



House of Commons
European Scrutiny Committee

**Ninth Report of
Session 2007–08**

Documents considered by the Committee on 23 January 2008

Report, together with formal minutes

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Notes

Numbering of documents

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

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

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

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

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

Abbreviations used in the headnotes and footnotes

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

Euros

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

Further information

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

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

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1 European Information and Network Safety Agency

(29300) 16840/07 COM(07) 861	Draft Council Regulation to amend Regulation (EC) No. 460/2004 establishing the European Network and Information Security Agency as regards its duration
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<i>Legal base</i>	Article 95 EC; QMV; co-decision
<i>Date originated</i>	20 December 2007
<i>Date deposited</i>	28 December 2007
<i>Department</i>	Business, Enterprise and Regulatory Reform
<i>Basis of consideration</i>	EM of 15 January 2008
<i>Previous Committee Report</i>	None; but see (28677) 10340/07: HC-41 xxviii (2006–07), chapter 2 (4 July 2007) and HC-41 xxxiv (2006–07), chapter 9 (2 October 2007); and (29172) 15371/07 (29173) 15379/07 (29174) 15387/07 (29176) 15416/07 (29177) 15422/07 and (29175) 15408/07: HC 16–vi (2007–08), chapters 1 and 2 (12 December 2007)
<i>To be discussed in Council</i>	To be determined
<i>Committee’s assessment</i>	Politically important
<i>Committee’s decision</i>	Not cleared

Background

1.1 With communications networks and information systems an essential factor in economic and social development, and the security and resilience of communication networks and information systems of increasing concern to society, the European Network and Information Security Agency (ENISA) was established in 2004, for a period of five years. Its main goal is “ensuring a high and effective level of network and information security within the Community ... in order to develop a culture of network and information security for the benefit of the citizens, consumers, enterprises and public sector organisations of the European Union, thus contributing to the smooth functioning of the internal market.”¹ Its organisation consists of a management board (Member State, Commission and stakeholder representatives), an executive director and a permanent stakeholders’ group, to liaise with and offer advice about the Agency work programme.

1.2 The tasks conferred on the Agency are:

- analysing current and emerging risks to the resilience of electronic communications networks and on the authenticity, integrity and confidentiality of those communications;
- developing “common methodologies” to prevent security issues;

¹ Regulation (EC) No 460/2004 of the European Parliament and of the Council of 10 March 2004 establishing the European Network and Information Security Agency — OJ No. L 77, 13.3.04, p.1.

- contribute to raising awareness;
- promoting exchanges of “current best practices” and “methods of alert” and risk;
- assessment and management activities;
- enhancing cooperation between those involved in the area of network and information security;
- assisting the Commission and the Member States in their dialogue with industry to address security-related problems in hardware and software products;
- contributing to Community efforts to cooperate with third States and, where appropriate, with international organisations to promote a common global approach to network and information security:

“thereby contributing to the development of a culture of network and information security”.²

Previous consideration of the future of ENISA

1.3 Article 25 of the ENISA Regulation requires evaluation of the Agency by the Commission before March 2007. To this end, the Commission “*shall undertake the evaluation, notably to determine whether the duration of the Agency should be extended beyond the period specified in Article 27*” (that is, five years). Furthermore, “*the evaluation shall assess the impact of the Agency on achieving its objectives and tasks, as well as its working practices and envisage, if necessary, the appropriate proposals.*”

1.4 In autumn 2007, we considered a Commission Communication that presented the findings of an evaluation of the Agency by an external panel of experts and the recommendations of the ENISA Management Board regarding the ENISA Regulation. It also made an appraisal of the evaluation report and launched a public consultation.³

1.5 Based thereon, the Communication sets out to initiate debate about ENISA’s value and future; the Commission would then inform the Council and EP and “further specify its overall evaluation findings, in particular its decision whether or not to introduce a proposal for the extension of the duration of the Agency”.

1.6 The overall picture was set out most vividly in a SWOT Analysis reproduced below:

2 As reiterated in the judgment of the ECJ, sections 56 and 57.

3 The full report is at http://ec.europa.eu/dgs/information_society/evaluation/studies/s2006_enisa/docs/final_report.pdf.

STRENGTHS	WEAKNESSES
<ul style="list-style-type: none"> — MS and Commission mandate — Good start in building relationships — Staff competence 	<ul style="list-style-type: none"> — Lack of vision, focus and flexibility — Uneasy relationship between Management Board and Agency — Location problem for recruitment and networking
OPPORTUNITIES	THREATS
<ul style="list-style-type: none"> — Increasing importance of security in the EU — Unique position to respond to security coordination needs — Global alliances look for EU counterpart — Launching new projects with high relevance in the security field — Becoming a reference point for all the MS 	<ul style="list-style-type: none"> — If effectiveness is not improved, rapid weakening and loss of reputation — High turnover is weakening the staff — Contradictory expectations from MS and between MS and stakeholders — Misperception of role and goals by external stakeholders

1.7 In sum, the Report confirmed the validity of the original rationale and goals. All activities were found to be in line with its work programme. However, those activities appeared insufficient to achieve the high level of impacts and value added hoped for, and visibility was below expectations. Factors affecting the ability of the Agency to perform at its best concerned its organisational structure, the skills mix and the size of its operational staff, the remote location, and the lack of focus on impacts rather than on deliverables. The chances for a successful future for ENISA depended on “a renewed political agreement among the Member States, built on the lessons learned and the achievement of the first phase of the Agency”. Most stakeholders felt that closing the Agency in 2009 would represent a significant missed opportunity for Europe, and have negative consequences for NIS and the smooth functioning of the internal market. But they also believed that change was needed in the Agency’s strategic direction and structure.

1.8 The Commission endorses the overall findings. Enhancing ENISA’s contacts and working relations with stakeholders and Member States’ centres of expertise was “a key finding”. But it danced around the other key issue: the location of the agency in Heraklion. The Commission summarised the evaluation panel recommendations on the future of ENISA after 2009 as follows:

- the mandate of the Agency should be extended after 2009, maintaining its original main objectives and policy rationale, but taking into account the current experience;
- the Regulation should be revised, to reflect ENISA’s original strategic role and to clear ambiguities about its profile. The Regulation should not define in detail the operational tasks of the Agency to allow for flexibility in adapting to the evolution of the security environment;
- the Agency’s size and resources should be increased (up to 100 persons approximately) in order to reach the necessary critical mass;
- the role of the Management Board should be revised in order to improve governance;

- the appointment of a high-profile figure, well recognised in the NIS environment, who could act as an ambassador, to help increase ENISA’s visibility; and
- “recommendations regarding the location of the Agency in Heraklion.”

1.9 Although the Commission thus danced around the other key issue — the location of the agency in Heraklion — the Panel discussed the location question in depth. It said the negative consequences of the location on networking activities should be examined closely. Decisions to implement short-term improvements “should be taken without preventing in any way the possibility to make a more radical choice about the location after 2009.” Here, it recommended that:

- the feasibility be seriously considered of moving the Agency from Heraklion to Athens or “another EU city with an international environment and greater proximity to the security environment main knowledge centres”;
- as an alternative, opening a liaison office in Brussels or a city “with high relevance for the security environment” should be considered;
- the concept of a “networked agency” with small headquarters and a few distributed offices “hosted by some of the main actors of security” be explored; and
- examples of successful organizations with networking and think-tank activities be examined to learn from their management practices, even if they were not EU agencies. An example cited is EIPA (European Institute for Public Administration), “which, in addition to its main headquarters has antennas in other cities, acting as competence centres”.

1.10 When we first examined the Communication, we felt that the then Minister (Margaret Hodge) was no better than the Commission, with her Explanatory Memorandum containing none of the foregoing, nor saying anything about the report, despite the picture painted in the Communication strongly suggesting that ENISA had been created on an unsound basis, which had then been compounded by situating it in the wrong place, for the wrong reasons. We felt that we were entitled to know the Government’s views now, not when the consultation was over and the Commission had decided what to do. In particular, we asked her successor, the Minister of State for Competitiveness in the Department for Business, Enterprise and Regulatory Reform (Stephen Timms) for:

- his understanding of the structural difficulties to which the Commission referred, and more about somewhat Delphic references to ambiguities in the interpretation of the Regulation, the “suboptimal level of human resources available to the Agency”, “the misalignment between the interpretation of the Regulation by the Agency staff and by the Management Board” and “the lack of a shared vision of ENISA among the Member States”;
- his views on the Report’s recommendations, particularly on the location of the Agency and the suggestion that it might need another 100 staff; and
- what the Government thought should be done about ENISA and the challenges posed for network information security in the EU.

1.11 We felt that his response, which we considered on 2 October 2007, contained the comprehensive statement of the Government’s position that was initially absent. Lamentable as it seemed to us, it was made clear that the evaluation report’s main concern, i.e., ENISA’s inappropriate location, was plainly off limits, for the same reason that it was put there in the first place, i.e., its political nature. In clearing the Communication, we noted the importance of any future such decision not being left to one Member State to determine when the interests of all Member States were concerned. We also noted that there was no appetite for more staff, and that the Government would resist any move to make ENISA more operational, and that what was needed now were proposals that showed how ENISA, despite its unhelpful location, could be developed so as to fulfil its tasks efficiently, effectively and economically. We also noted that the Minister undertook to submit a detailed Explanatory Memorandum when the Commission made substantive recommendations on the future of the Agency.⁴

1.12 Those were contained in a further package of proposals that we considered on 12 December 2007, which included the notion that a new European Electronic Communications Market Authority (EECMA) should, among other things, take over responsibility for the activities of ENISA. As both the Minister, in his accompanying Explanatory Memorandum, and we made clear, there are considerable doubts about the proposed EECMA (and therefore the contingent proposal to wind up ENISA); these will be further examined in a debate in the European Standing Committee that we recommended should be held on the Commission Communication that set out the Commission’s overall approach to revising the regulatory framework for electronic communications.⁵

The draft Council Regulation

1.13 In the meantime, with ENISA’s existing mandate due to expire in March 2009, and to ensure continuity, the Commission has proposed this interim measure for the two years between the Agency’s scheduled expiry date and the date when the proposed EECMA will take over responsibility for its activities.

The Government’s view

1.14 In his 15 January 2008 Explanatory Memorandum, the Minister of State for Competitiveness in the Department for Business, Enterprise and Regulatory Reform (Stephen Timms) says that at this stage he regards the extension of ENISA’s mandate “as good housekeeping and essential for the continued conduct of the Agency’s activities.” He notes that the EECMA negotiations have yet to take place and the eventual outcome is unclear: “whatever the result of negotiations, the EECMA would not be established before 2011 and therefore some mechanism to ensure ENISA’s continued operation needs to be put in place.”

4 See headnote: (28677) 10340/07: HC-41 xxviii (2006–07), chapter 2 (4 July 2007) and HC-41 xxxiv (2006–07), chapter 9 (2 October 2007).

5 See headnote: (29172) 15371/07, (29173) 15379/07, (29174) 15387/07 (29176) 15416/07 (29177) 15422/07 and (29175) 15408/07: HC 16–vi (2007–08), chapters 1 and 2 (12 December 2007).

1.15 He recalls that, in his earlier letter of 24 July 2007, he had said that the subject matter of ENISA remained important and that there seemed a sound case for this work to continue at a European level; and continues as follows:

“The UK therefore agreed (EM 10340/07) with the general tenor of the Commission’s communication of 1 June 2007 ((COM 2007) 285) and also agreed with the ENISA Management Board Recommendations about the need to extend the mandate and refresh the focus given to the Agency through the amendments to the Regulation. The Commission have taken a surprising turn in seeming to have foregone further work on the Review of the Agency and opted instead to roll ENISA into its proposals for a European Electronic Communications Markets Authority.

“The position of HMG on EECMA is that we are not convinced that this is the only or best way to ensure the improved implementation of the European regulatory framework for communications. Whatever solution is adopted, HMG is convinced that expertise will be required to advise or engage with national regulators on network and service resilience issues. If the negotiation process sets aside the Commission’s idea for a new Authority, then consideration will have to be given as to how best to agree common approaches to ensuring the appropriate resilience of networks. In that case, the continuation of ENISA might return as a viable prospect. If the new Authority idea prevails, then it has to be acknowledged that it would be difficult to argue for two Agencies that have a strong connection to the regulatory framework. Before reaching that position, we would need to have a much clearer idea than we have from the documentation released to date, that we can agree with the cessation of any activities currently undertaken by ENISA that would not transfer to EECMA. We will need to return to the Committee with more developed policy lines on security within the framework and the future of ENISA after we have consulted stakeholders and have had the benefit of exploratory discussion with the Commission and other Member States.”

1.16 On the question of *Consultation*, the Minister says that he does “not intend to consult on this proposal”, but that there will, however, be a formal consultation on “all of the Commission’s proposals and this will include questions on how to deal with security issues in the regulatory framework and whether ENISA should be incorporated into the proposed new Authority”.

1.17 As for the *Financial Implications*, the Minister says that the funding for any extension was “most likely [to] be in line with previous ENISA budgets” and “would have to be provided from the EU budget, so this would not have any direct financial implications for the UK”.

1.18 Finally, on the *Timetable*, the Minister says that “the proposal will need to be negotiated through the co-decision procedure and we understand that the Presidency wish to ask Council to reach Political Agreement on the proposal in June this year. It is too early to say whether this is a realistic prospect.”

Conclusion

1.19 As the Minister points out, an extension of ENISA’s mandate is contingent on much larger and more contentious questions — whether it should be incorporated in a new authority, the need for and appropriateness of which is still under examination; or, if not so incorporated, what should be done to make it more effective and efficient.

1.20 That being so, we shall continue to retain the document under scrutiny until the Minister is in a position to let us have his considered views, prior to which we should not expect him to enter into any Political Agreement on ENISA’s future.

2 Community action in relation to the International Whaling Commission

(a) (29297) 16832/07 COM(07) 823	Commission Communication on Community action in relation to whaling
(b) (29298) 16833/07 COM(07) 821	Draft Council Decision establishing a position to be adopted on behalf of the European Community with regard to proposals for amendments to the Schedule of the International Convention on the Regulation of Whaling

<i>Legal base</i>	(b) Articles 37, 175 and 300(2)(2) EC; QMV
<i>Document originated</i>	19 December 2007
<i>Deposited in Parliament</i>	29 December 2007
<i>Department</i>	Environment, Food and Rural Affairs
<i>Basis of consideration</i>	EM of 21 January 2008
<i>Previous Committee Report</i>	None
<i>To be discussed in Council</i>	March 2008
<i>Committee’s assessment</i>	Legally and politically important
<i>Committee’s decision</i>	Not cleared; further information requested

Background

2.1 The International Whaling Commission (IWC) was established in 1946, and is the international organisation responsible for the conservation and management of whale stocks at a global level. A Schedule to the relevant Convention sets out the detailed measures used to achieve these objectives, including the complete protection of certain species, designated whale sanctuaries, the setting of limits on the number and size of

whales which may be taken, specifying hunting seasons, the coordination of scientific research, and the collection of data.

2.2 Amendments to the Schedule require a majority of three-quarters of the Parties, and, in 1982, the IWC introduced a moratorium on commercial whaling. This was however subject to various exemptions, in that it does not affect “aboriginal” whaling in areas such as Greenland; Parties may conduct whaling without specific IWC approval for so-called scientific research purposes (a provision which has been used by countries such as Japan and Iceland); and Parties which lodge objections — notably Norway and Iceland — are not bound by the decision. The maintenance of the ban has been a controversial subject within the IWC for many years, with there being a fine balance between those in favour and those opposed to it, resulting in a narrow decision in 2006 to in effect rescind the moratorium, followed in 2007 by an equally narrow decision to reinstate it. In these two documents, the Commission has sought to explore how the Community may best ensure that its objectives in this area are met.

The current documents

Document (a)

2.3 In this Communication, the Commission notes that, although 20 Member States are parties to the IWC, the Community itself is not, having only observer status. It also recalls that, although it put forward in 1992 a proposal that the Community should accede to the Convention, the Council has yet to agree to this, and it notes that an amendment to the Convention, requiring ratification by all parties, would also be necessary. At the same time, however, the Commission says that the Community has not been able to use its political weight within the IWC, mainly because of the lack of a coordinated and agreed position, with Member States speaking and voting independently, and no coordination taking place.

2.4 It therefore suggests that, in addition to the remaining seven Member States becoming parties to the IWC, the Community position should in future be agreed by the Council (see below). In putting forward this suggestion, the Commission argues that it has exclusive competence under the Common Fisheries Policy for conservation at sea, with cetaceans as “live animals” being subject to Articles 33-38 of the EC Treaty; that one of the objectives of Community environmental policy is to promote international measures to deal with regional or worldwide problems, including the conservation of species; that the Habitats Directive prohibits the capture or killing of whales within Community waters (and the keeping of specimens taken from the wild); and that the Regulation implementing the Convention on International Trade on Endangered Species (CITES) within the Community bans the introduction of cetaceans for primarily commercial purposes. It therefore says that the ultimate objective of Community environmental policy in relation to whales is to seek their strictest protection.

Document (b)

2.5 In order to help achieve this, the Commission has put forward at document (b) a draft Council Decision, the Annex of which would establish the position of the Community at the meeting of the IWC in 2008 and in subsequent years. In particular, this would be based

on an over-arching objective of ensuring an effective regulatory framework for the protection of whales, and would involve opposing any proposal to lift the moratorium, either wholly or partially; supporting the creation of whale sanctuaries; supporting the continuation of aboriginal whaling, subject to the conservation of the stocks in question not being compromised; supporting proposals aimed at addressing all whaling activities carried out under the different legal headings of the Convention, including scientific whaling; supporting proposals which are coherent with the Community position adopted in relation to CITES and other international agreements to which the Community is a party; supporting proposals to encourage the collection of scientific data using non-destructive methods and research on conservation of whale populations; and opposing any proposals to amend the rules of procedure of the IWC to broaden the scope of secret ballot.

The Government's view

2.6 In his Explanatory Memorandum of 21 January 2008, the Minister for Marine, Landscape and Rural Affairs at the Department for Environment, Food and Rural Affairs (Mr Jonathan Shaw) says that the implications of this proposal for the current UK position could be significant, although this would depend upon the final contents of the Annex to the draft Decision. He also suggests that the use of a specific mandate for negotiations in the IWC may set a precedent for the development of such mandates in other multilateral environmental agreements to which the UK is a party, such as those on climate change, noting that the UK has previously favoured the use of Council Conclusions to agree Community positions in such agreements.

2.7 The Minister says that the Government does not dispute that the Community has some competence in this area, albeit not exclusively so, and he suggests that, provided the proposed Community negotiating lines conform to UK requirements, the net effect of the proposal should be slight, and that better coordination at Community level would enable the Community to play a more significant role than Member States acting individually in defending the protection of whales. At the same time, he notes that, although the UK has played a leading role among the anti-whaling countries within the IWC, along with Member States such as Germany, other Member States, such as Denmark, have taken a “less considered” approach, sometimes seeking compromise with pro-whalers and generally hoping “to occupy some form of (usually non-viable but nonetheless dangerous) middle ground”.

2.8 The Minister also says that the Government would be concerned if the effect of a Community negotiating mandate unduly constrained the UK's influence and activities in relation to key elements in its negotiating position, such as the promotion of whale welfare, whale conservation initiatives, and total opposition to lethal scientific research on whales and other cetaceans. He points out that the proposed mandate is virtually silent on these points, but that in other respects its current contents could prove quite useful, at least in constraining some other Member States from seeking undesirable compromises.

2.9 Finally, the Minister questions elements of the proposed legal base, notably Article 37 (which he says relates primarily to agriculture and fisheries, in which area there is no specific mention of whales), and whether Community competence should legitimately be held to apply on votes which have no legal effect (for example on cooperation between the

IWC and CITES), or which are essentially procedural (such as the use of secret ballots at IWC meetings). He also notes that, once adopted, the Decision would stand until replaced or amended, thus giving the Community a mandate which could remain as a constraint when such constraint “might prove less than useful”.

2.10 The Minister recalls that, when a similar proposal was discussed in 2007, there was general opposition to the Community representing the Member States in the IWC, but that this would have involved representation by the Commission, which most regarded as unacceptable, given the Community’s status as an observer. He indicates that the present proposal avoids that difficulty, and that, given some amendment of both its legal base and content, will probably be acceptable to most Member States.

Conclusion

2.11 **Although the Minister says that the draft Council Decision here will probably be acceptable to most Member States, he does not state explicitly whether or not the UK intends to support it, the inference from his Explanatory Memorandum being that the Government sees some attraction in doing so in order to enable the Community to play a more significant role than at present, but is nevertheless concerned that this might impose some undesirable constraints on the UK. Also, it appears that there are concerns over the extent to which the proposal might set a precedent for other multilateral international agreements, and over the use of Article 37 EC as a legal base, where the Government — rightly, in our view — seems to be at odds with the Commission’s interpretation of the extent to which the relevant articles of the Treaty apply to cetaceans.**

2.12 **In view of these uncertainties, we believe that, before we could consider clearing these two documents, we need clarification from the Government on whether the UK is prepared to support the proposal as it stands (and, if not, what changes it will seek to secure). We would also like further information on whether the proposal does indeed set a precedent for other international organisations (and, if so, whether the UK is prepared to accept this), and on how the impasse between the Government and the Commission over the proposed legal base is resolved. In the meantime, we propose to hold the document under scrutiny.**

3 Poverty and social exclusion

(29276) 16600/07 COM(07) 797	Draft Decision on the European Year for combating poverty and social exclusion (2010)
+ ADD 1	Commission staff working document: impact assessment of the proposal
+ ADD 2	Commission staff working document: summary of the impact assessment

<i>Legal base</i>	Article 137(2) EC; co-decision; QMV
<i>Document originated</i>	12 December 2007
<i>Deposited in Parliament</i>	19 December 2007
<i>Department</i>	Work and Pensions
<i>Basis of consideration</i>	EM of 14 January 2008
<i>Previous Committee Report</i>	None
<i>To be discussed in Council</i>	No date set
<i>Committee's assessment</i>	Politically important
<i>Committee's decision</i>	Not cleared; further information requested

Background

3.1 In March 2000, when approving the Lisbon Strategy, the European Commission agreed that:

“Steps must be taken to make a decisive impact on the eradication of poverty”.⁶

Member States have been working with each other towards that aim, and will continue to do so, through the Open Method of Coordination on Social Protection and Social Inclusion (OMC).⁷

3.2 In 2005, the Commission set out its proposals for the Community's Social Agenda for 2005–10.⁸ The Commission said that it intended, among other things, to propose 2010 as the European Year for combating poverty and social exclusion.

3.3 Article 136 of the EC Treaty makes combating social exclusion one of the objectives of the Community and the Member States. Article 137(1) requires the Community to support and complement the activities of Member States to combat social exclusion and integrate

6 Lisbon European Council, 23–24 March 2000, Presidency Conclusions, paragraph 32.

7 In March 2000, the European Council defined the open method of coordination. Its purpose is to help Member States develop their own policies by agreeing European guidelines and timetables for short, medium and long-term goals; defining quantitative and qualitative indicators; and setting benchmarks. Each Member State then translates the guidelines into national and regional policies. There is periodic monitoring, evaluation and peer review of the outcomes.

8 (26381) 6370/05: see HC 34–i (2005–06), chapter 44 (4 July 2005).

people who are excluded from the labour market. To that end, Article 137(2) authorises the Council to adopt measures to encourage cooperation between Member States. Article 140 requires the Commission to encourage cooperation between Member States and to facilitate the coordination of their action “in all social policy fields”.

The draft Decision

3.4 The Commission says that the purpose of the draft Decision is to strengthen and reaffirm the Community’s political commitment to make a decisive impact on the eradication of poverty. The main provisions of the draft Decision are as follows.

3.5 Article 1 designates 2010 as the European Year for combating poverty and social exclusion.

3.6 Article 2 sets out four objectives for the Year:

“Recognition — Recognising the right of people in a situation of poverty and social exclusion to live in dignity and to play a full part in society ...

Ownership — Increasing public ownership of social inclusion policies and actions, emphasising everyone’s responsibility for tackling poverty and marginalisation ...

Cohesion — Promoting a more cohesive society by raising public awareness of the benefits for all of a society where poverty is eradicated and no-one is condemned to live in the margins. The European Year shall foster a society that sustains and develops quality of life, social well-being and equal opportunities for all regardless of their background, ensuring sustainable development and solidarity between and within generations and policy coherence with EU action worldwide.

Commitment — Reiterating the strong political commitment of the EU to fight against poverty and social exclusion and promoting the commitment at all levels of governance ... The European Year shall strengthen the political commitment to the prevention and fight against poverty and social exclusion and give impetus to further development of the European Union’s action in this field.”

3.7 Article 3 provides that the action to achieve the objectives of the Year may include meetings and events; information, promotional and educational campaigns; and surveys and studies. The Annex to the draft Decision gives details of the activities which would fall within the terms of Article 3.

3.8 Section II(2) of the Annex provides that the Commission will produce a Strategic Framework Document establishing “the key priorities for the implementation of the European Year activities, including minimum standards in terms of participation in national bodies and actions”.

3.9 Section IV of the Annex says that the Year should focus on a limited number of “priority areas”. They are:

- “child poverty and intergenerational transmission of poverty;
- an inclusive labour market;

- disadvantages in education and training, including digital literacy training;
- poverty and the gender dimension [women are at greater risk of poverty];
- access to basic services, including decent accommodation;
- overcoming discrimination and promoting the integration of immigrants and the social and labour market inclusion of ethnic minorities.”

3.10 Article 6(1) requires each Member State to appoint a National Implementing Body (NIB) to:

- organise the country’s participation in the Year;
- define the National Programme of action; and
- select the actions for which the NIB will apply to the Commission for a grant of up to half the cost.

3.11 Article 6(3) requires each NIB to work closely with its National Advisory Group (NAG), which must include, among others, “national parliament representatives”.

3.12 Article 12 provides that the Year’s budget for the period 1 January 2009 to 31 December 2010 should be €17 million, of which €6.5 million should be for 2009. Up to 80% of the cost of activities run at EU-level could be met from the budget for the Year; that budget could also meet up to half the cost of activities run at national, regional or local level. Article 9 makes the Commission responsible for deciding whether to contribute to the costs and how much to grant.

The Government’s view

3.13 The Parliamentary Under-Secretary of State at the Department of Work and Pensions (Mr James Plaskitt) tells us that:

“A Year for Combating Poverty and Social Exclusion is a logical extension of the [Open Method of Coordination for Social Protection and Social Inclusion] with its focus on making a decisive impact on poverty by 2010. The proposals for the Year have a realistic prospect of raising awareness of poverty issues and providing a focus for renewed action across Europe to tackle the causes of poverty and social exclusion.”

3.14 The Minister adds that the Government has discussed the proposal for the Year with the Social Policy Task Force (a group of non-governmental organisations). It will develop the UK’s National Plan for the Year in partnership with the Task Force, the Devolved Administrations and local government.

Conclusion

3.15 We recognise the importance of the commitment to make a decisive impact on the eradication of poverty by 2010. We accept that European Years can make a useful contribution to increasing public awareness of issues, stimulating action and

encouraging the exchange of good practice. So we see no objection in principle to this proposal.

3.16 We note, however, the very wide scope of the objectives set out in Article 2 of the draft Decision. They appear to extend well beyond the causes and effects of poverty. For example, the Cohesion objective in Article 2 includes:

“fostering a society that sustains the quality of life, social well-being and equal opportunities for all regardless of their background, ensuring sustainable development and solidarity between and within the generations and policy coherence with EU action worldwide”.

3.17 The EC designated 2007 as the European Year of Equal Opportunities for all. So we question the need to refer to equal opportunities in the objectives for the European Year on Poverty. We also question the inclusion in the objectives of “solidarity between and within the generations”; the connection between poverty and intergenerational solidarity is not readily apparent; nor is the connection with sustainable development.

3.18 Moreover, the draft Decision and the Commission’s supporting papers appear sometimes to treat poverty and social exclusion as synonyms and sometimes as distinct. Social exclusion can cause poverty and vice versa. But some materially poor people — such as men and women who have taken a religious vow of poverty — are well integrated in society and not all people who are socially excluded are poor.

3.19 We question, therefore, whether the draft Decision is sufficiently focussed on the aim set by the European Council in March 2000 — to make a decisive impact on poverty. We also draw attention to the apparent inconsistency between the very broad objectives proposed in Article 2 and the limited priorities specified in Section IV of the Annex.

3.20 The Commission proposes that:

- each Member State should establish a National Implementation Body;
- each Member State should also establish a National Advisory Group and must appoint to it representatives of its national parliament;
- each Member State should produce a National Programme of activities for the Year; and
- the National Plan should be consistent with the Commission’s Strategic Framework Document.

We question why such an elaborate mechanism is necessary and why EC legislation should prescribe Member States’ arrangements for taking part in the Year. In particular, we find it wholly inappropriate for EC legislation to require the appointment of representatives of national parliaments to the National Advisory Groups; that proposal is, in our view, clearly inconsistent both with the principle of subsidiarity and the right of parliaments (in particular the Westminster Parliament) to regulate their own affairs.

3.21 We should be grateful if the Minister would consider these points, discuss them with the Commission and his colleagues in the Council and tell us the outcome. We should also be grateful for progress reports on the negotiations. Meanwhile, we shall keep the draft Decision under scrutiny.

4 Excise duties

(29264) 16404/07 COM(07) 772	Draft Decision authorising Portugal to apply a reduced rate of excise duty on locally produced beer in the autonomous region of Madeira
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<i>Legal base</i>	Article 299(2); consultation; QMV
<i>Document originated</i>	6 December 2007
<i>Deposited in Parliament</i>	14 December 2007
<i>Department</i>	HM Treasury
<i>Basis of consideration</i>	EM of 10 January 2008
<i>Previous Committee Report</i>	None
<i>To be discussed in Council</i>	Not known
<i>Committee's assessment</i>	Legally and politically important
<i>Committee's decision</i>	Not cleared; further information requested

Background

4.1 Community legislation sets minimum rates for excise duty on alcohol and alcoholic beverages to be applied by Member States. The legislation provides that Member States may apply reduced rates of excise duty, at not more than 50% below the standard national rate, on beer produced by independent small breweries, defined as those whose annual beer production does not exceed 200,000 hectolitres. The two breweries in Madeira benefit from this reduced rate.

The document

4.2 This draft Council Decision would allow Portugal to apply a lower rate of excise duty than the current minimum rate to beer produced in Madeira, in cases where the annual production of a brewery does not exceed 300,000 hectolitres. This is to meet the case that, because of increased tourism, one brewery is approaching the annual production cap of 200,000 hectolitres, at which point its entitlement to reduced rates under existing provisions would cease.

4.3 In presenting the case for the proposal the Commission says:

- various factors, including geography and local market conditions, mean that the retail selling price of Madeira beer is currently about 7.5% higher than the retail selling price of beer brewed in mainland Portugal and sold in Madeira;
- it is estimated that the difference in retail selling price would increase to at least 15% if the breweries were to lose the “small brewery” relief;
- Portugal therefore judges that this derogation is necessary to ensure the continued survival of the local brewing industry; and
- to ensure there is no distortion to the single market, any production in excess of 200,000 hectolitres (but below the 300,000 threshold) would only benefit from the reduced rate to the extent that it is consumed locally.

4.4 The proposed derogation would run for six years — until 31 December 2013, with the condition that Portugal submit a mid-term report to the Commission, on the basis of which the latter would decide whether the derogation was still justified.

The Government's view

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

- the proposal has no impact on UK tax rates and the Government does not anticipate that it would lead to any diversion in alcohol sales throughout the single market; and
- whilst it is inclined to agree to this derogation, the Government would like further information on current production figures and recent production trends from the two Madeira breweries, as well as further detail on measures to ensure that beer benefiting from the reduced rate will be consumed locally.

4.6 But the Minister also says that:

- unlike most tax proposals, which are decided by unanimity — a position that the Government strongly defends — the legal base for this proposal, Article 299(2) EC, makes the measure subject to qualified majority voting;⁹ and
- given the limited nature of this derogation and the fact that it has no impact on UK taxes, the Government is content, exceptionally, with the use of Article 299(2) as the legal base.

Conclusion

4.7 Even though the Government is not yet wholly satisfied with the case for this measure or with the detail of how local consumption would be ensured, we see no grounds on the substance of the proposal to delay its clearance from scrutiny.

⁹ This article allows measures to be passed in respect of the outermost regions of the Community, namely the French overseas departments, the Azores, Madeira and the Canary Islands.

4.8 However, we are concerned about the choice of a legal base for the measure subject only to qualified majority voting. As the Minister says tax proposals are normally subject to unanimity and in our view this has strengthened the ability of the Government to resist attempted erosion of national competence in relation to taxation matters. We note the Minister’s contention that the limited nature of the proposal and the absence of impact on UK taxes lead the Government to accept, exceptionally, the use of a legal base subject to qualified majority voting. But we ask the Minister to consider whether:

- an unhelpful precedent is being created unnecessarily; and
- citation of an additional legal base, subject to unanimity, might be sought.

4.9 Pending the Minister’s comments the document remains uncleared.

5 Criminal measures to enforce intellectual property rights

(27460) 8866/06 COM(06) 168	Amended Draft Directive on criminal measures aimed at ensuring the enforcement of intellectual property rights
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<i>Legal base</i>	Article 95 EC; co-decision; QMV
<i>Department</i>	Home Office
<i>Basis of consideration</i>	Minister’s letters of 30 July 2007 and 10 January 2008
<i>Previous Committee Report</i>	HC 34–xxxii (2005–06), chapter 8 (14 June 2006)
<i>To be discussed in Council</i>	No date set
<i>Committee’s assessment</i>	Legally and politically important
<i>Committee’s decision</i>	Not cleared; further information awaited

Background

5.1 A number of instruments have been proposed or adopted at Community level relating to the substantive law on intellectual property, including measures on patents,¹⁰ trade marks¹¹ and copyright,¹² as well as a measure (Directive 2004/48/EC) on the enforcement

10 A Community Patent Regulation has been proposed, but has not been adopted.

11 Council Regulation (EC) 40/94 on the Community trade mark, OJ No. L 11, 14.1.94, p.1.

12 See Council Directive 91/250/EEC of 14 May 1991 on the legal protection of computer programs OJ No. L 122, 17.5.91, p.42 and Directive 2001/29/EC of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society OJ No. L 167, 22.6.01, p.10.

of intellectual property rights in 2004,¹³ but none of these required Member States to adopt criminal law measures.

5.2 In 2005 we considered an earlier version of a draft Directive containing provisions on criminal penalties and proposed by the Commission under Article 95 EC. The Directive required Member States to ensure that “all intentional infringements of an intellectual property right on a commercial scale, and attempting, aiding or abetting and inciting such infringements” were treated as criminal offences, and obliged Member States to provide for sentences of imprisonment, with fines and confiscation of the infringing goods also applying to both natural and legal persons. The Directive was supplemented by a proposal for a Framework Decision prescribing minimum periods of imprisonment, providing for the confiscation of proceeds, and requiring Member States to allow right holders to assist investigations carried out by joint investigation teams.

5.3 In its judgment of 13 September 2005 the Court of Justice of the European Communities (ECJ) in Case C-176/03 *Commission and European Parliament v. Council* the ECJ indicated that the Community could adopt criminal measures in relation to environmental policy under Articles 174 to 176 EC where these were “essential” for combating serious environmental offences and where the Community legislature considered such measures to be necessary to ensure that the Community rules on environmental protection were fully effective.

5.4 Following that judgment, the Commission submitted an amended draft Directive. The Commission withdrew its proposal for a Framework Decision, and transferred its provisions on penalties and powers of confiscation to the Directive. The then Parliamentary Under-Secretary of State at the Home Office (Mr Gerry Sutcliffe) informed us in 2006 that at the first Council working party following the submission of the new text there was a “very clear and broad consensus” against the wide interpretation of the ECJ judgment adopted by the Commission with the Member States taking the view that as a matter of principle obligations to impose criminal penalties could be created only in respect of Community law. The Minister also explained that no further progress could be made without guidance at the political level, pending the outcome of the legal challenge by the Commission to the ship-source pollution Framework Decision (Council Framework Decision 2005/667/JHA of 12 July 2005 to strengthen the criminal-law framework for the enforcement of the law against ship-source pollution), which was expected to take at least a year.

The Minister’s letters of 30 July 2007 and 10 January 2008

5.5 In her letter of 30 July 2007 the Parliamentary Under-Secretary of State at the Ministry of Justice (Bridget Prentice) informs us of amendments made to the proposal by the European Parliament and of the initial consideration of these by the Council working group. The Minister reports that the European Parliament has amended the proposal to exclude patents from its scope as well as those provisions of national law which do not implement Community law on intellectual property. The European Parliament has also introduced definitions for the concepts of “intentional infringements”, “infringements on a

13 OJ No. L 195, 2.6.04, p.16.

commercial scale” and has also introduced the concept of a “serious” offence as an aggravating factor for the purpose of penalties. The Minister reports that when the Council working group considered these amendments in June 2007, most Member States supported the exclusion of patent rights from the scope of the proposal, as well as the restriction in scope to Community law, and that this was also the Government’s view.

5.6 We were grateful for this letter and, in view of the fact that the ECJ had by then given judgment in the ship-source pollution case (Case C440/05 *Commission and Parliament v. Council*), we asked the Minister to inform us of the Government’s position on the competence of the Community to require criminal sanctions in relation to intellectual property.

5.7 In her letter of 10 January 2008 the Minister explains that the proposal has not been considered further by the Council, so that the Government has not been in a position to conduct a further assessment of the European Parliament’s amendments. The Minister also explains that the Council has not yet drawn any conclusions from the judgment in the ship-source pollution case on the extent to which the competence described in that judgment extends beyond the protection of the environment from serious harm.

5.8 The Minister makes the following statement of the Government’s position on this issue:

“The Court’s ruling confirmed that Community competence to legislate for criminal sanctions is limited. As a general rule, criminal law and criminal procedure are to be agreed unanimously between Member States under the Third Pillar. The Court clearly found that, whilst the Community can require Member States to criminalise conduct to protect the environment from serious harm, it cannot prescribe the nature or severity of sanctions. The Government’s initial assessment of the Court’s ruling is that the judgment should not be regarded as authority for the generalised inclusion of criminal law obligations in First Pillar instruments that are not connected to the environment.”

5.9 The Minister adds that neither the Commission nor the European Parliament has outlined plans for the future of this proposal, and that the Slovenian Presidency has not as yet suggested further discussions at expert level.

Conclusion

5.10 **We thank the Minister for her helpful letters. We agree with the points the Minister makes on the lack of Community competence to make detailed provisions of criminal law in this field.**

5.11 **We note that the proposal is not currently under active discussion, but we shall hold the document under scrutiny pending news from the Minister on any resumption of negotiations.**

6 Statistics

(29013) Draft Regulation on European Statistics
 14094/07
 COM(07) 625

<i>Legal base</i>	Article 285 EC; co-decision; QMV
<i>Document originated</i>	16 October 2007
<i>Deposited in Parliament</i>	23 October 2007
<i>Department</i>	Office for National Statistics
<i>Basis of consideration</i>	EM of 2 November 2007 and SEM of 15 January 2008
<i>Previous Committee Report</i>	None
<i>To be discussed in Council</i>	Not known
<i>Committee's assessment</i>	Politically important
<i>Committee's decision</i>	Not cleared; further information requested

Background

6.1 The European Statistical System comprises the Commission's statistical body, Eurostat, and the national statistical institutes of the Member States. It has evolved over the years and is designed to provide reliable and comparable statistics on which decisions on and planning and implementation of Community policies can be based.

6.2 The basic legal framework for the production and dissemination of statistics at Community level is in:

- Council Decision (EEC, Euratom) No. 89/382 of 1989 establishing a Commission chaired Committee on the Statistical Programmes of the European Communities, composed of representatives of the national statistical institutes;
- Council Regulation (EEC, Euratom) No. 1588/90 of 1990 on transmission of data subject to statistical confidentiality to Eurostat;
- Council Regulation (EC) No. 322/97 of 1997 on Community Statistics; and
- Decision No. 2367/2002/EC of 2002 on the Community statistical programme 2003 to 2007.

This framework is supplemented by sectoral legislation in specific statistical domains.

The document

6.3 This draft Regulation is to revise and simplify the present basic legal framework for the production and dissemination of statistics at Community level. It would:

- repeal Council Decision (EEC, Euratom) No. 89/382, thus abolishing the Committee on the Statistical Programmes;

- replace that committee with a European Statistical System Committee, responsible for comitology¹⁴ related to statistics and a European Statistical System Partnership Group responsible for statistical coordination and assistance; and
- provide a framework for subsequent topic-specific Regulations and agreements necessary for delivering the European Statistical Programme.¹⁵

The Government's view

6.4 The Exchequer Secretary to the Treasury (Angela Eagle) says that the Government welcomes the initiative to modernise the basic legal framework for Community statistics, asserting that the present system is no longer fit for purpose. She says the Government is content that fundamental principles, related to data collection and sharing, exchange of confidential data, temporary direct activity by Eurostat, control of dissemination, access and disclosure, treatment of publicly available data sources and “passive confidentiality”,¹⁶ are properly set out in the draft Regulation.

6.5 However the Minister goes on to say that the Government is reserving its opinion on some features until an adequate explanation is provided. These include:

- a description of how the draft Regulation would actually deliver the fundamental principles;
- the scope of “European Statistics” in the context of national statistics and subsidiarity;
- adoption of a European Statistics Code of Practice;
- how a two committee system (rather than the single committee envisaged in preparatory work of the draft Regulation) will provide adequate governance;
- development of the multi-annual work programme in a spirit of partnership and how the two committee model provides for this; and
- the possibility of testing the adequacy of the new framework by trialling it in a topic-specific Regulation.

14 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.

15 See http://epp.eurostat.ec.europa.eu/pls/portal/docs/PAGE/PGP_DS_ABOUTESTAT/PGE_DS_ABOUTESTAT_01/TAB_ESS/PROGR_QUINQ.PDF

16 The principle of “passive confidentiality” is that a statistical authority takes appropriate measures only at the request of providers of data, for example businesses, who feel that their interests would be harmed by the dissemination of data.

Conclusion

6.6 Whilst acknowledging the Government's welcome for a revised basic legal framework for the production and dissemination of statistics at Community level, we note the reservations the Minister mentions and, incidentally, observe that some at least of the seem to stem from the failure of the Commission to provide an impact assessment for this proposal. So before considering the draft Regulation further we would like to hear about progress in securing resolution of the matters the Minister mentions.

6.7 We should also like more information about the proposal that Eurostat should be able to collect data directly in Member States and the safeguards on the use of this power.

6.8 Meanwhile the document is not cleared.

7 Collection and use of fisheries statistics

(28574) 8650/07 COM(07) 196	Draft Council Regulation concerning the establishment of a Community framework for the collection, management and use of data in the fisheries sector and support for scientific advice regarding the Common Fisheries Policy
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<i>Legal base</i>	Article 37EC; consultation; QMV
<i>Department</i>	Environment, Food and Rural Affairs
<i>Basis of consideration</i>	Minister's letter of 14 January 2008
<i>Previous Committee Report</i>	HC 41–xxvii (2006–07), chapter 1 (27 June 2007)
<i>To be discussed in Council</i>	No date set
<i>Committee's assessment</i>	Politically important
<i>Committee's decision</i>	Cleared

Background

7.1 Fisheries management of the kind carried out under the Common Fisheries Policy (CFP) requires an informed assessment of its economic, biological and technical aspects, and Council Regulation (EC) No. 1543/2000¹⁷ established a new framework for the collection and handling of the relevant data at the appropriate level needed to evaluate it, covering such areas as the catches (including discards) for each stock by vessel group, geographic area and time period; changes in fishing power and the activities of various parts of the fleet; the monitoring of prices, as well as landings; and evaluations of the

¹⁷ OJ No. L 176, 15.7.00, p.1. (20655) 12347/99 and (20662) 12350/99: see HC 23–xix (1999–2000), chapter 12 (24 May 2000).

economic state of the catching and processing sectors. According to the Commission, a number of shortcomings have since been identified in these arrangements, and it therefore put forward in April 2007 this document containing a number of proposals addressing these, and seeking to make the system less burdensome.

7.2 As we noted in our Report of 27 June 2007, the Government supports the principles behind the proposal, and some of its detailed aspects. However, it also had a number of reservations, including the possibility that aspects of the proposal (such as the extended obligation on Member States to respond to requests from users) could lead to an increase in the level of resources which they would need to deploy, whilst others (for example, a requirement on businesses to provide access for the collection of data) could cut across existing Community and national legislation.

7.3 We were also told that the main impact of the proposal within the UK was likely to fall on authorities rather than industry, and that, although there could be some increased requirements on businesses, a Regulatory Impact Assessment was not needed on this proposal at the moment. Notwithstanding this, we decided that, although we would draw the document to the attention of the House, we would hold it under scrutiny, pending further information on these points. In particular, before we felt able to clear the document, we said that we would like the Government to clarify the extent to which the proposal would impact on the industry.

Minister's letter of 14 January 2008

7.4 We have now received a letter of 14 January 2008 from the Minister for Marine, Landscape and Rural Affairs at the Department for Environment, Food and Rural Affairs (Mr Jonathan Shaw), indicating that the impact of the proposal on industry would be very limited, and in most cases would arise only indirectly. For example, a key change would be the collection of data on a fleet-based, rather than a stock-based, approach in order to assess the impact of various types of fishing activity, and this will require changes in the way data is collected. However, although this would involve the industry, the main impact would fall on Government.

7.5 More generally, the Minister reports that discussions in a Council Working Group, as well as in a number of European Parliament committees, has revealed concerns which echo those voiced by the UK, and that this has resulted in a number of helpful changes being agreed. For example, a requirement on Member States to provide direct electronic access to their systems, which was likely to involve significant costs, has been dropped.

Conclusion

7.6 We are grateful to the Minister for this further information, and, in view of his assurance about the likely impact of the proposal on the industry, we are now content to clear it.

8 Implementation of Community obligations under the Kyoto Protocol

(29224) 15898/07 + ADD 1 COM(07) 757	Commission Communication on progress towards meeting the Kyoto objectives
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<i>Legal base</i>	—
<i>Document originated</i>	27 November 2007
<i>Deposited in Parliament</i>	4 December 2007
<i>Department</i>	Environment, Food and Rural Affairs
<i>Basis of consideration</i>	EM of 10 January 2008
<i>Previous Committee Report</i>	None
<i>To be discussed in Council</i>	No date set
<i>Committee's assessment</i>	Politically important
<i>Committee's decision</i>	Cleared

Background

8.1 In order to meet the environmental challenges presented by global warming, the 1992 United Nations Framework Convention on Climate Change (UNFCCC) requires industrialised countries to return their emissions of greenhouse gases by the year 2000 to the levels obtaining in 1990. However, in 1997, the Kyoto Protocol went on to set legally binding emission targets for industrialised countries to meet by 2012. The Community of 15 accordingly undertook to reduce its 1990 emission levels by 8% by the period 2008–2012, with reductions being apportioned between the individual Member States under the Burden Sharing Agreement (see Annex). Of the new Member States, all but Cyprus and Malta have individual reduction targets under the Protocol, equivalent to 8% (except for Hungary and Poland, where the target is 6%).

The current document

8.2 This report provides a description of historical trends in, and projections of, greenhouse gas emissions for the EU-15 and EU-27, based on information provided by Member States, and is the second¹⁸ of a series of annual reports required under Decision 280/2004/EC. Historical emissions are shown between 1990 and 2005 (the latest year for which data is now available), whilst projected emissions are provided for 2010 (the midpoint of the first commitment period) on the basis of those measures currently in place and the additional policies and measures being introduced, as well as the effect of the

¹⁸ The first such report was in October 2006 (27997) 14918/06: see HC 41–iv (2006–07), chapter 8 (14 December 2006).

planned use of the Kyoto flexible mechanisms,¹⁹ and the projected use of carbon sinks (Land Use, Land Use Change and Forestry (LULUCF)) allowed under the Kyoto Protocol.

8.3 The report notes that, due mainly to reductions in carbon dioxide from public electricity and heat production, households and services and road transport, emissions in the EU-15 in 2005 decreased by 0.8% compared with 2004, and are now 2% below the base year. Despite this, the EU is currently not on target to meet its Kyoto target, but the report points out that the most recent projections to 2010 indicate that the target could be met, provided Member States put in place, and implement as soon as possible, their additional policies and measures.

8.4 As regards individual Member States, the report notes that three (Germany, Sweden and the UK)²⁰ are on track to meet their Kyoto targets using only existing measures, whilst eight other Member States are projected to do so when additional policies and measures, and use of the Kyoto mechanisms, are taken into account. However, the Commission says that Denmark, Italy and Spain appear to be unable to meet their targets, although it adds that this analysis does not take into account the recent decisions on national allocation plans under the Emissions Trading Scheme (which, compared with the base year, will bring an estimated reduction of 3.4% for the EU-15 and 2.6% for the EU-25).

8.5 For the EU-27, the report says that emissions in 2005 were 11% lower than the base year, without taking into account emissions and removals by LULUCF, and 0.7% lower than in 2004. It also says that, even though emissions are expected to increase between 2005 and 2010 in most of the new Member States, nine of them are projected to meet (or even exceed) their individual Kyoto targets using only existing policies and measures, whilst Slovenia estimates that it will meet its target, with planned additional policies and measures, the use of Kyoto mechanisms and carbon sinks.

8.6 The Commission also recalls that the Community has agreed to reduce greenhouse gas emissions by at least 20% by 2020, and says that there is a significant gap between this target and Member States' projections, requiring a much steeper emissions reduction path after 2012, as compared with 1990–2012. It adds that this underlines the need to put in place the necessary legislation as soon as possible in order to implement the various policies identified in the climate change and energy package, and it says that it will be putting forward proposals to achieve this.

8.7 More generally, the report notes that, with few exceptions, the measures announced in 2001 in the first phase of the European Climate Change Programme (ECCP) have now been implemented, and that the second phase was launched in 2005, with important proposals having been put forward on the inclusion of aviation within the Emissions Trading Scheme, fuel quality, and carbon dioxide emissions from cars; that the European Union emissions trading scheme was launched on 1 January 2005 (and currently covers about 50% of total carbon dioxide emissions in the EU-25); and that decisions have recently been reached on national allocation plans for the period 2008–12, which coincides with the first commitment period of the Kyoto Protocol.

19 Joint Implementation (JI) and the Clean Development Mechanism (CDM).

20 The Commission notes that Germany and the UK are the two largest emitters, accounting for about one-third of total emissions for the EU-27.

The Government's view

8.8 In his Explanatory Memorandum of 10 January 2008, the Minister of State for the Environment at the Department for Environment, Food and Rural Affairs (Mr Phil Woolas) says that the Community and the UK have taken a leading role in calling for, and taking, action to tackle climate change. The UK's new climate change programme, revised in March 2006, sets out how it plans to meet, and go beyond, its 12.5% Kyoto target and reduce greenhouse gas emissions in 2010 by 23% compared with 1990. Additionally, the Energy White Paper published in May 2007 confirmed the goal of putting the UK on a path to cut carbon dioxide by 60% by 2050, whilst the Climate Change Bill proposes an interim target of 26–32% reduction in carbon dioxide emissions by 2018–22. He adds that the UK emissions of the 'basket' of six greenhouse gases covered by the Kyoto Protocol fell by 15.7% (or 19.1% when the impact of the Emissions Trading Scheme is taken into account) between the base year and 2005.

8.9 The Minister says that the UK welcomes the report as a useful signpost of the progress being made, and of the further action which will be needed if all Member States and the Community as a whole are to meet their Kyoto targets. He adds that the Government is concerned that all Member States should meet their targets, and believes that the Community should not rely on over-compliance by some Member States. It, therefore, believes that the report will increase the pressure on those Member States in danger of missing their targets to take the necessary further action.

Conclusion

8.10 **This report is the latest in a series of assessments of the Community's progress towards meeting its Kyoto targets, and provides some interesting and useful information. As in previous years, we think it right in clearing the document to report it to the House, noting that, whilst a number of Member States are not projected to meet their Kyoto commitments, the Commission nevertheless estimates that, provided additional measures (including use of the flexible mechanisms under Kyoto) are taken, the Community as a whole should also do so by 2010. However, as we observed last year, this conclusion does depend critically upon those additional measures being taken. To that extent, therefore, it may again prove to be over-optimistic.**

Annex: Member States' commitments under the Community's Burden Sharing Agreement (percentage changes for 2008–2012 relative to 1990 emission levels)

Austria	-13
Belgium	-7.5
Denmark	-21
Finland	0
France	0
Germany	-21
Greece	+25
Ireland	+13
Italy	-6.5
Luxembourg	-28
Netherlands	-6
Portugal	+27
Spain	+15
Sweden	+4
UK	-12.5

9 European Development Fund expenditure in 2006

(29303)	Court of Auditor's annual report on the activities funded by the sixth, seventh, eighth and ninth European Development Funds concerning the Financial Year 2006 and the Commission replies
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<i>Legal base</i>	Article 248(1) and (4) EC; QMV; co-decision
<i>Deposited in Parliament</i>	7 January 2008
<i>Department</i>	International Development
<i>Basis of consideration</i>	EM of 15 January 2008
<i>Previous Committee Report</i>	None; but see (28734) 11141/07: HC 16–viii (2007–08), chapter 15 and (29232) —; chapter 3 (16 January 2008) and (28607) 9163/07: HC 41–xxiii (2006–07), chapter 13 (6 June 2007)
<i>To be discussed in Council</i>	12 February 2008 Economic and Financial Council
<i>Committee's assessment</i>	Politically important
<i>Committee's decision</i>	Cleared

Background

9.1 The European Union — the Member States and the European Commission — is the world’s biggest aid donor to more than 150 countries and territories.

9.2 Within the Commission, external aid is channelled into two main streams of funding, the general budget managed by the Directorate-General (DG) for External Relations, and the European Development Fund managed by DG Development. EuropeAid Co-operation Office (also known as AIDCO) was set up in 2001 — “the culmination of an EU effort to streamline aid management and delivery, while improving quality and effectiveness” — and manages EU external aid programmes worldwide. It is responsible to the Commissioner with responsibility for External Relations and European Neighbourhood Policy. The Director-General is responsible for the overall resources entrusted to it from the EC budget and the European Development Fund. In 2005, external assistance amounted to €10.4 billion. Of this, EuropeAid managed €7.5 billion.²¹

9.3 The European Development Fund (EDF) is the EU’s main development cooperation instrument for 78 African, Caribbean and Pacific (ACP) countries and 20 Overseas Countries and Territories (OCT). The 6th EDF was established in 1984 by the 3rd Lomé Convention. It was renewed in 1990 as the 7th EDF and again in 1995 as the 8th EDF. The Lomé Convention was superseded by the Cotonou Agreement (signed in 2000, entered into force in 2003) which provides the framework for the current, 9th EDF (EDF 9).²²

9.4 EDF 9 became operational on 1 April 2003 and runs until the end of 2007. It provides the €13.8 billion (£9.4 billion) specified in the Cotonou Agreement for the Community’s financial assistance for the five-year period, in addition to all uncommitted funds from previous EDFs. The UK share of EDF 9 is 12.69%.

9.5 The European Court of Auditors (ECA), the independent external auditor of the European Union, produces annual reports on Community expenditure in the previous financial year. The legal basis under which this document was prepared is Article 248(1) and (4) TEC, together with Article 116 of the Financial Regulation of 27 March 2003 applicable to EDF 9, which requires the Court to draw up and submit an annual report on the financial management of the EDFs. Hitherto, the report of the general budget of the Union included an annex on the EDFs. However, this year the ECA has elected to produce separate reports.

The Court of Auditors’ Report

9.6 The Annual Report concerns the EDF expenditure in 2006 managed by the Commission (EC) and contains the ECA’s observations on the effectiveness of the EDFs for the financial year 2006, together with the Commission’s replies. The main aspect is the ECA’s statement of assurance and accompanying information, which focus on the reliability of the Commission’s accounts and the legality and regularity of underlying

21 See http://ec.europa.eu/europeaid/index_en.htm for full details of EuropeAid’s activities.

22 Earlier EDFs were: EDF1 established by the Treaty of the European Economic Community in 1958, EDF2 by the 1st Yaoundé Convention of 1964, EDF3 by the 2nd Yaoundé Convention of 1969, EDF4 by the 1st Lomé Convention of 1975 and EDF5 by the 2nd Lomé Convention of 1979.

transactions. The ECA has concluded that the EDF accounts for 2006 reliably reflect actual revenue and expenditure and that underlying transactions — of revenue, allocations, commitments and payments — are, taken as a whole, legal and regular.

9.7 In reaching their judgement, the ECA assessed:

- supervisory and control systems at EuropeAid’s central services and in 5 EC Delegations;
- a sample of transactions made by the Delegations, excluding budget support;
- budget support provision in 2 of the 5 sample countries;
- 12 payments and 2 legal commitments authorised by EuropeAid’s central services;
- 40 transactions checked ex-post by EuropeAid’s central services; and
- the annual activity report and declaration by the Director-General of EuropeAid.

9.8 In his Explanatory Memorandum of 15 January 2008, the Parliamentary Under-Secretary of State at the Department for International Development (Mr Gareth Thomas) notes the progress made by the EC, and recorded by the ECA, in addressing issues identified in its annual report on EDF expenditure in 2005, including a review of ex-post controls and improved support to operational and financial staff in EC Delegations and central services.

9.9 He continues as follows:

“That said, the ECA did identify a material incidence of errors affecting transactions authorised by Delegations, most of which resulted from inadequate controls carried out by supervisors or auditors. The ECA has recommended that the EC introduce, by the end of 2007, a comprehensive supervisory and control system covering all parties, including EC Delegations, EuropeAid central services and ACP states. The ECA recommends that this be supplemented by more active monitoring of projects and support to implementing agencies by EC Delegations; audits being undertaken at an early stage of implementation of projects; the use of standardised terms of reference for external audits; and better monitoring and communication of audit results.”

9.10 The Minister then highlights some specific comments concerning the EC’s provision of budget support:

“These are based on the review of budget support in two EC delegations — Sierra Leone and Mozambique. Its recommendations essentially reiterate issues raised in its Special Report 2/2005 concerning EDF Budget aid to ACP countries. The ECA believes that the EC should take greater account of partner countries’ public financial management capabilities when deciding whether this form of assistance is appropriate. It recommends that disbursements be benchmarked against specific events having taken place, including evidence of improved public financial management where relevant.”

9.11 The Commission’s response is annexed to the ECA report. It confirms that it has set-up an Action Plan for an integrated internal control framework across all of its services; has produced a new practical guide on EDF financial and contractual procedures; run 21 training courses for staff and ACP counterparts in 2006; adopted new terms of reference and related guidance for audits; and planned further improvements to the central monitoring of external audits in 2007.

9.12 Regarding budget support, the Minister notes that the Commission has “signalled its general agreement to the ECA’s observations and recommendations”, highlighting the introduction of revised guidelines for the provision of general budget support following the ECA’s special report 2/2005 and noting that the Commission “believes that it has acted in accordance with the provisions of the Cotonou Agreement in managing the provision of budget support to Sierra Leone and Mozambique.”

The Government’s view

9.13 The Minister welcomes the ECA’s report and its statement of assurance on the EDF accounts and underlying transactions, the steps that the Commission has taken to address the ECA’s previous recommendations and the measures it plans to take in response to this latest report. He says that he will continue to take a close interest in the EC’s financial management performance.

9.14 On its website, the Department for International Development says that:

“Our mission is to reduce poverty overseas and to this end we deliver aid to poor countries in various ways. One way of doing this is poverty reduction budget support (PRBS). This involves directly supporting a partner government’s budget — giving them money to spend on reducing poverty. PRBS stops countries being dependent on aid forever, and builds countries’ own systems from the inside to help them reduce poverty and sustain this in the long-term. Supporting governments directly means the government and citizens are better able to manage their own plans and budgets, get results, and have a say in how and where the money is spent. This method of aid improves the government’s capability to deliver. Plus it facilitates change in individual sectors”²³

9.15 Regarding the ECA’s observations on budget support, the Minister says:

“DFID Country Offices in Sierra Leone and Mozambique have broadly supported the efforts taken by the EC in providing and managing budget support. We support the EC’s view that when providing budget support in fragile environments, the lack of robust and timely data needs to be balanced against the capacity constraints of the country and the benefits of budget support. As stated in 2005, the EU agrees that budget support is a key instrument for fighting poverty. However, we will continue to seek to ensure that issues of risk to EC funds provided through budget support are adequately addressed by the Commission. We understand that the ECA will produce

23 For further information on budget support, see <http://www.dfid.gov.uk/news/files/prbs-govs-reduce-poverty.asp>

a follow-up special report on budget support provision during 2009, which will be subject to the normal scrutiny process.”

9.16 Looking ahead, the Minister says that the report will be considered by the Council’s ACP Working Group in January and the Economic and Financial Council on 12 February 2008, and anticipates that the Council will make a recommendation to the European Parliament to give the EC a discharge on EDF expenditure in 2006.

Conclusion

9.17 **The ECA report raises no immediate concerns or questions. But it does highlight an issue where its approach to the proper control of large amounts of European taxpayer funding is potentially at odds with an approach to funding and encouraging development that is now central. Though no doubt not so intending, the Minister nonetheless leaves us with the impression that he does not attach as much importance to the former as does the ECA. He says that he will “continue to seek to ensure that issues of risk to EC funds provided through budget support are adequately addressed by the Commission”, but without saying anything about how he will do this, and seems to be content to leave it to a further special ECA in 2009, while noting without comment that this Report’s recommendations essentially reiterate issues already raised in its earlier Report in 2005 concerning EDF Budget aid to ACP countries.**

9.18 We hope to see earlier indications of appropriate progress, as detailed in paragraph 9.9 and 9.10 above, in the corresponding Report in a year’s time on the financial year 2007. In the meantime, we clear this Report, which we are reporting to the House because of the widespread interest in development issues.

10 Public access to documents held by EC Institutions

(28576) 8754/07 COM(07) 185	Green Paper on public access to documents held by institutions of the European Community — A review
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<i>Legal base</i>	—
<i>Document originated</i>	18 April 2007
<i>Deposited in Parliament</i>	26 April 2007
<i>Department</i>	Foreign and Commonwealth Office
<i>Basis of consideration</i>	Minister’s letter of 20 January 2008
<i>Previous Committee Report</i>	HC 41-xxiii (2006–07), chapter 6 (6 June 2007)
<i>To be discussed in Council</i>	No date set
<i>Committee’s assessment</i>	Legally and politically important
<i>Committee’s decision</i>	Cleared

Background

10.1 Article 255 EC (as amended by the Treaty of Amsterdam in 1996) provides for a public right of access to information held by the European Community. Further provision was made by Regulation (EC) No. 1049/2001²⁴ for public access to documents held by the European Parliament, the Council or the Commission. This Regulation came into force on 3 December 2001. Access to information relating to the environment is the subject of an international agreement, the Århus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters of 25 June 1998 (the Århus Convention). By virtue of Regulation (EC) No. 1376/2006²⁵ of 6 September 2006, the provisions of the Århus Convention apply to Community institutions and bodies with effect from 28 June 2007.

10.2 The Commission's Green Paper reviews the operation of Regulation (EC) No. 1049/2001, its relationship with the Regulation imposing duties on the Community institutions under the Århus Convention and the need for any amendment to Regulation (EC) No 1049/2001 so as to provide for one regime for the disclosure of environmental and other information held by the EC Institutions. The Commission points out that this would involve amendments to take account of the public interest in disclosure where the information concerns emissions released into the environment, and to provide that the exception relating to the financial, monetary or economic policy of the Community or of a Member State may not be relied on to refuse disclosure of environmental information.

10.3 When we considered the Green Paper on 6 June 2007, we found it unhelpful that the Government's Explanatory Memorandum should give little, if any, indication of its views on the issues raised by the Green Paper. The Minister confined himself to observing that there were important areas in the EU's Access to Documents Regulation that needed to be addressed, in particular how the Regulation should work alongside the Århus Convention. The Minister stated that the Government would be putting forward its proposals in response to the points raised by the Commission in the Green Paper and would forward this to Parliament "in due course".

10.4 We asked the Minister to provide an explanation of the Government's views in reply to the Green Paper in sufficient time to allow us to comment before the consultation period drew to a close.²⁶ We asked, in particular, if the Minister would explain the views of the Government on the need for amendments to Regulation No. 1049/2001 so as to provide for a single regime on the disclosure of environmental and other information by the EC institutions, and on the question of defining "legislative documents" for the purposes of that Regulation.

The Minister's reply

10.5 In his letter of 20 January 2008 the present Minister for Europe at the Foreign and Commonwealth Office (Jim Murphy) replies briefly to the questions we put to his predecessor. On the question of amending Regulation No. 1049/2001 to provide a single

24 OJ No. L 145, 31.05.01, p.43.

25 OJ No. L 264, 25.09.06, p.13.

26 The Minister's Explanatory Memorandum indicated that the public consultation period would run until July 2007.

regime on the disclosure of environmental and other information, the Minister states that the UK supports the creation of a single set of rules for access to documents, including those on environmental issues.

10.6 On the question of defining “legislative documents” for the purposes of the Regulation, the Minister refers to the mandate adopted by the European Council on 21/22 June 2007, and subsequently “translated” into the Lisbon Treaty and explains that “in future, a differentiation will be made in primary law between legislation and legal instruments without a legislative character”. The Minister adds that “this should ensure that the differentiation between legislative and non-legislative documents is clear”.

Conclusion

10.7 We regret to find that the Minister’s reply is both late and perfunctory. His predecessor told us that there were “important areas” in the access to documents Regulation that “needed to be addressed”, but we are now told simply that the UK supports the creation of a single set of rules for access to documents, including those on environmental issues, with no explanation given of the “important areas” previously referred to.

10.8 It is also apparent that the consultation period has now closed, but we have been given no explanation of whether the Government did reply or of any points the Government may have made, and this despite our request to be shown the Government’s reply in draft. We also note that the then Minister undertook to forward the Government’s reply to Parliament, but it does not appear that this undertaking was ever discharged.

10.9 There is some irony in the Government’s reticence over the issue of public access to documents and we shall expect the Government to be more forthcoming when legislative proposals are made. The Green Paper is now spent and we see no point in holding it under scrutiny.

11 EU Special Representative to the African Union

(29082)	Draft Joint Action to appoint a European Union Special Representative to the African Union
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<i>Legal base</i>	Articles 14, 18(5) and 23(2); QMV
<i>Department</i>	Foreign and Commonwealth Office
<i>Basis of consideration</i>	Minister's letter of 15 January 2008
<i>Previous Committee Report</i>	HC16–ii (2007–08), chapter 20 (14 November 2007) and HC 16–vi (2007–08), chapter 13 (12 December 2007)
<i>Discussed in Council</i>	19–20 November 2007 General Affairs and External Relations Council
<i>Committee's assessment</i>	Legally and politically important
<i>Committee's decision</i>	Cleared (reported to the House on 14 November 2007)

Background

11.1 EU Special Representatives (EUSR) are appointed to represent Common Foreign and Security Policy (CFSP) where the Council agrees that an additional EU presence on the ground is needed to deliver the political objectives of the Union. They were established under Article 18 of the Amsterdam Treaty and are appointed by the Council. The aim of the EUSRs is to represent the EU in troubled regions and countries and to play an active part in promoting the interests and the policies of the EU.

11.2 An EUSR is appointed by Council through the legal act of a Joint Action. The substance of his or her mandate depends on the political context of the deployment. Some provide *inter alia*, a political backing to a European Security and Defence Policy (ESDP) operation, others focus on carrying out or contribute to developing an EU policy. All EUSRs carry out their duties under the authority and operational direction of the High Representative (Javier Solana). An EUSR is financed out of the CFSP budget implemented by the Commission. Member States contribute regularly, e.g. through seconding some of the EUSR's staff members.

11.3 Currently the European Union has nine Special Representatives in different regions of the world. The only ones in Africa thus far are to the Great Lakes Region and for Sudan.

The Joint Action

11.4 Last November, we considered a Joint Action to appoint an EUSR to the African Union (AU, based in Addis Ababa) and set out her/his policy objectives and mandate, with that mandate based on the EU's policy objectives in support of African efforts to build a

peaceful, democratic and prosperous future, as set out in the EU strategy “The EU and Africa: towards a strategic partnership”.²⁷

11.5 The Joint Action also provides for the EUSR to be Head of a new Delegation; the person concerned would thus perform the functions of:

- *Head of the European Commission Delegation* to the AU, appointed by the European Commission. As Head of the EC Delegation, he/she will represent the European Community with respect to the AU, on all matters falling under Community competence; and
- *EU Special Representative* to the AU, to be appointed by the Council pursuant to Article 18(5) TEU. As EUSR, the individual concerned would represent the EU with respect to the AU in matters falling under the CFSP.

11.6 In his accompanying Explanatory Memorandum, the Minister for Europe at the Foreign and Commonwealth Office (Mr Jim Murphy) said that the purpose of creating a double-hatted head was to:

- “enhance the EU’s political dialogue and broader relationship with the AU;
- “strengthen the EU-AU partnership in the priority sectors set out in the EU strategy for Africa and the EU-Africa dialogue;
- “work with, and provide support to the African Union (AU) by supporting institutional development and strengthening the relationship between EU and AU institutions, including through development assistance, to promote in particular peace and security, human rights and governance, sustainable growth, regional integration and trade, investing in people;
- “ensure better coherence of EU and Community policies, instruments and actions with Member States’ policies towards the AU, as well as co-ordinating EU policies with non-EU-Actors, without prejudice to respective competences;
- “strengthen the AU’s crisis management capabilities.”

11.7 He went on to say that the new EUSR/Head of Delegation and his/her staff would have primary responsibility for implementing the EU commitments in the proposed EU Strategic Partnership for Africa and that, given his strong support for improving the coherence and effectiveness of the EU’s engagement and cooperation with the AU, the UK had proposed a high level national candidate.

11.8 For our part, we noted that: a Delegation to the AU headquarters was not groundbreaking, there already being such at other centres of international organisations (OECD, OSCE, UN and WTO); it plainly made sense for there to be a resident European Union Special Representative at the seat of the African Union, rather than a periodic visitor from Brussels; and that it was axiomatic to wish to see better coordination and coherence between Community and EU policies. However, we felt that, while clear enough from the

²⁷ (28780) 11326/07: see HC 41–xxxiv (2006–07), chapter 2 (2 October 2007) on the proposed EU Strategic Partnership for Africa, which was debated in the European Standing Committee, *Stg Co Deb*, 23 October 2007, cols 3–20.

draft EUSR mandate what his or her job would be, and to whom he or she would be responsible (it having been drawn up on “standard” EUSR lines), it was not altogether plain from the Minister’s Explanatory Memorandum of what the “permanent head of the EC delegation” part of the job would consist. We noted that the only precedent is the present “double-hatting” of the EUSR to the Former Yugoslav Republic of Macedonia (FYROM), in which instance an incumbent head of an existing EC delegation, performing an established and conventional bilateral role, assumed the role of EUSR; whereas in this instance, the intention was to create a “double-hatted” individual from the outset.

11.9 We further noted that, as the Commission themselves put it, “Delegations exercise powers conferred by the treaty on the European Community, in third countries, by promoting the Community’s interests as embodied in the common policies” and “play a key role in the implementation of external assistance”; and “also play an increasing role in the conduct of the Common Foreign and Security Policy (CFSP), providing regular political analysis, conducting evaluations jointly with Member State Embassies and contributing to the policy making process”.²⁸ We said that the CFSP role would presumably be carried out exclusively by the EUSR. However, it was not immediately apparent what common policies under the EC Treaty the head of delegation would be promoting, or what external assistance he or she would be implementing, since that is customarily done on a bilateral basis (as in the FYROM).

11.10 The legal base for deciding on “double-hatting” was also not apparent. We recalled that, when we considered the proposal regarding the EUSR/FYROM on 12 October 2005, it was emphasised by the then Minister for Europe that this was very much a *sui generis* arrangement, as explained in his accompanying Explanatory Memorandum:

“This arrangement offers a practical, pragmatic and cost effective solution to the specific requirements of Macedonia at this time. Having one individual heading up both offices will ensure that the Macedonian authorities receive one authoritative message on both security and integration issues. However, as we would want to consider the merits of any possible future proposal for such an arrangement on its own terms, we have secured a Declaration to accompany the Joint Action. This highlights that this proposal is an exceptional measure and does not set a model for the appointment of future EUSRs. Importantly, the declaration also notes the Council’s primacy in CFSP by stating the Council and Commission’s agreement that the EUSR will take instructions from the Council on CFSP, with no caveats or exceptions.”²⁹

We also recalled that this position was subsequently confirmed in evidence to the Foreign Affairs Committee by the previous Foreign Secretary.³⁰

11.11 We were content to clear the draft Joint Action appointing an EU Special Representative. But we asked the Minister to write to us with a clear exposition of:

— what the Government’s position now is on the question of “double-hatting”;

28 *Ibid.*

29 (26896)—: HC 34–v (2005–06), chapter 42 (12 October 2005): see headnote.

30 Oral evidence taken before the Foreign Affairs Committee on 13 December 2006, HC 166–i.

- what the head of EC delegation role will involve in this instance, and what balance of work is envisaged between the two functions;
- what the proposed reporting arrangements are, so that we might be assured that, as he had put it, there was indeed “better coherence of EU and Community policies, instruments and actions with Member States’ policies towards the AU”, but “without prejudice to respective competences”; and
- the legal base for the proposed “double-hatting” arrangement.

The Minister’s letter of 5 December 2007

11.12 When we considered the Minister’s response, on 12 December last, we concluded that he had now provided us with a clear idea of the basis of appointment of each component of the combined function, of what both components will consist, and of the reporting arrangements. But we were less convinced than he was that agreement to this proposal did not indicate a shift in the Government’s overall attitude.

11.13 The Minister referred, quite correctly, to his predecessor’s statement that the Government would “consider the merits of future such proposals on their own terms”. What he chose not to mention, however, was the emphasis that his predecessor also put on the Declaration that he had secured to accompany the Joint Action establishing the only other “double-hatted” EUSR, which he said “highlights that this proposal is an exceptional measure and does not set a model for the appointment of future EUSRs.” So we asked the Minister:

- to explain how this Declaration was taken into account, and why it was decided that it would be right to overlook the exceptional, non-precedent-setting nature of that earlier appointment in this instance; and
- whether he agreed with us that, in so doing, and now praying in aid the elastic phrase “compelling operational reasons” he has effectively made it redundant?

In the meantime we reported this further information to the House because of the widespread interest in how the Community’s and the EU’s external action is managed.³¹

The Minister’s letter of 15 January 2008

11.14 The Minister responds as follows:

“You ask how the Declaration accompanying the 2005 Joint Action appointing a double-hatted EUSR to Macedonia was taken into account when deciding on the arrangements and mandate for the EUSR to the African Union. The Government’s policy on this issue has not changed. It remains fully consistent with the 2005 Joint Council/Commission Declaration which states that the appointment of Mr Erwan Fouéré as a double-hatted EUSR to Macedonia ‘is an exceptional measure and is not to be regarded as setting a precedent for the appointment of future EU Special

³¹ See headnote: HC 16–vi (2007–08), chapter 13 (12 December 2007).

Representatives'. Indeed, when Mr Fouéré's mandate was last extended on 15 February 2007, the UK ensured that the Council and Commission reaffirmed this Declaration.

"Since Mr Fouéré's appointment in November 2005, eight new EUSRs have been appointed without any suggestion of double-hatting, including recently Roeland Van de Geer, appointed EUSR to the African Great Lakes in March 2007, and Torben Brylle, appointed EUSR to Sudan in May 2007.

"The explanation of the Government's policy as detailed in my letter of 15 December 2007 [*sic*] and my predecessor's letter of 7 October 2005 remains valid. Double-hatting in Macedonia is not an automatic precedent; the merits of each proposal are considered on their own terms. In this case, the UK Government considers that double-hatting is necessary for EU co-ordination on the ground: it is vital that the EU speaks with a clear and coherent voice to the African Union, wider civil society and other international actors in Addis Ababa such as the United Nations. Further, this improvement [is] not only in the EU's interests, it is clearly in the UK's national interest."

Conclusion

11.15 As is plain, the Minister has not answered our questions fully. Much of his letter consists of reiterating the justification for "double-hatting" on this occasion. That the "double-hatted" appointment in the FYROM was "an exceptional measure" and was "not to be regarded as setting a precedent for the appointment of future EU Special Representatives" clearly suggests something stronger than each further such proposal being "considered on their own terms". We accordingly find the Minister's response disappointing and unconvincing, and — noting the Minister's failure to respond at all on this point — accordingly continue to judge that the much-vaunted Declaration has now been effectively made redundant.

12 European Security and Defence Policy and Guinea-Bissau

(29349)	Joint Action: <i>Security Sector Reform in Guinea-Bissau</i>
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<i>Legal base</i>	Article 14 and 23 EU; unanimity
<i>Department</i>	Foreign and Commonwealth Office
<i>Basis of consideration</i>	EM of 17 January 2008
<i>Previous Committee Report</i>	None
<i>To be discussed in Council</i>	28 January 2008 General Affairs and External Relations Council
<i>Committee's assessment</i>	Politically important
<i>Committee's decision</i>	Cleared

Background

12.1 The Foreign and Commonwealth Office website paints a troubled and unhappy picture of Guinea-Bissau's move to independence, via a protracted guerrilla war and then Portugal's own 1974 "carnation revolution": firstly, one-party rule, then a coup in 1980 which "began a pattern of military coups and instability, which has persisted until quite recently". That coup was led by João Bernardo "Nino" Vieira, who became the first directly-elected President in 1994, after the acceptance of multi-party democracy in 1991 (a presidential democracy which allows for multiparty politics and an elected national assembly).

12.2 The period from 1998 to 2004 was notable for a further coup attempt; protracted stalemate between loyalist and rebel forces; the intervention of troops from neighbouring Senegal and Guinea, as well as from the regional peacekeeping force, ECOMOG; elections in December 1999 and January 2000; and the eventual election of opposition leader Kumba Yala in February 2000.

12.3 The first half of this present decade then consisted of further manifestations of unresolved tensions between the government and the military hierarchy: a further attempted military rebellion; subsequent rule by President Yala "characterised by chronic political instability"; his eventual deposition in a bloodless coup in September 2003 supported by all political parties, including Yala's own; and the installation of a businessman as interim President; and legislative elections in March 2004 in which no party came out with an overall majority.

12.4 More recently, a further period of political turmoil has followed the June 2005 presidential elections, following which ex-President Vieira eventually emerged as the winner in a close finish, and was sworn in as President on 1 October; including ex-president Yala's return from exile in late 2006; and culminating in the collapse of the government coalition in March 2007.

“After a stand off the opposition leader Martinho N’Dafa Kabi became Prime Minister in April, and the political situation in the country now appears to have steadied.

“In recent months several media reports have brought to public attention a growing problem of drug trafficking via Guinea Bissau. Drugs coming from Latin America are being smuggled to Europe via the country, taking advantage of the mangrove swamps and jagged coastline, and the poor capacity of the government to deal with the problem.”³²

The draft Joint Action

12.5 The preamble sets out the context for the proposal therein:

- the promotion of peace, security and stability in Africa and Europe is a key strategic priority of the Joint Africa-EU Strategy adopted by the EU-Africa Summit on 9 December 2007;
- security sector reform (SSR) in Guinea-Bissau is essential for the stability and sustainable development of the country;
- in November 2006, the Government of Guinea-Bissau presented a National Security Strategy underlining its commitment to implement security sector reform;
- the Council and the Commission carried out an initial joint information gathering mission in May 2007 in Guinea Bissau, in cooperation with the Bissauan authorities, to develop an overall EU approach to support for the national security sector reform process;
- an Action Plan for the Restructuring and Modernisation of the Security and Defence Sectors was presented by the Government of Guinea-Bissau in September 2007, and the institutional framework for the implementation of this Action Plan was established;
- in order to combat the increasing threat posed by organised criminal networks operating in the country, the Government of Guinea-Bissau, with the assistance of the United Nations Office on Drugs and Crime (UNODC), also announced an Emergency Plan to Fight Drug Trafficking in September 2007;
- a report by the UN Secretary-General of 28 September 2007 (S/2007/576), whilst commending the Government of Guinea-Bissau for the positive measures taken so far to implement the security sector reform programme, also underlined the country’s inability to combat drug trafficking by itself and called for technical and financial support from regional and international partners;
- on 19 November 2007, the Council considered that an ESDP action in the field of Security Sector Reform in Guinea-Bissau would be appropriate, in coherence with and

³² See FCO Country Profile at <http://www.fco.gov.uk/servlet/Front?pagename=OpenMarket/Xcelerate/ShowPage&c=Page&cid=1007029394365&a=KCountryProfile&aid=1019744953879>

complementary to the European Development Fund and other Community activity;
and

- following a second EU fact-finding mission deployed in October 2007, the Council approved on 10 December 2007 the General Concept for potential ESDP action in support of Guinea-Bissau Security Sector Reform.

12.6 In his 17 January 2008 Explanatory Memorandum, the Minister for Europe at the Foreign and Commonwealth Office (Mr Jim Murphy) explains that the Joint Action would establish an ESDP Security Sector Reform (SSR) Mission in Guinea Bissau (EUSSR Guinea-Bissau). He says that this follows a visit last year by the Ministry of Defence's Security Sector Defence Advisory Team, to assess the extent of its problems, whose findings were reported to the EU and taken up by Portugal, the former colonial power, in the run up to its EU Presidency. The Mission's role will be to provide advice and assistance to the local authorities in Guinea-Bissau on reform of the security sector, within the initial framework of the National Security Sector Reform Strategy, which needs to be implemented.

12.7 The Mission's tasks will, he says, include:

- advising and contributing to the development of detailed resizing/restructuring plans for the armed forces;
- assisting in the development of an underpinning doctrine for employment of the Armed Forces, including the areas of command, control and logistic support, and mainstreaming the counter narcotics effort;
- supporting the development of detailed plans for the restructuring of police bodies into four services; and
- advising on the planning and development of an effective criminal investigations capacity.

12.8 The Mission will comprise of approximately 15 experts in the various fields of the security sector.

12.9 It will consist of a preparatory phase beginning in mid-February, and an implementation phase beginning no later than 1 May 2008.

12.10 The Joint Action allows for a Mission of 12 months, with a review six months after the beginning of the implementation phase.

The Government's view

12.11 The Minister supports the proposal and comments as follows:

“With the country still dealing with the aftermath of civil war, and in the lead up to elections in November 2008, now is a good opportunity to assist SSR in Guinea Bissau. Guinea Bissau is a transit point for drugs being trafficked from Latin America to Europe, and the Mission will help to address this issue.

“There is strong support for the EU’s proposals from the authorities in Bissau, who lack the capacity and structures to deal with the problems caused directly and indirectly by the influx of drugs and organised crime to the country. There is also support for this Mission from all political parties in the country, so the outcome of the elections should not affect the reform process. Although Guinea-Bissau’s problems are large, the country is small,³³ and enough political will exists to instigate reform.”

12.12 The Minister goes on to explain that funding for common costs (in-country transport, office equipment etc) will be met from the Common Foreign and Security Policy Budget, to which the UK currently contributes approximately 17%; with an estimated cost of €5.75 million, the cost to the UK would be approximately £739,000.

12.13 He concludes by noting that the UK has no current plans to contribute any personnel to the Mission.

12.14 The Joint Action is expected to be agreed at the 28 January General Affairs and External Relations Council.

Conclusions

12.15 We are grateful to the Minister for his earlier letters in which he kept the Committee informed of the preparations for this mission, and have no questions to raise at this stage. The justification is clear, the Mission has been well-prepared and the costs are relatively modest. Only time will tell if, as we all would wish, the Minister’s hopes come to fruition.

12.16 We note that the mission is due to last for a year; that there will a mid-point review; and that moves are now afoot within the Council to develop formal assessment mechanisms for such ESDP missions. We should accordingly be grateful if, when the mission ends, he would let us have either the mission assessment and his views thereon or, if it has not yet been formally assessed, his own assessment of its outcomes and effectiveness (to include the conclusions of the mid-point review and steps taken to address them).

12.17 We now clear the document, which we are reporting to the House because of the widespread interest in European Security and Defence Policy and its growing involvement in security sector reform in troubled areas of Africa.

³³ Area: 36,120 sq km; Population: 1.5 million (2005 United Nations estimate).

13 Marketing of food and feed products containing genetically modified potato

(29295) 16785/07 COM(07) 813	Draft Council Decision authorising the placing on the market of food and feed products containing, consisting of, or produced from genetically modified potato line EH92–527–1
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<i>Legal base</i>	Regulation (EC) No. 1829/2003; QMV
<i>Document originated</i>	18 December 2007
<i>Deposited in Parliament</i>	28 December 2007
<i>Department</i>	Food Standards Agency
<i>Basis of consideration</i>	EM of 14 January 2008
<i>Previous Committee Report</i>	None
<i>To be discussed in Council</i>	February 2008
<i>Committee's assessment</i>	Politically important
<i>Committee's decision</i>	Cleared

Background

13.1 The marketing of genetically modified organisms within the Community is governed by two pieces of legislation — Directive 2001/18/EC,³⁴ which controls the release into the environment of the genetically modified product itself (typically maize), and Regulation (EC) No. 1829/2003,³⁵ 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

13.2 This document deals with the authorisation of food and feed products produced from genetically modified potato (line EH92–527–1). An application was submitted to the relevant authority in the UK, and subsequently received a favourable opinion from the EFSA, which concluded that it was unlikely that the placing on the market of such a product would have adverse effects on human or animal health or the environment.

13.3 In the light of that opinion, a draft Commission Decision authorising the marketing of the product in question was prepared, and submitted to the Standing Committee on the

³⁴ OJ No. L 106, 17.4.01, p.1.

³⁵ OJ No. L 268, 18.10.03, p.1.

Food Chain and Animal Health on 10 October 2007. 10 Member States (123 votes) were in favour of the proposal, 12 Member States (133 votes) were against, and five (89 votes abstained). Since support for the proposal fell short of the qualified majority required, it has now been referred to the Council for a decision under the relevant rules of procedure (see above).

The Government's view

13.4 In her Explanatory Memorandum of 14 January 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.

Conclusion

13.5 Since the authorisation of products containing genetically modified crops remains a matter of public interest, we think it right to draw this proposal to the attention of the House. Having said that, the proposal is in line with the advice provided by the European Food Safety Authority, and is supported by the UK. It does not, therefore appear to us to give rise to any issues requiring further consideration, and we are therefore clearing it.

14 Marketing of food and feed products containing genetically modified maize

(a) (29292) 16782/07 COM(07) 814	Draft Council Decision authorising the placing on the market of food and feed products containing, consisting of, or produced from genetically modified maize line MON 863 x NK 603 under Regulation (EC) No. 1829/2003
(b) (29293) 16783/07 COM(07) 815	Draft Council Decision authorising the placing on the market of food and feed products containing, consisting of, or produced from genetically modified maize line MON 863 x MON 810 under Regulation (EC) No. 1829/2003
(c) (29294) 16784/07 COM(07) 816	Draft Council Decision authorising the placing on the market of food and feed products containing, consisting of, or produced from genetically modified maize line MON 863 x MON 810 x NK 603 under Regulation (EC) No. 1829/2003

<i>Legal base</i>	Regulation (EC) No. 1829/2003; QMV
<i>Documents originated</i>	18 December 2007
<i>Deposited in Parliament</i>	28 December 2007
<i>Department</i>	Food Standards Agency
<i>Basis of consideration</i>	EMs of 14 January 2008
<i>Previous Committee Report</i>	None
<i>To be discussed in Council</i>	February 2008
<i>Committee's assessment</i>	Politically important
<i>Committee's decision</i>	Cleared

Background

14.1 The marketing of genetically modified organisms within the Community is governed by two pieces of legislation — Directive 2001/18/EC,³⁶ which controls the release into the environment of the genetically modified product itself (typically maize), and Regulation (EC) No. 1829/2003,³⁷ 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

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

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

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 proposals

14.2 These three documents each deal with the authorisation of food and feed products produced from genetically modified maize (lines MON 863 x KN 603, MON 863 x MON 810, and MON 863 x MON 810 x NK 603 respectively). In each case, an application was submitted to the relevant Member State authority, and subsequently received a favourable opinion from the EFSA, which concluded that it was unlikely that the placing on the market of such a product would have adverse effects on human or animal health or the environment.

14.3 In the light of that opinion, draft Commission Decisions authorising the marketing of the products in question were prepared, and submitted to the Standing Committee on the Food Chain and Animal Health on 10 October 2007, and in each case 12 Member States (149 votes) were in favour of the proposal, 11 Member States (119 votes) were against, and four (77 votes abstained). Since support for the proposals fell short of the qualified majority required, they have now been referred to the Council for a decision under the relevant rules of procedure (see above).

The Government's view

14.4 In her Explanatory Memoranda of 14 January 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.

Conclusion

14.5 Since the authorisation of products containing genetically modified crops remains a matter of public interest, we think it right to draw these proposals to the attention of the House. Having said that, the proposals are in line with the advice provided by the European Food Safety Authority, and are supported by the UK. They do not, therefore, appear to us to give rise to any issues requiring further consideration, and we are therefore clearing them.

15 Financial services

(29205) 13364/07 COM(07) 727	Commission Communication: <i>Review of the Lamfalussy process: strengthening supervisory convergence</i>
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<i>Legal base</i>	—
<i>Document originated</i>	20 November 2007
<i>Deposited in Parliament</i>	29 November 2007
<i>Department</i>	HM Treasury
<i>Basis of consideration</i>	EM of 9 January 2008
<i>Previous Committee Report</i>	None
<i>Discussed in Council</i>	4 December 2007
<i>Committee's assessment</i>	Politically important
<i>Committee's decision</i>	Cleared

Background

15.1 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.³⁸ 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;
- 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

³⁸ 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.

from amongst the members and a high level representative from the Commission. The committees act as an advisory group 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).

The document

15.2 In this Communication the Commission sets out its assessment of the operation of the Lamfalussy process to date. In the introductory first section the Commission describes the Lamfalussy arrangements and recalls that they are aimed at putting in place an efficient mechanism to begin the convergence of European financial supervisory practice and enable Community legislation to respond rapidly and flexibly to developments in financial markets.

15.3 In the second section the Commission gives a general assessment of the Lamfalussy process. Overall it finds experience with the process has been positive, and this positive view has been shared by Member States, the European Parliament, market participants and regulators. Other things being equal, it finds the Lamfalussy process has significantly contributed to the development of a more flexible European regulatory system, has brought about a more efficient, speedier decision making process, and has begun to pave the way for greater supervisory convergence and cooperation. The Commission notes that:

- the Lamfalussy process has developed at different paces across the securities, banking and insurance sectors;
- the process has coincided with a significant improvement in the global competitiveness of Europe's financial services and markets;
- the quality of the Community's regulatory method has played an important role in creating a dynamic framework for Community capital markets to develop and innovate;
- nevertheless, at present there is no available overall estimate of the costs and other burdens placed by cross-border, cross-sectoral regulations on the industry; and
- as a result, the Commission has decided to launch a study of the costs of compliance facing firms when implementing a number of Directives. The results will be available in 2009 and will be used to assess whether further improvements may be needed.

15.4 The third section of the Communication considers the legislative process and enforcement procedures and what further improvements might be made. Overall, the Commission believes that progress has been made focussing Level 1 Directives on general rules and principles, while acknowledging that some critics claim too much detail continues to exist. At Level 2 the Commission believes it has carefully calibrated measures,

linked to technical advice from the Level 3 committees. The Commission also notes that the agreement of July 2006, between the Council, the European Parliament and the Commission, on comitology arrangements:

- satisfactorily addresses the European Parliament’s concerns about the need to safeguard an appropriate inter-institutional balance (by giving it a scrutiny role in regulatory procedures; and
- includes a commitment to abolition of sunset clauses in various Directives (a commitment which the Commission now believes is important to fulfil).³⁹

15.5 In the remainder of this section the Commission comments on three specific matters, saying that:

Sequencing of Level 1 and Level 2 measures

- the Lamfalussy process has resulted, on occasion, in some bottlenecks and unrealistic timetables;
- so it is now essential to better align timetables for adoption and transposition of legislating measures;
- this could be achieved by linking the transposition deadline for the whole legislative package to adoption of the last implementing measures identified in the Level 1 legislation;

Better regulation

- the Lamfalussy process has pioneered the introduction and strict application of sound regulatory principles — a bottom-up approach, open consultation, impact analysis and the early and thorough participation of market participants and supervisors in the regulatory process;
- the Commission again calls on Member States to refrain from “gold plating”, particularly in relation to the Market in Financial Instruments Directive;
- on occasion, consultation times have been too short and it will consider how to ensure the right balance between the time allocated to consultation and the technical complexity of the issue;
- there should be full transparency about the results of such consultations and, except where confidentiality is specifically requested, systematic publication of consultation results should become normal practice;
- the Commission invites the Council, when tabling substantive amendments, and the Level 3 Committees, when they give advice to the Commission, to accompany their proposals with comprehensive impact analysis;

39 For the agreement and the legislation on comitology see OJ No. C 255, 21.10.06, p.1 and p. 4, <http://eur-lex.europa.eu/JOHtml.do?uri=OJ:C:2006:255:SOM:EN:HTML>.

- for its part it will progressively endeavour to extend its current impact assessments to implementing measures taken in the framework of these Committees;
- in relation to improving enforcement, that is Level 4 activity, the Lamfalussy process has not so far resulted in a significant improvement in the timely performance of Member States in transposing Directives;
- enhancing transparency about transposition of Directives can assist in this respect; and
- twice a month the Commission publishes, on its website,⁴⁰ scorecards showing the rate of transposition of Financial Services Action Plan Directives and both Level 1 and Level 2 Lamfalussy Directives.

15.6 In the fourth section of the Communication the Commission discusses supervisory cooperation and convergence. Commenting that fostering supervisory cooperation and convergence is a key objective of the Lamfalussy arrangements and that such convergence should result in consistent regulatory and supervisory solutions and consistent application on the ground, the Commission says that:

- despite the Level 3 Committees' best efforts, results have not always met expectations;
- at times they do not seem to be fully equipped to deliver what is expected of them and a stronger political impetus may be needed;
- but since these supervisors' first responsibility is a national one, they might not have adequate powers or incentives to converge at the European level; and
- it has identified a number of changes that it believes will enhance greater supervisory convergence, which it expects to be put in place, as far as possible, in the course of 2008.

15.7 The Commission then discusses such changes for six policy areas, saying that:

Strengthening Level 3

- without prejudicing supervisory independence, the Community institutions should express their political expectations as regards the main results to be delivered by the committees and should be given the ability to assess regularly the performance of the committees;
- the committees would report to the institutions on their achievements, or the reasons which prevented them from meeting the objectives set;
- this should be supplemented by the inclusion in the terms of reference of national supervisory authorities the requirement to cooperate with other supervisors;

40 See http://ec.europa.eu/internal_market/finances/actionplan/index_en.htm#transposition .

- Commission Decisions setting up the Level 3 Committees do not sufficiently reflect their importance;
- the missions of each committee vary slightly from one Decision to another and logically all three Decisions should be consistent;
- the Commission will consider what changes are appropriate;

Building mutual trust to ensure better implementation — practical obstacles at European and national levels

- in general the charters of the three Level 3 Committees provide for decisions to be taken by consensus (although qualified majority voting can be used for technical advice) and they have so far not used the possibility of qualified majority voting;
- consensus decisions can carry considerable weight, but a requirement for consensus can result in no solution being reached;
- the committees could change their charters to introduce qualified majority votes for all advice to the Commission and any measures aimed at fostering convergence of supervisory practice;
- the Council and European Parliament should agree a joint declaration asking the Level 3 Committees to amend their decision making procedures. Alternatively, the Commission could modify the Decisions setting up the Level 3 Committees;
- members of the committees could usefully agree that members in the minority would apply the will of the majority. Such an agreement would include a safeguard clause where members would be allowed not to apply guidance or non-binding standards, under certain clearly defined circumstances;
- where a committee member does not comply with a measure and does not comply with the conditions for being excluded (or refuses to explain the decision) the Commission would invite the committee to provide in its charter some form of disciplining;
- experience shows that measures agreed at Level 3 have not been consistently applied nationally;
- where guidance has been agreed at Level 3, national regulators should refrain from adopting any additional measures;
- the Commission does not propose giving the Level 3 Committees any independent regulatory powers, instead it suggests that Member States request their supervisors to agree to the full application of Level 3 Committees' common standards and guidelines;
- while national regulators do not need identical powers to implement Directives and Level 3 standards or guidelines, they should have the necessary and sufficient minimum powers and tools to fulfil their obligations;

- the Commission and the Level 3 Committees are currently analysing the extent to which there are divergences — first results indicate significant divergences exist;
- the Commission will therefore initiate a wide-ranging cross-sectoral survey of supervisory powers and systems of sanctions and will consider the need to reinforce the provisions of minimum supervisory powers in the Level 1 legislation;
- clear responsibilities and objectives for supervisors are important — tasks need to be carried out in a transparent, independent and accountable manner;
- there is occasional evidence that politicians in some parts of the Community do not grant sufficiently full operational independence to supervisory authorities;
- the Commission is committed to work to raise awareness in Member States and urge them to adopt its basic principles for supervisory independence;
- in monitoring this, the Commission will not hesitate to propose appropriate action, if sufficient progress is not achieved;
- given the importance of delegation, the Commission is considering introduction of explicit legal provisions to allow supervisors to delegate tasks to the supervisor of another Member State;
- cooperation between home and host supervisors for groups active on a cross border basis should be further enhanced;
- Level 3 Committees have a key role in fostering mutual confidence and ensuring a level playing field;
- the Commission is to look at possible enhancements to clarify the nature and extent of the legal obligations for supervisory authorities to exchange information and to cooperate and will report to the Economic and Finance Committee⁴¹ by the end of 2007 on whether legislative changes are necessary; and
- the Commission intends to make legislative proposals in October 2008 to strengthen the power of the “lead” supervisor for cross-border banking groups;

Colleges of supervisors

- cross-border supervision and convergence in the EU supervisory system would be significantly enhanced by the existence of colleges of supervisors — there is already positive experience in the banking sector;
- for colleges to function optimally they require legal underpinning in Directives and a number of adjustments to the present approach, for example clear internal

⁴¹ The Economic and Finance Committee, established under the Treaty, is composed of representatives of Member States' finance ministries and central banks, of the Commission and of the European Central Bank and is chaired by one of the finance ministry representatives. It is tasked with monitoring economic and financial matters and with preparing the work of the ECOFIN Council. See http://www.banque-france.fr/gb/eurosys/telechar/europe/04-416_Comite_economique_et_financier-GB.pdf.

decision-making procedures and a requirement for participants to comply with a college decision;

- Level 3 Committees should develop a set of common standards for operation of the colleges and the appropriate responsibilities for members;

Cross-sector cooperation

- whilst noting the joint work by the Level 3 Committees on financial conglomerates, through the Interim Working Committee on Financial Conglomerates (IWCFC), it is too early to decide whether improvements are needed;
- the Commission will conduct a review of the Conglomerates Directive and intends to address the status of the IWCFC;
- a priority for the Commission is development of common reporting standards. The Level 3 Committees are due to produce a report on this and will analyse the case for further action;

Crisis management

- all three Level 3 Committees should ensure they are prepared to act efficiently and collectively in the case of a major market disturbance or financial crisis and rapid crisis information procedures should be ensured;

Resources and budget

- currently the Level 3 Committees are funded by their members, however they are under increasing pressure to finance projects that derive from legal obligations stemming from the Community's regulatory framework;
- there is a need to build up a common supervisory culture and the Level 3 Committees could develop a common cross-sectoral, pan-European training capacity;
- some financial assistance may be appropriate to encourage European supervisory convergence;
- the Commission is examining possible modalities of contributing to the financing of both training capacity and encouraging supervisory convergence; and
- it will examine the intensions of the Level 3 Committees and, if they can be met under existing regulatory and budgetary constraints, will come forward with a concrete proposal in 2008.

15.8 In the concluding section of the Communication the Commission:

- points to the recent turmoil in financial markets as demonstrating the growing interconnectivity and globalisation of financial markets;

- asserts that recent events underscore the need to adopt a globally convergent approach to regulation and supervision and that the Level 3 Committees and national supervisory authorities have a key role to play in this respect;
- says that in 2008 it will continue to work on converging supervision and strengthening cooperation between supervisors;
- calls on the Council, the European Parliament and the Level 2 and 3 Committees to endorse the initiatives in its Communication; and
- says that it intends to monitor the implementation of the initiatives, and the overall Lamfalussy framework, to ensure that it is fit for purpose.

The Government's view

15.9 The Exchequer Secretary to the Treasury (Angela Eagle), whilst noting that the Commission's Communication makes no legislative proposals and that such proposals as are made to strengthen the Lamfalussy arrangements are of a non-legislative, and broadly practical nature, observes that the UK authorities, that is the Government and the Financial Services Authority, believe the Lamfalussy arrangements have made a major contribution to the development of the regulatory and supervisory framework for financial services in the Community.

15.10 The Minister says that overall the UK authorities believe that the structures of the Lamfalussy arrangements are fundamentally sound and provide an innovative and effective solution to enhancing supervisory convergence. In particular, the UK authorities believe the respective roles and responsibilities of the Community institutions, the Level 3 Committees and national authorities within the current framework continue to provide the most appropriate and effective means of regulating and supervising the Community's markets for the foreseeable future. Nevertheless, the UK authorities believe there are a number of practical enhancements to the current framework that might be made to deliver tangible benefits in terms of the efficiency of the supervisory process facing firms and the effectiveness in the way the committees conduct their day-to-day business.

15.11 The Minister continues that proposals by the UK authorities for practical enhancements, as set out in detail in *Strengthening the EU regulatory and supervisory framework: a practical approach*,⁴² include:

- encouraging convergence through the operation of a principles-based approach to regulation and supervision aimed at ensuring equivalent regulatory outcomes;
- better regulation, in particular through the use of robust economic analysis when preparing advice to the Commission for the formulation of implementing measures for Directives, and, in due course, non-binding guidance;
- ensuring consistent implementation, through the application of tools such as "comply or explain" and peer review by the Level 3 Committees and through

42 See http://www.hm-treasury.gov.uk/media/4/0/fin_lamfalussy071107.pdf .

Member States limiting, to the minimum extent necessary, their use of national discretions in Community legislation;

- introducing standard timescales and guidelines for implementation of substantial Directives or legislative changes;
- enhancing accountability of the Level 3 Committees within the Lamfalussy framework through more formalised reporting arrangements to the Community institutions;
- improving the efficiency of the committees' decision-making arrangements through forms of non-binding majority voting and a comply or explain approach; and
- ensuring greater efficiency for cross-border groups, through greater use of group based supervisory approaches.

15.12 The Minister also tells us that the ECOFIN Council discussed the Lamfalussy arrangements and Community supervisory arrangements more generally at its meeting of 4 December 2007 and adopted Conclusions⁴³ which are consistent with Government policy and which set out a way forward for further enhancing these arrangements. She adds that no substantive legislative changes are being made to the Lamfalussy arrangements as a result.

Conclusion

15.13 The Lamfalussy arrangements for supervision and regulation of financial services clearly are playing an important role in enhancing that supervision and regulation. We observe that the Commission's Communication is aimed at ensuring the Lamfalussy arrangements continue to be fit for purpose and that the Government finds the way matters are developing is consistent with its policies. We have no questions to raise on the document and clear it.

43 See http://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressData/en/ecofin/97420.pdf .

16 Taxation

(29266) 16449/07 COM(07) 785	Commission Communication: <i>The application of anti-abuse measures in the area of direct taxation — within the EU and in relation to third countries</i>
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<i>Legal base</i>	—
<i>Document originated</i>	10 December 2007
<i>Deposited in Parliament</i>	14 December 2007
<i>Department</i>	HM Treasury
<i>Basis of consideration</i>	EM of 8 January 2008
<i>Previous Committee Report</i>	None
<i>To be discussed in Council</i>	Not known
<i>Committee’s assessment</i>	Politically important
<i>Committee’s decision</i>	Cleared

Background

16.1 Tax regimes have “anti-abuse rules”, which can come in many forms. For instance the UK applies targeted anti-abuse provisions, such as Controlled Foreign Company rules⁴⁴ (CFC) and thin capitalisation (ThinCap) rules⁴⁵ that aim to protect the domestic tax base from particular types of erosion.

16.2 The European Court of Justice has:

- found that in principle such measures, provided they are a proportionate response to the threat to the national tax base, are compatible with the Treaty;
- found that the need to prevent tax avoidance and abuse constitutes an overriding reason in the public interest justifying a restriction on fundamental freedoms;
- held that the application of such measures should be limited to “wholly artificial arrangements aimed at circumventing the application of the legislation of the Member State concerned”,⁴⁶ and
- in determining what is meant by “wholly artificial arrangements”, differentiated between subsidiaries carrying on genuine economic activities and other subsidiaries that were mere “letterboxes” or “fronts”. In determining whether an operation is “genuine” consideration needs to be given for example, to the physical existence of premises, staff and equipments.⁴⁷

44 Aimed to counter the use of low-taxed foreign subsidiaries to divert profits from the UK so as to avoid UK tax.

45 Aimed to prevent multinationals from using loans within their own group in un-commercial ways to shift profits from one part of the group to another through interest payments.

46 *Langhorst* case (C-264/96).

47 *Cadbury* case (C-196/04).

The document

16.3 In this Communication the Commission asserts that there is a need for Member States to review the application of anti-abuse rules, in relation to direct taxation, in the light of recent relevant European Court of Justice decisions. The Commission suggests that:

- Member States review and coordinate their anti-avoidance or anti-abuse rules to ensure they are compatible with the Treaty;
- applying anti-avoidance or anti-abuse measures to domestic situations, where no risk of abuse or avoidance exists, in order to avoid a charge of discrimination could be counter productive, saying that this would undermine the competitiveness of the Member States' economies; and
- there is scope for exploring the practical application of principles set down by the Court to different types of business activities and structures.

16.4 The Commission invites Member States and other interested parties to work with it to develop a better understanding of the implications for each Member States' tax system. It says it is keen to work with Member States with a view to:

- developing a common definition for abuse and wholly artificial arrangements, suggesting that the test for wholly artificial arrangements is in effect an analysis of substance over form;
- improving administrative cooperation in order to detect and contain abuse and fraudulent tax schemes;
- sharing best practices to ensure proportionality of anti-abuse measures;
- reducing potential mismatches in inadvertent non-taxation; and
- ensuring better coordination of anti-abuse measures in relation to third parties.

The Government's view

16.5 The Financial Secretary to the Treasury (Jane Kennedy) says that, as the Government considers that anti-abuse rules must strike a balance that preserves national tax bases while not unnecessarily inhibiting economic integration, it welcomes the Commission's recognition that it is legitimate for Member States to act to preserve their tax bases through CFC and ThinCap rules.

16.6 The Minister continues that the Government:

- supports coordination between tax authorities, based on the principle that direct taxation remains a matter of national competence;
- thinks it is important for tax authorities, both within the Community and elsewhere, to continue to work together both bilaterally and multilaterally to ensure that their direct tax systems work together and to ensure there is no inadvertent non-taxation;

- has already begun to review its CFC rules and is considering many of the same issues that were highlighted in the Communication — this work is part of the wider work on taxation of foreign profits;⁴⁸
- believes that this Communication is a helpful contribution to the debate on the subject of anti-avoidance or anti-abuse; and
- recognises there is a discussion to be had on the issues raised in the Communication.

16.7 The Minister comments further that at this stage the Commission's analysis is very much at a generalised level, therefore:

- more work needs to be done on more specific situations, for example distinguishing between existing rules that are anti-abuse rules and rules that form part of the normal computation of profits; and
- more thought needs to be given to the application of anti-avoidance or anti-abuse measures to domestic situations, where the Government does not believe that the issues are as clear-cut as the Communication suggests.

16.8 The Minister concludes that, overall, the Government believes there is much in this Communication that can form the basis of constructive debate, and in tandem with its cooperation work with Member States, it is interested in actively participating in the future work developing out of the document.

Conclusion

16.9 Although we have no matters to raise on this document, in clearing it we draw it to the attention of the House, both for its intrinsic interest and for its relevance to the Government's present consideration of the taxation of foreign profits.

48 See "Taxing Foreign Profits: a discussion document", June 2007, http://www.hm-treasury.gov.uk/media/E/9/consult_foreign_profits020707.pdf.

17 Energy products taxation

(29299) 16835/07 COM(07) 826	Commission Communication in accordance with Article 19(1) of Council Directive 2003/96/EC (waste oils)
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<i>Legal base</i>	—
<i>Document originated</i>	19 December 2007
<i>Deposited in Parliament</i>	28 December 2007
<i>Department</i>	HM Treasury
<i>Basis of consideration</i>	EM of 13 January 2007
<i>Previous Committee Report</i>	None
<i>To be discussed in Council</i>	None planned
<i>Committee's assessment</i>	Politically important
<i>Committee's decision</i>	Cleared

Background

17.1 The Energy Tax Directive, 2003/96/EC, sets out which energy products are concerned, the uses that make those products liable to tax, the minimum rates of taxation applicable to each product, depending on its use as a propellant, for industrial and commercial purposes or for heating, and specific exemptions from the normal rules.

17.2 The Directive also sets out in annexes a number of derogations which allow Member States to apply reduced rates or exemptions from energy tax for various products and purposes. Most of these derogations were due to expire on 31 December 2006. Under Article 19 of the Directive a Member State may ask the Commission to propose to the Council a new or extended derogation. If the Commission makes such a proposal it is decided by the Council unanimously.

17.3 In October 2006 we reported that the Commission had conducted a review of the current derogations and had issued a Communication with its view as to whether they should be allowed to continue beyond 2006. The Commission noted derogations which after 31 December 2006 would have no legal basis under the Directive and held that expiry of most of the derogations should be seen as an opportunity to achieve greater transparency and greater coherence in the energy tax legislation. It asked Member States to assess in the light of its Communication whether they wished to seek renewal of any of their derogations. The Commission would assess any such requests on their merits, taking into account the proper functioning of the internal market, as well as Community environmental, energy and transport policies.⁴⁹

⁴⁹ (27664) 11167/06: see HC 34–xxxvii (2005–06), chapter 55 (11 October 2006).

17.4 We reported subsequently rejection by the Commission of 22 requests from Member States, including two by the Government, for extensions of derogations and acceptance of one.⁵⁰

The document

17.5 In this Communication the Commission announces its decision to reject an application from the Government for continuation of a derogation allowing an energy tax exemption for waste oils reused as fuel, as well as similar applications from Austria, Ireland, Italy and Portugal. The Commission says it does not consider:

- favourable tax treatment of waste oils used as fuel can be justified for environmental reasons;
- the requests are consistent with the proper functioning of the single market; and
- arguments concerning administrative burdens and compliance and enforcement difficulties are valid.

The Government's view

17.6 The Financial Secretary to the Treasury (Jane Kennedy) says that without this derogation waste oils reused as fuel will be liable to the full rate of duty applicable to the fuel for which it is substituting. She continues that the Government recognises the impact there will be on the waste oil recovery industry and on those industries using recovered waste oil and will be working with them to discuss appropriate ways of implementation.

Conclusion

17.7 Given the Commission's previous decisions on applications for continuation of these derogations, this Communication is not surprising. We clear the document but draw it to the attention of the House because of its relevance to the UK.

50 (28116) 16188/06 (28117) 16190/06 (28145) 16424/06 (28153) 16528/06 (28162) 16757/06 (28163) 16758/06: see HC 41–vi (2006–07), chapter 2 (17 January 2007) and HC 41–x (2006–07), chapter 14 (21 February 2007), (28479) 7615/07 (2846) 7694/07: see HC 41–xviii (2006–07), chapter 5 (25 April 2007), (28688) 10676/07: see HC 41–xxvii (2006–07), chapter 10 (27 June 2007) and (28842) 12212/07: see HC 41–xxxiv (2006–07), chapter 22 (2 October 2007).

18 Lisbon Strategy

(a) (29285) 16714/07 + ADDs 1–4 COM(07) 803	Commission Communication: <i>Strategic report on the renewed Lisbon Strategy for growth and jobs: launching the new cycle (2008–2010) — keeping up the pace of change (Part I/IV)</i>
(b) (29288) 16752/07 COM(07) 804	Commission Communication: <i>Proposal for a Community Lisbon Programme 2008–2010</i>
(c) (29290) 16747/07 COM(07) 798	Commission Communication: <i>Member States and regions delivering the Lisbon Strategy for growth and jobs through EU cohesion policy, 2007–2013</i>

<i>Legal base</i>	(a) Draft Council Recommendation in ADD 3: Articles 99(2) and 128(4) EC; —; QMV. Draft Council Recommendation in ADD 4: Article 99(2) EC; —; QMV. Draft Council Decision in ADD 4: Article 128 (2)EC; consultation; QMV (b) and (c) —
<i>Documents originated</i>	11 December 2007
<i>Deposited in Parliament</i>	(a) and (b) 27 December 2007 (c) 28 December 2007
<i>Department</i>	(a) HM Treasury and Work and Pensions (b) and (c) HM Treasury
<i>Basis of consideration</i>	(a) EMs of 9 and 10 January 2008 (b) and (c) 10 January 2008
<i>Previous Committee Report</i>	None
<i>To be discussed in Council</i>	February and March 2008
<i>Committee’s assessment</i>	Politically important
<i>Committee’s decision</i>	Cleared; further information requested

Background

18.1 The Spring European Council 2005 relaunched the Lisbon Strategy, with the continued aim to make the EU “the most competitive and dynamic knowledge-based economy in the world” by 2010. The relaunched strategy was focussed on growth and employment. It requires Member States to submit annual implementation reports on their National Reform Programmes (NRP).⁵¹ And the Commission normally submits an Annual

51 (26351) 5990/05: see HC 38–xii (2004–05), chapter 12 (23 March 2005).

Progress Report (APR) commenting on, amongst other matters, implementation of the Community Lisbon Programme — that is the range of actions at Community level proposed by the Commission, at the behest of the European Council, in support of the relaunched Lisbon Strategy,⁵² and on implementation of the four horizontal themes agreed at the 2006 Spring European Council:

- investing in knowledge and innovation;
- unlocking business potential, particularly of small and medium-sized enterprises;
- adaptability of labour markets based on “flexicurity”;⁵³ and
- energy and climate change.

18.2 However, as the first three-year cycle since the relaunch of the Lisbon Strategy is coming to an end, the Spring European Council 2007 invited the Commission to present a strategic report instead of the usual APR.

The documents

18.3 The Commission Communication, document (a) is the strategic report called for by the European Council. It has an exhortatory foreword by the Commission’s President and gives an overview of economic reform in the Community over the three year cycle just ended and recommendations for the next three year cycle. It annexes papers covering:

- individual country chapters assessing each NRP, accompanied by a statistical annex;
- a detailed analysis of the macro-economic and micro-economic parts of the Lisbon Strategy, the Commission’s draft of the Joint Employment Report 2007/08, detail on the general approach used by the Commission to assess progress with structural reforms and an analysis of the European Growth Initiative (otherwise known as the European Action for Growth);⁵⁴
- a draft Council Recommendation with country-specific Integrated Recommendations, that is guidelines for economic and employment policies, to be taken into account by Member States in implementing their NRPs. The draft would also endorse additional guidelines for the eurozone; and
- new two-part Community-level Integrated Guidelines (IGs), including a Commission Recommendation with broad guidelines for the economic policies of Member States and the Community and a draft Council Decision on guidelines for the employment policies of Member States.

52 (26765) 11618/05: see HC 34–x (2005–06), chapter 22 (16 November 2005).

53 The concept of flexicurity embraces policies to enhance, on the one hand, flexibility of labour markets, work organisation and labour relations and, on the other, employment and social security.

54 (25060) 14893/03: see HC 42–ii (2003–04), chapter 13 (9 December 2003).

18.4 The Communication, which is subtitled “Keeping up the pace of change”, reviews structural reforms implemented during the 2005–2008 cycle and discusses “deepening the Lisbon Strategy” during the next cycle, including integrating national, Community and international action into an effective policy. The Commission particularly emphasises that the Lisbon Strategy operates within the context of globalisation and that this must be built more effectively into implementation of the policies, particularly by encouraging reciprocally open markets.

18.5 In a further section the Commission suggests actions in the four priority areas, the four horizontal themes adopted by the European Council in March 2006. These are:

“To invest more in people through a life-cycle approach in employment and education, to modernise labour markets and to reinforce social inclusion:

“Community action:

“the Commission will propose a renewed Social Agenda by mid-2008 based on opportunities, access and solidarity, taking account of Europe’s new social realities and covering notably issues such as youth, education, migration and demography;

“the Commission will make proposals to address the skills gap by improving the forecasting and monitoring of future skills requirements in Europe;

“the Commission will make proposals for a common policy on immigration in 2008.

“Member States should:

“implement the agreed common principles on ‘flexicurity’ by defining national pathways within their NRPs by end 2008;

“increase the availability and affordability of quality childcare in line with national and Community targets;

“draw up action plans and set targets to substantially reduce early-school leaving and improve basic reading skills;

“link up national and regional programmes to the Erasmus programme to increase the number of students participating in international exchanges;

“by 2010, draw up national qualification frameworks aligned with the European framework.”

“Unlocking business potential:

“Community action:

“adopt a European Small Business Act setting out an integrated policy approach to unlock the growth potential at every stage of the life-cycle of SMEs;

“move towards the target to reduce EU administrative burdens by 25% by 2012 and implement an ambitious simplification programme;

“strengthen the single market, increase competition in services and take further steps to integrate financial services markets.

“Member States action should:

“undertake sustained and consistent efforts to implement the services directive by end 2009;

“complete the screening and assessment of national legislation before end 2008 and, in parallel, set up single contact points and electronic procedures and introduce an effective system of administrative cooperation across borders;

“set and announce national administrative burden reduction targets before the 2008 Spring European Council;

“make full use of the opportunities offered by the implementation of the services directive and the better regulation agenda to continue modernising public administrations.”

“Making the ‘fifth freedom’, the free movement of knowledge, a reality:

“Community action:

“improve the key framework conditions for innovation through an integrated patent jurisdiction and a single affordable patent; streamline the currently fragmented IPR rules, particularly to facilitate the circulation of content; accelerate the setting of interoperable standards and move towards more common spectrum management; and improve access to venture capital;

“remove obstacles to the cross-border mobility of researchers based on a European ‘passport’;

“pool EU and Member States’ R&D resources to ensure their more effective use, by agreeing by end 2008 areas for joint programmes and launching common calls for projects by end 2010;

“launch a new generation of world-class research facilities by drawing up by end 2009 roadmaps for the launch of the 35 commonly agreed projects. For those projects of a global scale, launch a dialogue with interested international partners during 2008;

“improve competition for high-speed internet by adopting the telecoms review by May 2009.

“Member States should:

“better co-ordinate efforts to improve framework conditions for innovation;

“indicate how national R&D investment targets for 2010 will be met and how their R&D strategies will contribute to realising a European research area;

“remove obstacles to the mobility of researchers between public and private research centres;

“draw up, by end 2008, national strategies identifying the new generation of world-class research facilities in which they will participate;

“as part of their NRPs, set national targets for high-speed internet usage¹⁰ aiming at a 30% penetration rate of the EU population and connection of all schools by 2010.”

“Transform Europe into a low carbon and energy-efficient economy:

“Community action:

“adopt legislative proposals to complete the internal electricity and gas markets and the climate change package in order to put in place the framework to achieve at least a 20% reduction in greenhouse gas emissions and reach a renewables energy share of 20% by 2020;

“promote an industrial policy geared towards more sustainable production and consumption, focusing on renewable energies and low-carbon and resource-efficient products, services and technologies;

“review the energy tax directive to link it more closely to the EU’s energy and environmental objectives;

“strengthen the requirements in the energy performance of buildings directive.

“Member States should:

“review their economic instruments, including taxation, subsidies and charging, to ensure that they contribute to the fight against climate in a cost-effective way;

“urge contracting authorities to systematically include energy efficiency as one of the award criteria for public procurement;

“set mandatory energy reduction targets for government buildings;

“improve inter-connection of energy grids.”

18.6 In its second Communication, document (b), the Commission proposes a new Community Lisbon Programme for the cycle 2008–2010. It suggests ten key objectives, related to the four priority areas, to be achieved by 2010 and details proposed activity for each objective. The objectives are:

“The Commission will propose a renewed Social Agenda by mid-2008 and will help to address the skills gap.

“The Commission will make proposals for a common policy on immigration in 2008.

“The Community will adopt a Small Business Act to unlock the growth potential of SMEs throughout their life-cycle.

“The Community will move towards the target to reduce EU administrative burdens by 25% by 2012 and implement an ambitious simplification programme.

“The Community will strengthen the single market, increase competition in services, and take further steps to integrate the financial services market.

“The Community will make a reality of the fifth freedom (the free movement of knowledge) and create a genuine European Research area.

“The Community will improve the framework conditions for innovation.

“The Community will complete the internal market for energy and adopt the climate change package.

“The Community will promote an industrial policy geared towards more sustainable production and consumption.

“The Community will negotiate bilaterally with key trading partners to open up new opportunities for international trade and investment, and create a common space of regulatory provisions and standards.”

18.7 The Commission’s third Communication, document (c), discusses the results of the negotiations of the new generation of cohesion policy strategies and programmes for the period 2007–2013, how the renewed Lisbon Strategy for growth and jobs has been central to the new cohesion policy strategies and programmes and the potential role of cohesion policy programmes in taking the Lisbon Strategy forward during its next three-year cycle.

18.8 The strategic report Communication is subject to ongoing discussions in the Council and its relevant preparatory bodies. The legislative proposals for an update to the Integrated Guidelines and Integrated Recommendations are being discussed in Council in line with the Treaty. The ECOFIN, Employment and Competitiveness Councils will agree reports to the Spring European Council of 13–14 March 2008 at their meetings in February 2008. The European Council will adopt its view of the strategic report and the proposed Community Lisbon Programme and be invited to endorse the reports from the Council. It is expected that following the 2008 European Council the Council will formally adopt the Integrated Guidelines and Integrated Recommendations.

The Government’s view

18.9 The Exchequer Secretary to the Treasury (Angela Eagle) says that the Government continues to support the re-launched Lisbon Strategy and its focus on jobs and growth. She comments that:

- Member States have a crucial role to play in responding to and addressing the economic challenges of globalisation;
- responsibility lies primarily with them to introduce necessary domestic structural reforms to enhance their competitiveness and increase productivity, based on a strengthened commitment to the Lisbon Strategy;

- external policies are also important in the response to globalisation — the Government believes that a sustained commitment to openness of the economy across the whole Community is vital for adapting to changing patterns of global trade and investment; and
- the Government also recognises that targeted and proportionate action at the Community level can make an important contribution to raising levels of growth and employment.

18.10 Turning to the documents the Minister says the Government:

- considers that, overall, the strategic report by the Commission, document (a), is well balanced and rightly focuses on a limited number of priority actions;
- broadly agrees with the analysis presented by the Commission that, although the Community is moving in the right direction, it is difficult at the moment to disentangle fully the cyclical from the structural component;
- shares the Commission President’s view that the Lisbon Strategy is an essential part of the Community’s response to globalisation and that Member States need to keep up the pace of change;
- agrees, against the background of the Commission seeing signs of “reform fatigue” among Member States, that more efforts are therefore needed to ensure a stable macroeconomic environment, to improve the underlying conditions for innovation and entrepreneurship, to embed better regulation at the national level and to continue to reform labour markets by introducing active labour market policies which protect employability rather than specific jobs;
- welcomes, therefore, the Commission’s proposal for stability in the IGs, in the fourth annex to document (a), to ensure that the focus is kept firmly on reform implementation and delivery;
- will now work with Community partners on the Commission’s Recommendation on the IGs to prepare for their adoption by the Council in 2008;
- broadly accepts the Commission’s assessment of the UK and its Recommendation to the Council for an Integrated Recommendation addressed to the UK, in the third annex to document (b), that it should, “implement recent plans to substantially improve skill-levels and establish an integrated approach to employment and skills in order to improve productivity and increase opportunities for the disadvantaged”; and
- has recently published “Opportunity, Employment and progression, making skills work”,⁵⁵ which sets out how the Government is building on welfare to work.

18.11 The Minister comments further that Community-wide aspects of the Lisbon Strategy, including those set out in the proposal for the Community Lisbon Programme, in

55 See <http://www.dius.gov.uk/publications/7381-TSO-Skills.pdf> .

document (b), form an important pillar of the strategic partnership between the Community institutions and the Member States to reach the Lisbon goals. She says the Government will continue to support progress on actions related to:

- a new approach to the single market, that prioritises action to where the economic benefits are greatest;
- proactive use of competition policy;
- actions to improve the business environment through the Community industrial policy agenda;
- bringing business and other interested parties into policy development at an early stage;
- better regulation, making full use of more flexible forms of regulation and a more risk-based approach;
- encouraging innovation, in particular through further improvements to the European patent system;
- tackling climate change and energy security;
- an effective and well-functioning social dimension that pursues modern social policies, which combine labour market flexibility with fairness; and
- improving forecasting and monitoring of the Community's long-term skill needs.

The Minister adds that the Government believes that Community action on the Lisbon Strategy needs to be consistent with a disciplined and prudent approach to the Community budget focused on adding value at the Community level.

18.12 Finally the Minister turns to a number of more detailed points. First, noting the Commission's intention to make proposals for a common policy on immigration, in document (a), she says the Government agrees that policies should be further oriented at national and Community level, based on a genuine political consensus. But, that further orientation should take into account that Member States are best placed to determine their labour market needs and management of migration also needs to acknowledge citizens' concerns and take account of intra-Community migration issues.

18.13 Secondly, in relation to the Commission's intentions for a Small Business Act, the Minister says the Government welcomes this focus on SME issues and believes this initiative should primarily be aimed at promoting SME growth, in line with better regulation principles. Commenting that it is not yet clear that legislation would be required, the Government would want to see strong evidence to justify any new legislation and believes the Commission should work closely with Member States and the SME community to develop the most appropriate, evidence based and proportionate response to removing existing barriers and meeting the needs of the Community's SMEs.

18.14 Thirdly, in reference to some mentions in the documents to tax issues, with the Commission reiterating its intention to publish a legislative proposal on a Common

Consolidated Corporate Tax Base in the third quarter of 2008, the Minister comments that except where specifically within Community competence, such matters remain a national preserve.

18.15 Fourthly, after commenting on the usefulness of the Commission’s paper on cohesion policies, document (c), the Minister says that the Government believes that the challenge now is to investigate the impact of cohesion fund investment on growth outcomes, that there is still too much focus on input-related measures rather than outcome-based assessment and that more needs to be done to identify those investments that provide the most growth enhancement.

18.16 The Parliamentary Under-Secretary of State, Department for Work and Pensions (Mr James Plaskitt), in his shorter Explanatory Memorandum, echoes the policy comments of the Exchequer Secretary.

Conclusion

18.17 These documents, which we clear, give a comprehensive account of where matters stand on the relaunched Lisbon Strategy. Although they are subject to examination and comment by the Employment, ECOFIN and Competitiveness Councils, we draw them to the attention of the House as illustrative of what the Commission would wish to be endorsed by the 2008 Spring European Council.

18.18 Turning to a matter of scrutiny procedure, the Cabinet Office guidance to government departments on the preparation of Explanatory Memoranda says “The description of the subject matter should be sufficient to enable all recipients to understand broadly what is proposed without reference to the EU document.” The two relevant paragraphs in the Treasury’s Explanatory Memorandum, one of which is little more than an elaboration of the titles of the seven documents and annexes concerned, is a wholly inadequate description of the content of the almost 400 pages of these papers.

18.19 We ask the Exchequer Secretary to both:

- ensure for the future that her department’s Explanatory Memoranda properly describe the content of the documents they deal with; and
- inform us of the action she has taken to ensure this happens.

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

Department for Environment, Food and Rural Affairs

- (29274)
16570/07
COM(07) 782
- Draft Council Decision on the termination of the Protocol setting out the fishing opportunities and financial contribution under the Fisheries Partnership Agreement between the European Community and the Islamic Republic of Mauritania.
- (29327)
16856/07
COM(07) 854
- Draft Council Regulation amending Regulation (EC) No.1234/2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products ("Single CMO Regulation").
- (29346)
5215/08
+ COR 1
COM(07) 852
- Draft Council Directive on the marketing of vegetable propagating and planting material, other than seed (codification version).

Foreign and Commonwealth Office

- (29305)
5014/08
COM(07) 841
- Commission Report on the application in 2006 of Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents.
- (29352)
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—
- Joint Action in Support of the Universalisation and Implementation of the 1997 Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction (Ottawa Convention), in the Framework of the European Security Strategy.
- (29364)
—
—
- Council Common Position extending Common Position 2004/133/CFSP on restrictive measures against extremists in the former Yugoslav Republic of Macedonia.

Home Office

- (29304)
16452/07
—
- Draft Council Decision establishing the European Police Office (EUROPOL).

(29325)
5153/08
COM(07) 827

Commission Report on the implementation of the Council Decision of 17 October 2000 concerning arrangements for cooperation between financial intelligence units of the Member States in respect of exchanging information (2000/642/JHA).

Department for Innovation, Universities and Skills

(29287)
16741/07
+ ADD 1
COM(07) 799

Commission Communication on Pre-commercial Procurement: Driving innovation to ensure sustainable high quality public services in Europe.

(29278)
16140/07
SEC(07) 1556

Commission Staff Working Document on the Report on the application of Directive 2001/29/EC on the harmonisation of certain aspects of copyright and related rights in the information society.

(29291)
16769/07
COM(07) 801

Commission Report on the implementation of Decision No 1608/2003/EC of the European Parliament and of the Council.

Office of National Statistics

(29262)
16361/07
COM(07) 776

Draft Regulation amending Council Regulation (EC) No.2223/96 on the European system of national and regional accounts in the Community as regards the implementing powers conferred on the Commission.

Department for Transport

(29143)
15145/07
—

Report on the annual accounts of the European Railway Agency for the financial year 2006 together with the Agency's replies.

(29315)
5111/08
COM(07) 859

Draft Directive on statistical returns in respect of carriage of goods and passengers by sea.

(29328)
5020/08
COM(07) 864

Commission Opinion pursuant to Article 251(2), third subparagraph, point (c) of the EC Treaty on the European Parliament's amendments to the Council Common Position regarding the Draft Regulation of the European Parliament and of the Council amending Regulation (EC) No.1592/2002 of 15 July 2002 on common rules in the field of civil aviation and establishing a European Aviation Safety Agency amending the proposal of the Commission pursuant to Article 250 (2) of the EC Treaty.

HM Treasury

- (29225)
15944/07
+ ADD 1
COM(07) 756
- Commission Communication on the sixth report on the practical preparations for the future enlargement of the euro area.
- (29251)
16205/1/07
+ ADD 1
COM(07) 721
- Commission Communication on the EU Economy: 2007 Review — Moving Europe's productivity frontier.

Department for Work and Pensions

- (21199)
7965/00
COM(00) 216
- Draft Council Decision on the position of the Community within the Association Council concerning implementation of Article 65 of the EU-Tunisia Euro-Mediterranean Association Agreement.
- (29275)
16599/07
COM(07) 789
- Draft Council Decision on the position to be taken by the Community within the Stabilisation and Association Council established by the Stabilisation and Association Agreement between the European Communities and their Member States and the Republic of Croatia, with regard to the adoption of provisions on the coordination of the social security systems.
- (29281)
16688/07
COM(07) 788
- Draft Council Decision on the position to be taken by the Community within the Association Council created by the Euro-Mediterranean Agreement establishing an association between the European Communities and their Member States and the Republic of Tunisia with regard to the adoption of provisions on the co-ordination of the social security systems.
- (29320)
5081/08
COM(07) 790
- Draft Council Decision on the position to be taken by the Community within the Association Council created by the Euro-Mediterranean Agreement establishing an association between the European Community and its Member States and the People's Democratic Republic of Algeria with regard to the adoption of provisions on the co-ordination of the social security systems.
- (29321)
5083/08
COM(07) 792
- Draft Council Decision on the position to be taken by the Community within the Association Council created by the Euro-Mediterranean Agreement establishing an association between the European Communities and their Member States and the Kingdom of Morocco, with regard to the adoption of provisions on the co-ordination of the social security systems.

(29322)
5107/08
COM(07) 793

Draft Council Decision on the position to be taken by the Community within the Association Council created by the Euro-Mediterranean Agreement establishing an association between the European Communities and their Member States and the State of Israel with regard to the adoption of provisions on the co-ordination of the social security systems.

(29370)
—
COM(07) 787

Draft Council Decision on the position to be taken by the Community within the Stabilisation and Association Council established by the Stabilisation and Association Agreement between the European Communities and their Member States and the former Yugoslav Republic of Macedonia with regard to the adoption of provisions on the co-ordination of the social security systems

Formal minutes

Wednesday 23 January 2008

Members present:

Michael Connarty, in the Chair

Mr Adrian Bailey	Mr David Heathcoat-Amory
Mr David S Borrow	Mr Keith Hill
Mr William Cash	Kelvin Hopkins
Ms Katy Clark	Angus Robertson
Jim Dobbin	Mr Anthony Steen
Mr Greg Hands	Richard Younger Ross

1. 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 17.7 read and agreed to.

Paragraph 18, Headnote read. Amendment proposed in line 17, to leave out the word “Cleared”, and to insert the words “For debate in European Standing Committee”. — (*Mr William Cash.*)

Question put, That the Amendment be made.

The Committee divided.

Ayes, 3	Noes, 8
Mr William Cash	Mr Adrian Bailey
Mr David Heathcoat-Amory	Mr David S Borrow
Kelvin Hopkins	Ms Katy Clark
	Jim Dobbin
	Mr Greg Hands
	Mr Keith Hill
	Mr Anthony Steen
	Richard Younger-Ross

Headnote agreed to.

Paragraphs 18.1 to 19 read and agreed to.

Resolved, That the Report be the Ninth Report of the Committee to the House.

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

* * *

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*)