 billion) if needed. This move came after some commercial banks suspended foreign currency loans and demand for government bonds dried up. It made Hungary the first non-eurozone Member State to receive ECB support. Access to ECB funds will allow the NBH to swap euros for Hungarian Forint in an overnight facility, adding liquidity to the inter-bank foreign exchange market without the need to tap into foreign currency reserves.

18.4 On 28 October 2008 the IMF, the Community and the World Bank announced a joint financing package for Hungary totalling €20.00 billion (£16.10 billion) to support its economy. The IMF is ready to lend Hungary €12.50 billion (£10.06 billion) under a 17-month Stand-By Arrangement[59] — reflecting the exceptional circumstances, this represents

59 IMF Stand-By arrangements form the core of the IMF's lending policies, providing assurance to member countries that they can draw up to a specified amount.

1000% of Hungary's quota.[60] The IMF has also called on the large financial institutions operating in Hungary to continue providing adequate financing of the economy. The World Bank has agreed to provide €1.00 billion (£0.81 billion).

18.5 It is intended that the Community will provide a loan of €6.50 billion (£5.20 billion) through support from the medium-term facility for balance of payments support established by Council Regulation EC 332/2002. The draft Council Decisions in the document are to grant mutual assistance and to approve the loan to Hungary. It is intended that core measures under the Hungarian programme will improve fiscal sustainability and strengthen the financial sector. It includes measures to maintain adequate domestic and foreign currency liquidity, as well as levels of capital for the banking system. The Hungarian authorities have adopted a package of measures which foresee, *inter alia*, an acceleration of fiscal consolidation this year and next, a reform of fiscal governance and action to shore up market liquidity and financial stability.

The Government's view

18.6 The Economic Secretary to the Treasury (Ian Pearson) tells us that the Government is in full support of providing assistance to Hungary through the medium-term facility for balance of payments support and believes that in the current economic climate the Community must act in a decisive and coordinated manner to support the needs of all Member States and protect the functioning of the single market. The Minister says that there are no direct financial implications for the UK arising from this proposal. The loans financed by ECB borrowing on capital markets are underwritten by the Community, which would only be called upon in the case of a default in the repayment of the loan.

18.7 The Minister also tells us of the Government's intention to vote in favour of the Council Decisions at the ECOFIN Council of 4 November 2008. He apologises that this means that we have not been given time to scrutinise the proposal but explains that Hungary's application for assistance was submitted and discussed within a very short time frame, that the Government believes that it is necessary to provide rapid support to Hungary in order for it to be effective and that, given the exceptional circumstances and the urgency of providing rapid and effective support to Member States in crisis to prevent wider ramifications, the Government believes also that it would be inappropriate for the UK to stand in the way of the assistance being granted.

Conclusion

18.8 **In clearing this important proposal from scrutiny we draw it to the attention of the House as one of the many present international and national measures undertaken in relation to the financial situation.**

18.9 **We note and accept the Minister's apology and explanation for this breach of the scrutiny reserve resolution.**

60 Each member country of the IMF is assigned a quota, based broadly on its relative size in the world economy. A member's quota determines its maximum financial commitment to the IMF, its voting power, and has a bearing on its access to IMF financing.

19 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

(30013) 13779/08 COM(08) 581	Draft Council Decision Concerning the extension of the Agreement for scientific and technological cooperation between the European Community and the Government of the United States of America.

Department for Children, Schools and Families

(29847) 11799/08 + ADDS 1–3 SEC(08) 2293	Commission Staff Working Document on progress towards the Lisbon objectives in Education and Training – Indicators and Benchmarks 2008.

Department for Environment, Food and Rural Affairs

(30046) 14364/08 COM(08) 643	Draft Council Regulation on trade in certain steel products between the European Community and the Republic of Kazakhstan.

Department for International Development

(30044) 14015/08 + ADD 1 COM(08) 626	Commission Communication on Local Authorities: Actors for Development.

Formal minutes

Wednesday 5 November 2008

Members present:

Michael Connarty, in the Chair

Mr Adrian Bailey
Mr William Cash
Mr James Clappison
Jim Dobbin
Mr Greg Hands
Mr David Heathcoat-Amory
Keith Hill
Mr Bob Laxton
Mr Anthony Steen
Richard Younger-Ross

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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 1.1. to 7.10 read and agreed to.

Paragraph 8, Headnote read, amended and agreed to.

Paragraphs 8.1. to 8.10 read and agreed to.

Paragraph 8.11, as amended, read and agreed to.

Paragraphs 9.1. to 10.18 read and agreed to.

Paragraph 10.19 read.

Amendment proposed, in line 2, to leave out the words "Although the Government and other like-minded states were unable to secure rejection of the flag state draft Directive", and to insert the words "We endorse the reservations of the Government and other like-minded states about the flag state draft Directive". — *(Mr. David Heathcoat-Amory.)*

Question put, That the Amendment be made.

The Committee divided.

Ayes, 4	Noes, 3
Mr Adrian Bailey	Mr William Cash
Jim Dobbin	Keith Hill
Mr Greg Hands	Richard Younger-Ross
Mr David Heathcoat-Amory	

Paragraph, as amended, agreed to.

Paragraphs 11.1 to 13.9 read and agreed to.

Paragraph 14, Headnote read.

Amendment proposed in line 13, to leave out the word “Cleared”, and to insert the words “For debate in European Committee.” — *(Mr William Cash.)*

Question put, That the Amendment be made.

The Committee divided.

Ayes, 3	Noes, 3
Mr William Cash	Mr Adrian Bailey
Mr David Heathcoat-Amory	Jim Dobbin
Richard Younger-Ross	Keith Hill

Whereupon the Chairman declared himself with the Noes.

Paragraphs 14.1 to 14.5 read and agreed to.

Paragraph 15, Headnote read.

Amendment proposed in line 10, to leave out the word “Cleared”, and to insert the words “For debate in European Committee.” — *(Mr William Cash.)*

Question put, That the Amendment be made.

The Committee divided.

Ayes, 3	Noes, 3
Mr William Cash	Mr Adrian Bailey
Mr David Heathcoat-Amory	Jim Dobbin
Richard Younger-Ross	Keith Hill

Whereupon the Chairman declared himself with the Noes.

Paragraphs 15.1 to 17.6 read and agreed to

Paragraph 17.7 read.

Amendment proposed, in line 3, to insert the words "We hope that further over-rides of this nature will be resisted by the Government".— *(Mr David Heathcoat-Amory.)*

Question put, That the amendment be made.

The Committee divided.

Ayes, 3	Noes, 4
Mr William Cash	Mr Adrian Bailey
Mr Greg Hands	Jim Dobbin
Mr David Heathcoat-Amory	Keith Hill
	Richard Younger-Ross

Paragraph 18, Headnote read.

Amendment proposed in line 12, to leave out the word "Cleared", and to insert the words "For debate in European Committee". — *(Mr William Cash.)*

Question put, That the Amendment be made.

Ayes, 3	Noes, 3
Mr William Cash	Mr Adrian Bailey
Mr Greg Hands	Keith Hill
Mr David Heathcoat-Amory	Richard Younger-Ross

Whereupon the Chairman declared himself with the Noes.

Paragraphs 18.1 to 19 read and agreed to.

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

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

[Adjourned till Wednesday 12 November at 11a.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*)