



House of Commons

European Scrutiny Committee

Sixth Report of Session 2007–08

**Documents considered by the Committee on 12 December
2007, including the following recommendation for debate:**

EU Regulatory Framework for Electronic Communications and
Network Services

Report, together with formal minutes

*Ordered by The House of Commons
to be printed 12 December 2007*

HC 16-vi

Published on 7 January 2008
by authority of the House of Commons
London: The Stationery Office Limited
£0.00

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).

Staff

The staff of the Committee are Alistair Doherty (Clerk), Emma Webbon (Second Clerk), David Griffiths (Clerk Adviser), Terry Byrne (Clerk Adviser), Sir Edward Osmotherly (Clerk Adviser), Peter Harborne (Clerk Adviser), Michael Carpenter (Legal Adviser) (Counsel for European Legislation), Dr Gunnar Beck (Assistant Legal Adviser), Anwen Rees (Committee Assistant), Allen Mitchell (Chief Office Clerk), James Clarke (Chief Office Clerk), Mrs Keely Bishop (Secretary), Dory Royle (Secretary), Sue Panchanathan (Secretary), Estelita Manalo (Office Support Assistant).

Contacts

All correspondence should be addressed to the Clerk of the European Scrutiny Committee, House of Commons, 7 Millbank, London SW1P 3JA. The telephone number for general enquiries is (020) 7219 3292/5465. The Committee's email address is escom@parliament.uk

Contents

Report

Page

Documents for debate

1	BERR	(29172) (29173) (29174) (29176) (29177) EU Regulatory Framework for Electronic Communications and Network Services	3
---	------	--------------------------------------------------------------------------------------------------------------------	---

Documents not cleared

2	BERR	(29175) European Electronic Communications Market Authority	13
3	HMT	(29092) Value added taxation	22

Documents cleared

4	BERR	(29079) European Competitiveness Report 2007	25
5	BERR	(29189) The challenge of globalisation	27
6	BERR	(29243) Regulation of electronic communications	31
		Annex 1 – Summary of changes to the Recommendation	35
		Annex 2 –Text of the letter sent to the Commission during inter-service consultation prior to publication on 13 November	38
7	DEFRA	(29157) Minimum criteria for environmental inspections	41
8	DFID	(28807) Cotonou Agreement: the 10th European Development Fund	44
9	DFT	(27904) Road safety	49
10	DFT	(29005) Labour and social legislation: seafarers	53
11	DFT	(26852) (28122) Road safety	58
12	FCO	(29076) Commission Legislative and Work Programme 2008	63
		Annex: Summary of the proposals to be adopted by the Commission under the Work Programme for 2008	66
13	FCO	(29082) EU Special Representative to the African Union	73
14	HMT	(28817) (28994) European Globalisation Adjustment Fund	79

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

15	List of documents	83
----	-------------------	----

Formal minutes	86
Standing order and membership	87

1 EU Regulatory Framework for Electronic Communications and Network Services

(a) (29172) 15371/07 COM(07) 696	Commission Communication: <i>Report on the outcome of the Review of the EU regulatory framework for electronic communications networks and services in accordance with Directive 2002/21/EC and Summary of the 2007 Reform Proposals</i>
(b) (29173) 15379/07 COM(07) 697	Draft Directive amending Directives 2002/21/EC on a common regulatory framework for electronic communications networks and services, 2002/19/EC on access to, and interconnection of electronic communications networks and services, and 2002/20/EC on the authorisation of electronic communications networks and Services
(c) (29174) 15387/07 COM(07) 698	Draft Directive amending Directive 2002/22/EC on universal service and users' rights relating to electronic communications networks, Directive 2002/58/EC concerning the processing of personal data and the protection of privacy in the electronic communications sector and Regulation (EC) No 2006/2004 on consumer protection cooperation
(d) (29176) 15416/07 SEC(07) 1472	Commission Staff Working Documents: <i>Impact Assessment</i>
(e) (29177) 15422/07 SEC(07) 1473	<i>Summary of the Impact Assessment</i>

<i>Legal base</i>	(a) (d) and (e): —; (b) and (c): Article 95 EC; QMV; co-decision
<i>Documents originated</i>	13 November 2007
<i>Deposited in Parliament</i>	22 November 2007
<i>Department</i>	Business, Enterprise and Regulatory Reform
<i>Basis of consideration</i>	EM of 10 December 2007
<i>Previous Committee Report</i>	None; but see (27665)11190/06 + ADD 1–3: HC 34–xxxvii (2005–06), chapter 45 (11 October 2006)
<i>Discussed in Council</i>	29–30 November 2007 Telecoms Council
<i>Committee's assessment</i>	Politically and legally important
<i>Committee's decision</i>	Document (a) recommended for debate in the European Standing Committee; documents (b) and

(c) retained under scrutiny, pending receipt of further information; documents (d) and (e) cleared, and relevant to the debate

Background

1.1 The regulatory framework for electronic communications networks and services was agreed in 2002 (and implemented in 2003) to bring about effective competition in the provision of electronic communications and services across all Member States. It was also designed to harmonise approaches to regulating communications providers with significant market power, and to opening up markets to increased competition. Separation of Government from day-to-day regulation and a move away from state ownership of incumbent operators were among the key objectives. Under the Framework Directive, the effectiveness of the new regulatory framework was to be reviewed by the end of 2006.

1.2 The framework comprises five European Directives:

- Directive 2002/21/EC of 7 March 2002 on a common regulatory framework for electronic communications networks and services (*the Framework Directive*);
- Directive 2002/20/EC of 7 March 2002 on the authorisation of electronic communications networks and services (*the Authorisation Directive*);
- Directive 2002/19/EC of 7 March 2002 on access to, and interconnection of, electronic communications networks and associated facilities (*the Access and Interconnection Directive*);
- Directive 2002/22/EC of 7 March 2002 on universal service and users' rights relating to electronic communications networks and services (*the Universal Service Directive*); and
- Directive 2002/58/EC of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (*the Privacy & Electronic Communications Directive*);

and a Recommendation on relevant markets.

1.3 The Communication and two proposed amending Directives are part of a package of proposals published by the Commission on 13 November 2007. The publication of the two amending Directives coincides with the publication of the Commission's proposals for a Regulation establishing a new EU Authority under this framework (the Regulation) and a revised Recommendation on relevant markets, both of which are dealt with elsewhere in this Report.¹ The Commission has also published an Impact Assessment and Summary thereof.

1.4 The proposals are helpfully summarised in his 10 December 2007 Explanatory Memorandum by the Minister of State for Competitiveness at the Department for Business, Enterprise and Regulatory Reform (Stephen Timms):

1 Chapters 2 and 6.

Summary of the proposals

- “Ensuring competition works for consumers by improving the information available to customers about the service level they are receiving (e.g. real broadband speed) and transparent prices. Improvements to number portability delays (reduced to one day) to remove unnecessary barriers to moving to an alternative operator who offers the customer a better deal.
- “e-accessibility proposals to improve access to services and equipment for disabled users, including ‘112’ (EU emergency services number).
- “EU Authority ... comprising: two boards, one regulatory (the heads of national regulators) and one administrative (6 members appointed by the Commission and 6 appointed by the Council); an executive Director; an appeals board for numbering decisions; and a Chief Network Security Officer.

“The Authority as currently drafted would be a Community body, replacing the independent European Regulators’ Group, and would incorporate the existing EU Agency, ENISA, focussing on network security. It would also have a role in relation to pan-EU spectrum allocations and telephone numbering for pan-EU services.

- “Commission power to veto and impose remedies. On the advice of the Authority, the Commission would use its veto to stop national regulatory authorities (NRAs) from imposing remedies that the Commission considers to be incompatible with the single market or Community law. Where the Commission is not content with a regulator’s response to a veto, the Commission could go on to impose more appropriate remedies. In addition, the Commission would be able to impose remedies where a regulator is late in carrying out a market review or in the case of trans-national markets.
- “Functional separation to be an option for NRAs, where it is found to be the most appropriate form of regulation to manage enduring monopoly network access problems. Functional separation is where the management of the local access network of an incumbent operator is put into an independent company within the parent group, as happened in the UK with the creation of Openreach within BT Group. This ensures equivalent access to the incumbent’s monopoly network for all retail telecoms and internet providers, avoiding any real or perceived advantage to the incumbent’s retail arm (e.g. BT Retail in the UK). If combined with the strengthened veto/imposition powers, the Commission would be able to force Member States to impose this remedy.
- “e-Privacy proposals aimed at giving consumers greater confidence to use on-line services through mandatory notifications to customers when their network or service provider loses their personal data (“breach notification”). There are also proposals designed to improve enforcement mechanisms.
- “Network security strengthened to include mandatory requirements on operators and an obligation on national regulators to conduct and report on security audits. The Commission believes that the only way to ensure that networks are secure and services are not interrupted or lost, is to impose minimum security standards on

network operators and for national regulators to proactively enforce secure network design and operation. The Commission’s proposals to incorporate ENISA into the new Authority have been presented as underlining the Commission’s commitment to network security.

- “Spectrum proposals to further liberalise spectrum authorisations (licences) and allocations and enable secondary trading and, where technically feasible, change of use, are presented as the most efficient and effective way of managing spectrum in a future characterised by fast-changing innovative services. In addition, there are proposals for the Authority and Commission to be given the role of allocating spectrum and telephone numbers in the case of pan-EU services.”

1.5 The Minister explains that, as well as his primary responsibility for the policies covered by the proposals, the following Departments also have an interest in the proposals:

- Culture, Media and Sport (broadcasting aspects of the Directives, including e-accessibility aspects of digital TV);
- Justice (data protection aspects of the e-Privacy Directive);
- HM Treasury (spectrum authorisations and EU liberalisation);
- Cabinet Office (coordination of the Government’s EU liberalisation strategy and network security/resilience);
- Home Office (network security/resilience); and
- Work & Pensions (e-accessibility aspects of the Directives).

1.6 With regard to the interest of the *Devolved Administrations*, the Minister says that, while EU negotiations and electronic communications regulation are reserved matters, the Devolved Administrations have an interest in how competition and the single market impacts on electronic communications infrastructure development, local investment and the availability of services (especially broadband) in their regions, and that he will “consult the Devolved Administrations throughout the process”.

Legal and Procedural Issues

1.7 The Minister says that the legal basis of the proposed legislation is Article 95 of the EC Treaty;² that the co-decision procedure under Article 251 of the EC Treaty is to apply; and that the voting procedure is qualified majority voting.

1.8 The Minister then examines the main existing provisions of UK law which may be affected by these proposals, namely:

- Office of Communications Act 2002;

² The central provision of which is that “The Council shall, acting in accordance with the procedure referred to in Article 251 and after consulting the Economic and Social Committee, adopt the measures for the approximation of the provisions laid down by law, regulation or administrative action in Member States which have as their object the establishment and functioning of the internal market.”

- Communications Act 2003;
- Wireless Telegraphy Act 2006;
- Advanced Television Services Regulations 2003 (S.I. 2003/1901); and
- Privacy and Electronic Communications (EC Directive) Regulations 2003 (S.I. 2003/2426).

1.9 The Minister says that it is these legislative provisions which largely implement the five existing Directives amended by these new proposals, attaches Transposition Tables giving full details³ and then looks in more detail at each of the existing Directives in turn:

“The Framework Directive was implemented principally by provisions of the Communications Act 2003. Some of the relevant provisions of that Act are now contained in the Wireless Telegraphy Act 2006, which consolidated the wireless telegraphy provisions of a number of Acts going back to 1949 and including the 2003 Act. In addition, some of the Framework Directive’s provisions on national regulatory authorities (Article 3) were implemented in the Ofcom Act 2002 and Part 9 of the Enterprise Act 2002; some of the Directive’s provisions on rights of way (Article 11) and on co-location and facility sharing (Article 12) were implemented in Schedule 2 to the Telecommunications Act 1984; and some of the Directive’s provisions on market analysis procedure (Article 16) were implemented in the Electronic Communications (Market Analysis) Regulations (S.I. 2003/330).

“The Access and Interconnection Directive was wholly implemented by provisions of the Communications Act 2003, except for Articles 2(d) and 4(2) which were implemented in the Advanced Television Services Regulations 2003 (S.I. 2003/1901).

“The Authorisation Directive was principally implemented by provisions in the Wireless Telegraphy Act 1949 and the Communications Act 2003. The whole of the 1949 Act is now contained in the Wireless Telegraphy Act 2006. In addition, some of the provisions of the Annex to the Directive were implemented in or under Schedule 2 to the Telecommunications Act 1984, the Wireless Telegraphy Act 1998 and the Regulation of Investigatory Powers Act 2000.

“The Universal Services Directive was wholly implemented by provisions of the Communications Act 2003, except for part of Article 8 implemented in the Electronic Communications (Universal Service) Regulations 2003 (S.I.2003/33) and Article 24 and Annex VI which were implemented in the Advanced Television Services Regulations 2003 (S.I. 2003/1901).

“The Privacy and Electronic Communications Directive was wholly implemented by The Privacy and Electronic Communications (EC Directive) Regulations 2003 (S.I.2003/2426), except for Article 5(1) and (2) whose requirements were respectively already met by the Regulation of Investigatory Powers Act 2000 and by the Telecommunications (Lawful Business Practice) (Interception of Communications)

3 See Explanatory Memorandum of 10 December 2007.

Regulations 2000 (S.I.2000/2699). Regulation 26 of the 2003 Regulations has been amended by S.I. 2004/1039.”

1.10 He concludes that “at this early stage, it is only possible to say that we are likely to need to amend at least some of the Acts and Statutory Instruments identified above to reflect some of the proposed changes to the five Directives which would be amended by these proposals”, and says that he will provide more detailed information about this in subsequent Explanatory Memorandums submitted on these proposals.

1.11 The Minister then examines *Compliance with Fundamental Rights*, saying that he will be “undertaking an analysis of the compliance of these proposals with fundamental rights (as described by Article 6(2) of the Treaty on European Union)”, and will again give further information about this in subsequent Explanatory Memorandums submitted on these proposals. He continues as follows:

“At this initial stage it appears that the right to property (together with the freedom to contract and to conduct a business) and the rights to a fair hearing and an effective remedy will be most relevant.

“In particular, as already noted above, under these proposals the Commission would be able to require national regulators to impose particular obligations (remedies) on undertakings in certain situations (see Articles 7 and 16 of the Framework Directive). In addition, the Commission would be able [to] take decisions requiring national regulators to allocate or withdraw rights of use for spectrum and telephone numbers in the case of cross-Community services (see Article 6b of the Authorisation Directive and Articles 12 and 13 of the Regulation). We will need to review these proposals to ensure that they safeguard the rights to a fair hearing and an effective remedy of those affected by the Commission’s actions. In the instances where the Commission has proposed the strengthening of enforcement mechanisms or powers (see for example, Article 10 of the Authorisation Directive and Article 15a of the Privacy and Electronic Communications Directive) we will also need to check compliance with these rights.

“With regard to the right to property (together with the freedom to contract and to conduct a business), at this initial stage it seems to us that the following proposals in particular may affect these rights.

- The proposals in relation to spectrum management (in particular, in Articles 9, 9a, 9b and 9c of the Framework Directive and Articles 5 to 7 of the Authorisation Directive).
- The proposed new remedy of functional separation and the associated provision on voluntary separation by a vertically integrated undertaking (Articles 13a and 13b of the Access and Interconnection Directive).
- The proposed power to require the sharing of facilities or property (Article 12 of the Framework Directive and Article 12(1)(f) of the Access and Interconnection Directive).

- The proposed requirement on an operator who has been designated as a provider of universal service to inform the national regulator of its intention to dispose of its local network assets (Article 8(3) of the Universal Service Directive).
- Other proposed changes to the Universal Service Directive including provisions on tariffs/charges (Articles 9, 26 and 27); the use of information on tariffs by third parties and regulators (Article 21); and contracts (Article 20).

“Lastly the proposals, in particular the proposed amendments to the Privacy and Electronic Communications Directive, appear to support the right to privacy and the right to data protection.”

1.12 Finally, he says that “consistency with the principle of subsidiarity has yet to be examined.”

The Government’s view

1.13 The Minister begins by saying that the Commission’s proposals have been presented as the measures needed to achieve “a single market for 500 million consumers” and that it is “in this context that we will review the proposed changes to the current regulatory regime.” He then describes the “Initial UK position” as follows:

Pursuit of the single market

“The regulatory framework has been a success where it has been implemented effectively resulting in increased competition, lower prices and wider choice of ever-increasing innovative services. However, one of the biggest barriers remains effective access regulation of monopoly, or “bottleneck”, parts of incumbent networks in many Member States.

“The top five European countries with the most effective regulatory environment (in descending order: UK, Netherlands, Denmark, Norway and France), as determined by the European Competitive Telecommunications Association, (ECTA), also have the most effective access regulation compared to other EU and European countries.⁴

“Our view is that fully independent NRAs in all Member States are essential to enabling the EU to realise the benefits from fully liberalised network industries. Regulatory consistency and improving the co-ordination between independent national regulatory authorities are also important.

Consumer benefits

“We welcome the focus on ensuring consumers and business users benefit from greater competition in electronic communications markets across the EU (including fixed line telecommunication and broadband). We believe that improving the price

4 The Minister attaches the executive summary of ECTA’s 2007 regulatory scorecard to amplify his comments.

and service level information available to consumer and business users is essential for effective competition.

“The focus on e-accessibility and disabled users is also important, and we agree that, wherever possible, we should take this opportunity to close and not widen the digital divide.

“e-Privacy is an important issue for consumers and business. We wish to work with the Commission to find the best way to evolve the current rules, including looking to ensure that the exemptions specified in the e-Privacy Directive are still fit for purpose.

Functional separation as a remedy

“Functional separation has been successful in the UK and investment in infrastructure has increased thanks to the resulting regulatory stability.

“We consider it is important for all NRAs to have a range of powers to deliver economic and consumer benefits. We believe this should include Functional Separation, if appropriate for their market characteristics. We do not believe that the decision whether or not to impose such a detailed and intrusive remedy should be subject to Commission approval.

Network security

“Network security is an important issue. In reviewing the proposals we will want to assess how the Commission’s proposals compare with our understanding of the minimum regulatory burden necessary to ensure security of supply in competitively functioning markets (where we would expect network providers to have every incentive [to] ensure their customers receive a good level of service).

Commission veto and imposition of national remedies

“Based on our initial analysis we are not convinced that the Commission should have a veto on remedies proposed by NRA’s and a power to impose remedies. We believe that national regulators are best placed to design remedies most appropriate to local conditions. We do not believe that a ‘one size fits all’ approach is the right way forward.

“The Commission already has powers to address the failure of NRAs to impose adequate remedies (or to act at all) through infraction proceedings and through its competition powers under Article 86 of the EU Treaty. Our more detailed analysis of the effectiveness of the Commission’s proposals will include a review of the Commission’s existing powers, to what extent they can address the problems identified by the Commission and the options for strengthening regulation in this area, if needed.

Spectrum

“We support spectrum liberalisation. We consider service and technology neutrality are essential if EU consumers and business are to maximise the benefit from this valuable resource. We also consider spectrum trading is essential to enable the market to react to new technologies and services.

“We are not convinced that there is enough supporting evidence to justify the proposal for the Commission, working with the Authority, to allocate spectrum in pan-European cases. The existing co-ordination machinery is, in our view, adequate to deal with any foreseeable pan EU services. See also our comments on this in the EM on the Regulation.

Universal service

“The Commission is planning a wider review of the scope and purpose of universal service obligations in Spring 2008. We expect that the wider review will restart the debate about if and when to include mobile and broadband access, and how it should be funded. These proposals concentrate on updating the text to ensure that it is better suited to future purposes.

“Some of the proposals under users’ rights include the possibility to mandate minimum quality of service levels and reminding customers of their obligations under copyright law. It is not clear at this early stage what the impact of these specific proposals will be on business and whether they will improve customers’ experience of using electronic communications.

“The Commission is committed to improving access to services for disabled users and we fully support this aim. One proposal from the Commission is to bring terminal equipment (e.g. a phone or text device) within the scope of the framework, which to date has only covered services. This could in theory help disabled users who might have access to services but can not get hold of the equipment they need. However, the biggest barrier to owning accessible equipment is often cost, which this proposal does not address.

The inclusion of ENISA (EU information security agency)

“Whilst we welcome objectives to reduce costs and regulatory burdens, we are surprised at this somewhat premature conclusion that ENISA should not continue as a separate Agency, given the views already expressed by the Commission, the ENISA Management Board and other stakeholders. The future of ENISA is currently under review by the Commission because its existing remit does not extend beyond 2009. The ENISA review is looking at, among other things, whether ENISA remit should be extended beyond 2009 and whether its focus and scope need refocusing.

“We will need to establish what security functions the proposed Authority need to perform, the extent to which this requires skills in house, and whether combining the Agencies (as suggested) delivers benefits or narrows the ability of the EU to deal with security issues.”

Future Timetable

1.14 Referring to the initial impact assessments (documents (d) and (e)), the Minister says he is preparing a partial impact assessment for a formal written consultation in January 2008, and also “analysing the Commission’s impact assessment and the options for best improving EU productivity and competitiveness through changes to the competitive framework for electronic communications”. At present, while there could, he says, be financial implications arising from the implementation of this Regulation as drafted, or as amended through negotiation, “it is too early to determine the scope or scale of the potential impact”.

1.15 The Minister refers to the Telecoms Council of Ministers on 29 November, at which he “broadly welcomed the Direction of the Commission’s proposals for improving the liberalisation of this sector and expressed some of the concerns outlined”. Looking ahead, the Minister says that he “will be consulting stakeholders throughout the process”. He refers to a stakeholder information meeting on Monday 19 November and to the formal written consultation in January 2008, and will write to us with the result of the consultation, including a summary of the responses received, in May 2008.

1.16 He expects the negotiations to begin in earnest in the New Year, under the Slovenian Presidency, and looks ahead to the further Telecoms Council planned for June. Beyond that, he says that the French Presidency for the latter half of 2008 “hopes to achieve political agreement at the autumn 2008 Telecoms Council but it is not clear at this stage how far the negotiations will have progressed or how the package will be received by the European Parliament”.

1.17 He undertakes to write to the Committee regularly to update us on the progress of negotiations “and the developing UK position”.

Conclusion

1.18 We are grateful to the Minister for this full and helpful Explanatory Memorandum, from which it is clear that we are just embarking upon a major scrutiny exercise.

1.19 It is also clear from the outset that, with plentiful evidence that the present regulatory framework has been very successful where it has been effectively implemented by NRAs, it is at least arguable that the Commission should be concentrating on recalcitrant or delinquent Member States, to ensure that it is properly and effectively implemented elsewhere, rather than seeking major new powers for itself via the proposed new European Electronic Communications Market Authority (ECMA). This is the subject of a separate proposed Regulation, which we examine in chapter 6 of this Report on the basis of a separate Explanatory Memorandum from the Minister, in which he sets out a number of concerns about the proposed ECMA that seem to us to be eminently well-founded.

1.20 We shall therefore retain the draft Regulations (documents (b) and (c) under scrutiny, and look forward to the first of the Minister’s promised reports on the negotiations and “developing UK position”.

1.21 We also recommend that the scrutiny process should begin with a debate in the European Standing Committee on the Commission Communication (document (a)).

1.22 We clear the two Commission Staff Working Documents (documents (d) and (e)), which we consider relevant to the debate.

2 European Electronic Communications Market Authority

(29175) 15408/07 COM(07) 699	Draft Regulation establishing the European Electronic Communications Market Authority
------------------------------------	---------------------------------------------------------------------------------------

<i>Legal base</i>	Article 95 EC; QMV; co-decision
<i>Document originated</i>	13 November 2007
<i>Deposited in Parliament</i>	22 November 2007
<i>Department</i>	Business, Enterprise and Regulatory Reform
<i>Basis of consideration</i>	Explanatory Memorandum of 10 December 2007
<i>Previous Committee Report</i>	None
<i>Discussed in Council</i>	29–30 November 2007 Telecoms Council
<i>Committee’s assessment</i>	Legally and politically important
<i>Committee’s decision</i>	Not cleared; further information requested

Background

2.1 The background is summarised in chapter 1 of this Report, where we consider the Commission Communication on the outcome of the Review of the EU regulatory framework for electronic communications networks and services.

The Commission Proposal

2.2 The central proposal in the Communication is a new EU Authority — a Community body, called the European Electronic Communications Market Authority (EECMA) (“the Authority”), which would work closely with the National Regulatory Authorities (“NRAs”) and the Commission, and would replace the independent European Regulators’ Group (ERG) and incorporate the existing EU Agency, ENISA (which focuses on network security), and would have a role in relation to pan-EU spectrum allocations and telephone numbering for pan-EU services.

2.3 This proposal is set out fully by the Commission in a draft Regulation, which is helpfully summarised in his 10 December 2007 Explanatory Memorandum by the Minister of State for Competitiveness at the Department for Business, Enterprise and Regulatory Reform (Stephen Timms).

2.4 The Minister says that the new body would be led by an Administrative Board overseeing the performance of the Authority, including appointment of the Director after consultation with the Board of Regulators. The Administrative Board would comprise twelve people, six of whom would be appointed by the Commission and six by the Council, who would sit for a fixed term of five years, which would be renewable once.

2.5 The Authority would be managed by its Director, who shall act independently; he or she would represent the Authority and be in charge of its management.

2.6 The Board of Regulators would consist of the heads of the NRAs in each Member State (effectively the “ERG” component of the Authority) who would reach decisions by a simple majority. A Chief Security Officer would manage the network and information security work, which is currently being carried out by ENISA. It would also establish a Permanent Stakeholders’ Group, which the Minister understands from the Commission’s presentation of this proposal would effectively be the Group that currently works with ENISA.

2.7 The Minister notes that one of the roles envisaged for the Authority is to issue rights of use for telephone numbers from the European Telephone Numbering Space (ETNS) to operators. He says that “there is a limited number of European numbers available, which means that not everyone may get the numbers they request. A Board of Appeal has been set up to deal with appeals to decisions taken by the Authority in relation to the allocation of European telephone numbers.”

2.8 The proposed resources for the new Authority would be:

General staff

- 38 in first year
- 113 in second year
- 135 in third year and onwards

Budget

- €10.16m in first year
- €23.10m in second year
- €27.50m in third year and onwards

2.9 The Commission’s purpose for the Authority is to improve the functioning of the internal market for electronic communications. The Minister says that, for the most part, it is proposed that the Authority’s general mandate would be advisory: that, at the request of the Commission, “the Authority shall deliver opinions on all matters regarding electronic communications”. It would also be able to issue opinions on its own initiative and assist the Commission by providing it with additional technical support in all matters regarding electronic communications. However, he notes that it is also proposed that the Authority will have some decision making/executive type functions, for example in relation to the rights to use numbers from the ETNS (see below) and in relation to selecting undertakings

to which rights of use of spectrum and numbers should be allocated in the case of cross-Community services: “This latter function is provided for in the Regulation and the amended Authorisation Directive and it is not clear from the texts exactly how the function would work and the limit of its scope.”

Tasks of the Authority

2.10 The Minister outlines the Tasks of the Authority relating to strengthening the internal market as follows:

- to foster the harmonised application of the regulatory framework.
- where the Commission takes issue with a draft measure notified by an NRA under Article 7 of the Framework Directive, review the definition and analysis of national markets and proposed remedies.
- to provide advice and assistance in relation to a specific national market where the NRA has failed to complete a market analysis within the time-frame set by the regulatory framework (NB this time-limit is introduced in the current proposals; there is currently no enforceable limit on the time NRAs can take to complete a market analysis).
- undertake analysis of “trans-national” markets following the identification of a trans-national market by the Commission.
- administer and develop the ETNS, which is a European telephone numbering scheme parallel to existing national numbering schemes and used for the provision of pan-European services (‘3883’ calls), manage harmonised number ranges such as “116” numbers (intended for “social” services including a missing children help line) and deliver an opinion, on the request of the Commission, on obligations regarding the porting of numbers (where a user takes their phone number with them when they change telephone provider).⁵
- carry out an annual review of measures taken at national level to increase the awareness of the single European emergency number ‘112’. On request of the Commission, it will issue an opinion of technical issues related to the implementation of ‘112’.
- assist the Commission on issues relating to technical and economic aspects regarding radio frequencies (spectrum) used for the provision of electronic communications services.
- assist in the identification of “cross-Community” services which would benefit from a common selection procedure. The Commission’s Explanatory Memorandum (but not the text of the proposal) says that for a service to qualify as a cross-Community service, it will need to fulfil certain conditions. For example,

⁵ Ofcom has just announced a two-hour limit for porting numbers between mobile networks, (to be in place by 2009 for mobile to mobile and 2012 for fixed to mobile), which means that within two hours of signing a contract with a new network your old number should be active on your new phone.

there should be demand for the service in more than one Member State and the services concerned, by the nature of the characteristics, crosses national borders and as such are susceptible to EU or regional rather than national negotiation.

- carry out the selection procedure for the provision of cross-Community services and deliver an opinion proposing the undertaking(s) to which rights of use could be granted.
- play a role in the withdrawal of rights of use issued following a common selection procedure.
- contribute to the development of a culture of network and information security by carrying out certain activities previously undertaken by ENISA (the existing EU network and information security Agency).
- there are also some cases where the Authority can act on its own initiative (rather than at the request of the Commission, as is the case for all of the above).

Complementary tasks of the Authority

2.11 The Minister notes that:

- the Authority will impose administrative charges for some of the services provided to offset the costs of administration. In the case of a common selection procedure, it will also collect administrative charges and usage fees for rights-of-use of radio frequencies on behalf of Member States, which it will then redistribute to Member States;
- on request from a NRA, the Authority will issue recommendations to the NRAs on the measures to be taken by the NRAs in case of cross-border issues;
- the Authority will play a role in the dissemination and exchange of information between the Member States, the NRAs and the Commission. It could be involved in studying technical developments within the Community. It will publish an annual report on developments in the electronic communications sector, in which it will identify remaining barriers to the completion of the single market. It will play a role in the collection of information including the management and publication of the frequencies information registry (spectrum use) and of the mobile roaming database (compliance with the recent mobile roaming Regulation); and
- the Authority will assist the Commission on e-Accessibility issues and publish an annual report on measures to be taken to improve accessibility of electronic communications networks and equipment by disabled end-users.

The Commission's rationale for the Authority

2.12 The Commission's rationale for the creation of the new Authority is captured in the preamble to the draft Regulation, which states that there is a need for "[a] more substantial institutional basis" than the ERG provides "[to bring] together the expertise and experience

of the national regulatory authorities” and the need for that body to have “a clearly defined set of competencies”. The preamble also mentions the need “to enhance the mechanisms for ensuring consistent regulatory practice in order to complete the internal market in electronic communications and services”.

2.13 The Minister again notes that the Commission’s intention is that the new Authority should complement the work of NRAs, not replace them:

“The Authority should, through the pooling of expertise, reinforce the capacities of the national regulatory authorities without replacing their existing functions or duplicating work already being undertaken, for the further benefit of assisting the Commission in the execution of its responsibilities.”

Impact on United Kingdom law

2.14 The Minister notes that, being a proposal for a Regulation, it would be directly applicable in the UK; that he will be considering whether domestic legislative action will be required to supplement the proposal; and that he will provide more detailed information about this in subsequent Explanatory Memorandums on this proposal.

2.15 He says that he will also be undertaking an analysis “of the compliance of this proposal with fundamental rights (as described by Article 6(2) of the Treaty on European Union)”, and will likewise provide further information about this in subsequent Explanatory Memorandums. He continues thus:

“At this initial stage it appears that the rights to a fair hearing and an effective remedy and possibly the right to property will be most relevant.

“As already noted, it is proposed that the Authority will be able to take decisions allocating rights of use for telephone numbers from the ETNS. In addition, the Authority will have a role in the selection of undertakings to which rights of use for spectrum and numbers should be allocated by the Commission in the case of cross-Community services and the withdrawal of such rights. It will also have a role in relation to cross-border disputes. Further, the Commission will be able to impose fines on undertakings if they fail to provide the Authority with information required under the proposed Regulation.

“In particular, it will be necessary to review these proposals to ensure that they safeguard the rights to a fair hearing and an effective remedy of those affected by the actions of the Authority and the Commission.”

Subsidiarity

2.16 The Minister says that “consistency with the principle of subsidiarity has yet to be examined”.

The Government’s view

2.17 The Minister says that the regulatory framework has been a success where it has been implemented effectively, resulting in increased competition, lower prices and wider choice

of ever-increasing innovative services. However, “one of the biggest barriers remains effective access regulation of monopoly, or ‘bottleneck’, parts of incumbent networks in many Member States.” He notes that the top five European countries with the most effective regulatory environment — in descending order: the UK, Netherlands, Denmark, Norway and France, as determined by the European Competitive Telecommunications Association — also have the most effective access regulation compared to other EU and European countries. He then comments extensively on the proposal, as follows:

UK view on the minimum essential features of an effective single market for electronic communications

“Full market opening through effective implementation of the existing regulatory framework, including politically and financially independent national regulators in all Member States.

“No unnecessary barriers to cross-border trade (e.g. a requirement before offering any service to: register; have a national presence; or enter into a partnership with local entities).

“A flexible, market-led approach to spectrum allocation.

“Realising benefits to consumers (e.g. wide choice of service provider, lower prices and ability to switch to alternative providers easily and cheaply), and protecting consumers (e.g. stopping misselling⁶ and ensuring that vulnerable users⁷ are not left behind as technology progresses).

Initial UK view on the proposals

“Our view is that fully independent NRAs in all Member States are absolutely essential to enabling the EU to realise the benefits from fully liberalised network industries. Regulatory consistency and improving the co-ordination between independent national regulatory authorities are also important.

“Based on our initial analysis, we are not convinced that a new authority would be the quickest or most effective method of achieving the Commission’s objective of completing the internal market through more effective national regulation. We have concerns about its scope, its size, and its governance (which may not have enough political independence to ensure robust, evidence-based decisions).

“We are looking at whether a new EU Authority would be more effective than an enhanced ERG (which would, in theory, be quicker and cheaper to set up). However, the onus is very much on the ERG to prove to the Commission, the European Parliament, Governments, and stakeholders that they can deliver a viable and strong alternative, and the UK position remains open pending further analysis.

6 Where a customer is switched to an alternative provider without their knowledge or permission.

7 Disabled and elderly users, low income families, and rural communities that are expensive to connect.

“In considering the scope and role of a new electronic communications institution, whether it follows the Commission’s Authority proposal or one based on a strengthened ERG (‘ERG+’), there are three areas of particular concern for the UK.

“Firstly, it must be fully independent. This is fundamental to ensuring we achieve the benefits of better-implemented EU regulation and more effective national regulation; the advice given must be impartial and based on sound economic and technical evidence. This is one of the important features that, in theory, the alternative ‘ERG+’ model would have, whereas it is not clear how the full independence of the Authority is assured based on the proposed management structure.

“Secondly, a role in spectrum authorisation, or the selection of undertakings, would seem to be inappropriate for the new Authority as this is a matter for NRAs (the responsibility for spectrum authorisation is ultimately the responsibility of national Governments).

“Thirdly, the role of ENISA would need to be considered carefully, including taking into account the current review, and the impact of combining its security responsibilities with a wider market remit. For example, ENISA-type responsibilities require Member States to co-operate on security issues at a political level whilst an economic market role must be fully independent.

“The Commission is in the middle of a review of the future of ENISA as the security Agency’s current mandate ends in 2009. If a new Authority was created, it would not begin effective operation until 2011, which means that the Commission, with Member States and the European Parliament, has to take a decision on the future of ENISA in the intervening period.

“Some Member States (Greece — ENISA is based in Crete — and Cyprus) have already spoken of the Commission and Member States’ ‘moral obligation’ to ENISA, an agency that is just three years old.

Spectrum role of the Authority

“One of the main tasks for the Authority would be assisting the Commission by advising on common conditions for rights of use of spectrum and the selection of undertakings for certain cross border services. The impact of this role depends a lot on what is meant by ‘cross border services’, also referred to as ‘cross-Community’ and ‘pan-EU’ services.

“Our view is that there are very few services that use spectrum that would benefit from such a co-ordinated approach. We are aware of only two: mobile satellites, where the co-ordination procedure, though not ideal, is almost complete, and mobile communications on transport (aircraft, trains and boats) which probably will not need any co-ordination as the risk of interference to other radio spectrum users is very minimal.

“The extent of the scope of the definition of ‘cross-Community’ services is not clear from the text of the proposals and we will seek further clarification. However, if the

broadest interpretation was taken, we would be concerned as it could cover virtually all services dependent on spectrum.

“The UK’s starting position is that we should oppose any responsibility for spectrum falling under the new Authority. A further argument against the Authority having any responsibility for spectrum issues is that it is not at all clear how this would work in practice. The Commission have proposed that the new Authority would be governed by the heads of the NRAs. In only very few cases do these NRAs, rather than a Government Ministry, have responsibility for spectrum (Ofcom obviously being an exception).

Network and information security role

“The Authority would take over the functions of the European Network Security Agency (ENISA), and this is proposed so as to reinforce the coherence between obligations to ensure network integrity (currently falling on NRAs) and the responsibility to create a culture of network and information security (which falls to ENISA).

“Clearly there are associated cost savings and efficiencies associated with this. However the Commission appears to be recasting the ENISA focus onto network security and to ensure that regulatory intervention can take place ‘where market forces alone fail to ensure the security, stability and integrity of eCommunications networks and services.’ This seems to move away from ENISA’s remit ‘to develop a culture of network and information security for the benefit of the citizens, consumers, enterprises and public sector organisations of the EU’.”

2.18 The Minister then outlines the alternative model proposed by the European Regulators Group (ERG), to which he refers above and which is set out in a letter to Commissioner Reding that he encloses with his Explanatory Memorandum:

“The ERG believes it can provide an effective alternative to a Commission Authority by formalising its legal status. An ‘ERG+’ option would have/provide (among other things):

- a permanent staff of up to thirty people (building up over time from the current staff of three);
- an independent full-time director to oversee ERG+ business;
- advice to the Commission on electronic communications;
- routine assessment of national regulators’ performance in complex areas; and
- advice on best practice and guidance on the right remedies for specific competition problems.

“The ERG+ model could be further enhanced (“ERG++”) by the Commission amending the ERG Decision to give the ERG a formal advisory role under the framework.

“The ERG model(s) would not address the Commission’s proposals for:

- spectrum and numbering authorisations for Pan-EU services; or
- the incorporation of network security work of ENISA.”

2.19 In conclusion, the Minister says that he needs to review the Commission’s case for including these other aspects in a more centralised EU regulatory system before he finalises his views on whether, and how far, the ERG proposals meet UK objectives.

Impact Assessment

2.20 The Minister includes an initial impact assessment with his Explanatory Memorandum; says that he is preparing a partial impact assessment for the written consultation scheduled for publication in January; and is also analysing the Commission’s impact assessment “and the options for best improving EU productivity and competitiveness through changes to the competitive framework for electronic communications”.

2.21 He also says that, while there could be financial implications arising from the implementation of this Regulation as drafted, or as amended through negotiation, it is too early to determine the scope or scale of the potential impact.

Consultation

2.22 With regard to the interest of the *devolved administrations*, the Minister says that, while EU negotiations and electronic communications regulation are reserved matters, the devolved administrations have an interest in how competition and the single market impacts on electronic communications infrastructure development, local investment and the availability of services (especially broadband) in their regions, and that he will “consult the devolved administrations throughout the process.”

2.23 He says that he will also be consulting other stakeholders throughout the process, referring to a stakeholder information meeting on 19 November and a forthcoming formal written consultation in January 2008, about which he undertakes to write to the Committee with the result of the consultation, including a summary of the responses received, in May 2008.

Timetable

2.24 The Minister says that at the Telecoms Council of Ministers on 29 November he “broadly welcomed the Direction of the Commission’s proposals for improving the liberalisation of this sector and expressed some of the concerns outlined in the policy implications above”. He expects the negotiations to “begin in earnest” in the New Year, under the Slovenian Presidency, with a UK consultation between January and April 2008 and a further Telecoms Council planned for June. Thereafter, he says that the French Presidency for the latter half of 2008 “hopes to achieve political agreement at the autumn 2008 Telecoms Council but it is not clear at this stage how far the negotiations will have progressed or how the package will be received by the European Parliament”.

Conclusion

2.25 In chapter 1 of this Report we consider, and recommend for debate in the European Standing Committee, the Commission Communication that not only reviews the present regulatory framework but also puts forward a number of proposals in the shape of three draft Regulations. The most important is the one considered here in more detail by the Minister, for whose full and frank Explanatory Memorandum we are most grateful.

2.26 His concerns about the proposed ECMA appear to us to be well-founded, and we shall therefore retain the document under scrutiny, while looking forward to the promised regular reports “on the progress of negotiations and the developing UK position”.

3 Value added taxation

(29092) 14942/07 COM (07) 677	Draft Directive amending VAT Directive 2006/112/EC
-------------------------------------	----------------------------------------------------

<i>Legal base</i>	Article 93 EC; consultation; unanimity
<i>Document originated</i>	7 November 2007
<i>Deposited in Parliament</i>	13 November 2007
<i>Department</i>	HM Treasury
<i>Basis of consideration</i>	EM of 27 November 2007
<i>Previous Committee Report</i>	None
<i>To be discussed in Council</i>	Not known
<i>Committee’s assessment</i>	Politically important
<i>Committee’s decision</i>	Not cleared; further information awaited

Background

3.1 The general framework for the common VAT system in the Community is governed by Council Directive 2006/112/EC, the VAT Directive.

The document

3.2 This draft Directive would amend the VAT Directive for four specific matters. The first concerns the VAT scheme applicable to the supply of natural gas, electricity, heat and refrigeration. With effect from 1 January 2005, following agreement on a previous Commission proposal,⁸ the UK along with other Member States introduced new rules

8 (24085) 15369/02: see HC 63–vi (2002–03), chapter 13 (8 January 2003).

governing the place of supply of gas and electricity. An associated relief from VAT on importations of gas and electricity was also introduced. These provisions were aimed at simplifying the VAT treatment in this area. They apply to imports or supplies of natural gas by pipelines that form part of the natural gas distribution system (predominantly the domestic system). But pipelines that are part of the transmission system are not covered. This omission was unintentional. To rectify this, this draft Directive would make it clear that the scope includes the supply and import of natural gas in all types of pipeline. It would also extend the scope to include the supply and import of natural gas by vessels designed for the transport of natural gas (on the basis that this gas is identical to that transported by pipeline and is fed into the pipelines of the transmission system following gasification). Finally, since the scheme was introduced, cross-border heat and refrigeration networks have become available in parts of the Community. As the issues are likely to be the same, the scheme would be extended to include supplies and imports of heat and refrigeration.

3.3 The second matter the draft Directive would deal with concerns the tax treatment of Community joint undertakings. The amendment is intended to clarify the tax status of joint undertakings and other bodies for Community research and development set up under Article 171 of the EC Treaty. It would enable them to be treated like international bodies for VAT purposes, so that businesses supplying these bodies would not have to charge them VAT. This would result in consistency in treatment of joint undertakings and a greater proportion of Community and Member States' funding provided to these bodies being made available for research activities, instead of taxation benefiting one Member State to the detriment of other Member States and the Community.

3.4 The third matter to be dealt with relates to the accession of Bulgaria and Romania. The draft Directive would insert two provisions in the VAT Directive to reflect that accession. The first sets out VAT registration thresholds levels for Bulgaria (at €25,000 or around £18,000) and Romania (at €35,000 or around £25,000) in line with conditions set out in the VAT Directive. The second provision would allow Bulgaria and Romania to continue to exempt international passenger transport under standstill provisions of the VAT Directive.

3.5 The final matter concerns the right of deduction on mixed-use immovable property. One of the main principles of the right to deduct input VAT is that the right of deduction arises only in so far as the goods and services concerned are used for taxable business transactions. In the case of goods used simultaneously for business and non-business purposes, taxable persons can choose to allocate the goods fully in their economic activity. If they do, they may immediately deduct all input VAT. However, the non-business use will then be taxed as a supply of services for consideration based on the extent of use for non-business purposes on an ongoing basis. (This is sometimes known as “Lennartz accounting”.) In the case of property, businesses that take this approach may obtain significant cash flow benefits and a competitive advantage over businesses that apply a different approach, such as allocation to mixed use and apportionment at the outset. It can also be used as a basis for avoiding tax, for example by engineering minimal business use to obtain upfront recovery and by putting in place arrangements to ensure only a small proportion is paid back for a limited period of time.

3.6 In order to make application of the rules fairer, the Commission proposes to restrict the initial deduction of input tax to the proportion of effective business use when property (including its purchase, construction, renovation and substantial transformation) is included in the company's assets and liabilities. At the same time, an adjustment system is proposed in order to reflect variations between the business and non-business use of such property over time. The adjustment mechanism will run parallel to the existing mechanism for capital items, which provides similar adjustments to reflect mixed taxable and exempt use.

The Government's view

3.7 The Financial Secretary to the Treasury (Jane Kennedy) says, in relation to:

- the VAT scheme for natural gas, electricity, heat and refrigeration, that the simplification scheme was widely supported and the Government expects that business will welcome this clarification and extension of its scope. Although extending the provisions to include heating and refrigeration would have little impact in the UK, the issues are similar and the Government sees no reason to stand in the way of applying a similar simplified treatment;
- the tax treatment of Community joint undertakings, that whilst recognising the intended benefits of the proposal, the Government believes further consideration is needed of its broader implications, in the light of the uncertainty over the range and number of joint undertakings and other bodies to which this status might automatically be granted and whether this should be on a case-by-case basis. The Government is requesting further information and discussion on this element of the proposal;
- the accession of Bulgaria and Romania, that these proposals would have no UK impact; and
- the right of deduction on mixed-use immovable property, that the proposal would make the input tax deduction on property fairer, as it would prevent some businesses obtaining a significant cash flow advantage. The proposal would also address the avoidance opportunities. The Government therefore supports this proposal.

3.8 The Minister says there are no financial implications in the proposals relating to the VAT scheme on natural gas, electricity, heat and refrigeration, which are revenue neutral, and to the accession of Bulgaria and Romania. She says that the amendments regarding joint undertakings may have a potential revenue impact for the UK and that the amendments on the right to deduct input VAT on immovable property would increase UK revenue. The current estimate of the cash flow advantage obtained under Lennartz accounting on property is £75 million per year. In terms of avoidance opportunities closed down, the revenue yield would be in the region of £40 million.

Conclusion

3.9 The proposals in this document seem straightforward and give no cause for major concern. However we note the Government's wish for further information and discussion on the joint undertakings proposal and will ourselves postpone further consideration of the draft Directive until we hear more on this aspect. Meanwhile the document is not cleared.

4 European Competitiveness Report 2007

(29079)
14794/07
+ ADD 1
COM(07) 666

Commission Communication: *Raising productivity growth: key messages from the European Competitiveness Report 2007*

<i>Legal base</i>	—
<i>Document originated</i>	31 October 2007
<i>Deposited in Parliament</i>	7 November 2007
<i>Department</i>	Business, Enterprise & Regulatory Reform
<i>Basis of consideration</i>	EM of 5 December 2007
<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

4.1 In recent years, the Commission has produced an annual European Competitiveness Report, which seeks to provide an analytical contribution to discussions on ways of achieving the objectives contained in the Lisbon Strategy. The Report for 2007 is set out in a lengthy Staff Working Document, which is accompanied by a Communication from the Commission identifying the key messages to be drawn from it.

The current document

4.2 After providing definitions of “competitiveness”,⁹ both generally and in relation to specific industries, the Communication begins with a review of recent developments in the European economy. It notes that real growth rates in the Community of 27 in 2006 of 3.0% were widespread among the Member States, and were the highest since 2000. Furthermore,

⁹ Generally speaking, competitiveness is defined as a sustained rise in the standard of living of a nation or region, with involuntary unemployment remaining as low as possible: in the case of an industry, the term is understood as maintaining and improving its position on the global market.

productivity growth was for the first time since 2001 higher than in the United States, thus narrowing a productivity gap between the two which had widened continuously over the past decade (though it also cautions that labour productivity in America was still some 39% higher). It adds that, although the upturn appeared to be essentially cyclical in nature, it was also likely to contain a structural element linked to past reforms by the Member States, especially in the labour market, and to increases in skill levels. The Commission also says that these developments were reflected at sector level, with all manufacturing sectors, apart from tobacco, showing substantially higher growth rates, and that improvements in productivity should continue as the effects of recent reforms — particularly those generated by the renewed Lisbon strategy — start feeding through more strongly.

4.3 The Report then considers the *main factors affecting competitiveness*. It notes that raising the long-term growth potential by increasing productivity growth is one of the fundamental objectives of the renewed Lisbon strategy, and an important response to the challenges of globalisation, not least in enabling the Community to sustain its social model in the future. It goes on to suggest that key elements in productivity growth include increased investment in R&D; investment in information and communication technology; increased competition in open markets; measures to ease the start and growth of companies, including small and medium-sized enterprises (SMEs); reducing regulatory burdens; and lowering corporate tax barriers. It says that progress has been made with reforms in all these areas, but adds that more still needs to be done.

4.4 The Commission also suggests that productivity can be increased by greater coordination between Member States, which enables countries to learn from each other, and also stimulates reform and helps overcome national resistance to reforms. It adds that, despite concerns over possible job losses, trade openness is another significant factor in increasing productivity,¹⁰ as are skill levels, with sectors employing a larger share of high or medium skilled workers exhibiting higher growth in productivity and exports.

4.5 The rest of the Communication is concerned principally with the *competitiveness of European industries*. It notes that, although overall performance is strong, particularly where SMEs play a significant role, it is highly variable at the level of individual industries both across countries and between sectors, with declining sectors including leather, and footwear, textiles, clothing nuclear fuel and tobacco, whilst those with the highest added value are related to new information and communication technologies.

4.6 The Communication also notes that the service content of manufacturing will be key to success in the future, with those companies providing added value through planning, marketing, R&D services and integrating components from outside sources being most successful. It adds that, whilst it is not wholly clear what emerging technologies will contribute in the future, their potential is very significant, and that consequently such matters as managing knowledge, intellectual capital and intangibles are becoming increasingly important, with related issues including the boosting of skills and increasing R&D.

¹⁰ For example, the Commission says that a 1% increase in openness (as measured by the ratio of imports to value added) results in an increase of 0.6% in labour productivity the following year.

The Government's view

4.7 In his Explanatory Memorandum of 5 December 2007, the Parliamentary Under-Secretary of State for Trade and Consumer Affairs at the Department for Business, Enterprise & Regulatory Reform (Mr Gareth Thomas) points out that this Communication is a background document with no direct policy implications, but that the Commission may draw upon it (along with other evidence) when formulating and considering policy proposals. He also notes that, although the document contains some reference to tax issues, these remain a national preserve, except where specifically within Community competence.

Conclusion

4.8 **Although these annual Competitiveness Reports are themselves lengthy, technical and detailed, the accompanying Communications which seek to identify the key messages have provided an input to discussions on the Lisbon strategy, and consequently we (and our predecessors) have tended to draw them to the attention of the House. We are therefore doing so again on this occasion, but we see no need for any further consideration, and we are accordingly clearing the document.**

5 The challenge of globalisation

(29189) 15530/07 COM(07) 581	Commission Communication: <i>The European Interest — Succeeding in the age of globalisation</i>
------------------------------------	-------------------------------------------------------------------------------------------------

<i>Legal base</i>	—
<i>Document originated</i>	3 October 2007
<i>Deposited in Parliament</i>	27 November 2007
<i>Department</i>	Business, Enterprise & Regulatory Reform
<i>Basis of consideration</i>	EM of 6 December 2007
<i>Previous Committee Report</i>	None
<i>To be discussed in Council</i>	See para 5.8 below
<i>Committee's assessment</i>	Politically important
<i>Committee's decision</i>	Cleared

Background

5.1 According to the Commission, the Community's response to globalisation has been at the heart of its policy agenda, with the informal meeting of the European Council at Hampton Court in October 2005 identifying the key challenges posed in areas such as innovation, energy, migration, education and demography. It points out that, at the same time, public awareness of globalisation has intensified, and has called into question some of the basic assumptions about the world economy and domestic economic interest,

generating new expectations about how to adjust to change. It says that the Community now needs to draw together the threads of this debate, and offer a coordinated response to “this most demanding of challenges”, and it therefore produced this Communication in order to provide a basis for a strategic policy discussion at the informal meeting of the European Council on 18–19 October 2007.

The current document

5.2 The Commission says that the Hampton Court meeting recognised the advantages of addressing globalisation on a Continental scale, and that this has since been reinforced by the decisions taken at the European Council in spring 2007 on energy and climate change. It suggests that the European economy is performing well, with the Lisbon strategy moving to the centre of the process of economic reform. As a result, Europe enjoyed strong growth and job creation in 2006, and growth is expected to remain at around 2.75% in 2007, though the Commission also points out that the likely slowdown in the US economy has substantially increased the risks for 2008, calling for a “consistent and assured” policy response. It therefore concludes that the Community must build upon the foundations which have already been laid, both internally and externally.

5.3 The Commission says that a review of *internal policies* is already under way, including:

— Getting the most from the Internal Market

The Commission is finalising its comprehensive review aimed at ensuring that the Internal Market continues to drive growth and jobs in the globalised world, the goal being a Europe which can rely on a strong, innovative and competitive industrial base, which realises the full potential of services, where consumers and entrepreneurs gain maximum benefits, and where European standards have an impact at the international level.

— Responding to Europe’s new social realities

The Commission refers to the big changes under way in employment patterns, family structures, lifestyles and traditional support structures, reflecting increasing pressures from demography in an ageing society. It says that this calls for more effective means of ensuring citizens’ rights of access to employment, education, social services, healthcare and other forms of social protection, and that policy responses in these areas must take globalisation into account.

— Migration in a globalising Europe

The Commission says that a Europe without internal borders, the changing demands of an ageing society, and a constantly evolving labour market have challenged established assumptions about migration from outside the Community, and that a new global approach is needed which balances the risk of labour market shortages, economic impacts, negative social consequences, integration policies and external policy objectives.

— Sustainable energy policies for a low carbon future

The Commission draws attention to the ambitious approach to energy and climate change which the Community has adopted, and says that it will put forward by the end of 2007 the main legislative proposals needed to deliver the objectives set by 2020. It adds that putting Europe on a path to a low carbon future demands a huge commitment, but brings real opportunities, pointing out that the eco-industry now employs more than key sectors such as car manufacturing or pharmaceuticals.

— Ensuring financial stability

The Commission believes that recent events have demonstrated the vital need for stability in the increasingly globalised financial markets, and that this can by no means be taken for granted. It says that financial market transparency, effective competition rules, and appropriate regulation and supervision will continue to be crucial, and that the need for the euro to realise its potential in the global economy “points to further reflection on its representation in financial institutions”.

5.4 So far as the *external dimension* is concerned, the Commission says that the Community needs to consider how the collective European effort can be maximised, and how different internal and external policies can be harnessed to best effect. It suggests that, whilst the Community needs to protect its citizens and values, protectionism cannot be the solution, and that, as the world’s leading trader and investor, its openness allows lower cost inputs, lower consumer prices, and a competitive stimulus for business and new investment. Similarly, it believes that the Community should use its influence to seek corresponding openness from others, including third countries wishing to export to the Community, and that there is a need to build on the proposal for external competitiveness it put forward in November 2006.¹¹ It adds that the global market place can work most effectively when there are common rules, and that, in addition to the Community’s own long-standing experience of helping its Member States to reconcile their different approaches, a new international approach, focusing on regulatory cooperation, convergence of standards and equivalence of rules, is emerging, and should be further developed.

5.5 The Commission stresses the key importance in all these areas of the Lisbon Strategy, and the success of the Strategy’s re-launch in 2005. It then identifies a number of ways in which the reforms in question can be taken forward. These include:

— Improved coordination

The Commission suggests that the integrated guidelines are fulfilling their role, and do not require major revision, but says that the pace of implementation has been uneven, and that, as Member States’ economies have become highly interdependent, this factor cannot be ignored. It therefore says that it is essential to press on with reform, not least with the country-specific recommendations adopted this year, and that the common currency offers an extra dimension to coordination (adding that it

11 (27896) 13715/06: see HC 34–xlii (2005–06), chapter 13 (7 November 2006).

will present a comprehensive review of the functioning of EMU to mark its tenth anniversary).

— Policy orientations

The Commission says that the four priority areas agreed at the European Council in spring 2006 — R&D and innovation, the right business environment, investment in people, and energy and climate change — provide the right basis for the Strategy at both Community and national level. However, it points out that investment alone is no guarantee of improved R&D performance, and that the right conditions must be in place for *research and innovation* to flourish, with Member States pooling resources in strategic areas; that a more dynamic *business environment* can be brought about by unlocking the potential of small and medium-sized enterprises, and by the further adoption of a better regulation culture, by both the Community institutions and at national level; that *investment in people* calls for training to reduce the gap between the skilled and unskilled, by helping people to manage employment transitions (“flexicurity”), and by greater emphasis on active inclusion and equal opportunities; and that, in the case of *energy and climate change*, a combination of a sea change in the commitment to reform and its recent legislative package will help to achieve secure, sustainable and competitive energy.

5.6 The Commission concludes by saying that the spring 2008 European Council will provide the opportunity for the key annual stocktake of the progress of the Lisbon strategy, and will show how the Commission’s new policy agenda will make a Europe a “strong and confident” player in the age of globalisation.

The Government’s view

5.7 In his Explanatory Memorandum of 6 December 2007, the Parliamentary Under-Secretary of State for Trade and Consumer Affairs at the Department for Business, Enterprise & Regulatory Reform (Mr Gareth Thomas) says that the Government supports the general policy direction of the Communication, and especially improving internal regulation, innovation, job creation and growth. It also welcomes the increased emphasis on issues affecting small and medium-sized enterprises, and believes that the challenge of globalisation needs to be met through a renewed commitment to free trade and open markets; fairness, by ensuring that the resulting benefits are shared by all Europe’s citizens and beyond, and by rewarding effort, creativity and entrepreneurship; and by cooperation, recognising the vital role which the Community can play in developing effective international action.

5.8 The Minister also says that no specific action is envisaged, but he points out that the Commission presented its Competitiveness Report¹² to the Council on 22 November 2007.

12 (29079) 14794/07: see chapter 4 above.

Conclusion

5.9 Though this Communication tends, like so many similar documents produced by the Commission, to be over-ambitious in its claims and fairly general in the measures it advocates, its overall thrust appears to be unexceptionable, and we note that its broad direction is supported by the Government. Consequently, although we are drawing it to the attention of the House, we see no reason to withhold clearance.

6 Regulation of electronic communications

(29243)	Commission Recommendation on relevant product and service markets within the electronic communications sector susceptible to <i>ex ante</i> regulation
—	
—	Commission Staff Working Document accompanying the Commission Recommendation in accordance with Directive 2002/21/EC on a common regulatory framework for electronic communications networks and services

<i>Legal base</i>	—
<i>Department</i>	Business, Enterprise and Regulatory Reform
<i>Basis of consideration</i>	EM of 10 December 2007
<i>Previous Committee Report</i>	None; but see (27286) 6114/06: HC 34–xxi (2005–06), chapter 9 (8 March 2006)
<i>To be discussed in Council</i>	To be determined
<i>Committee’s assessment</i>	Politically important
<i>Committee’s decision</i>	Cleared; relevant to the European Standing Committee debate on the proposed changes to the electronic communications and network services regulatory regime

Background

6.1 Article 249 EC set out the means by which the Community may legislate: Regulations, Directives, Decisions, Opinions and Recommendations. While Regulations, Directives and Decisions are in various ways binding, Article 249 EC provides that “Recommendations shall have no binding force.”

6.2 The new legal framework regulating electronic communications services and networks that came into force in the European Union in July 2003 aimed to promote competition, to

reinforce the single market and to safeguard consumer interests in the electronic communications sector.¹³

6.3 The “Key Principles” of the new regulatory regime are:

- *Cutting red tape*: a general authorisation procedure for operators to enter new markets replaces individual licences;
- *Light Regulation*: the framework builds upon general concepts of competition law, as applied to normally functioning markets. Regulation is seen as essentially a temporary phenomenon, required to make the transition from the formerly monopolistic telecommunications industry to a fully functioning market system. To develop in the short term, new market entrants need regulatory support to gain access to the networks of incumbent operators and to provide the benefits to end users which the market would offer if it were effectively competitive. However, as the sector evolves, operators will increasingly build their own infrastructures and compete more effectively. As normal market conditions develop, regulation can be rolled back, and competition law, as applied to industry in general, will replace sector-specific intervention;
- *Technological neutrality*: The same principles apply regardless of which kind of existing or potentially new technology is involved, thus providing the necessary flexibility to deal with emerging technologies and their convergence in fields such as media, internet and mobile communications; and
- *Consistency across the European market*: operators are thus assured that their investments can be planned in a stable, consistent and predictable regulatory environment throughout the EU’s single market, which allows companies to operate on a scale which only a Europe-wide market can provide. The regulatory framework accordingly establishes new processes permitting collaboration among the National Regulatory Authorities (NRAs) of the Member States and between NRAs and the Commission. In key areas, each Member State submits its draft national measures to the Commission and to other national authorities for consideration, and discusses common approaches in the *European Regulators Group*, established by the Commission in 2002. Thus a consistent approach is developed throughout the single market while permitting maximum flexibility to deal with national markets and conditions.

6.4 As noted elsewhere in this Report,¹⁴ the EU regulatory framework introduced in 2003 included the:

- *Framework Directive* setting out the main principles, objectives and procedures for an EU regulatory policy regarding the provision of electronic communications services and networks;

¹³ http://europa.eu.int/information_society/doc/factsheets/013-regulatory_framework.pdf

¹⁴ See Chapter 1 of this Report.

- a Recommendation, whereby the Commission recommended that the NRAs (in the case of the UK, Ofcom) look at 18 telecoms markets in closer detail to decide whether or not to regulate and, if so, how. Beyond these markets, regulators may also intervene, but they need to make a strong case that there are serious obstacles to competition. Regulators have to notify the Commission of their findings. The Commission then agrees or disagrees, and can request further analysis or the removal of a proposed measure. When the regulatory measure works and creates sustainable competition, it can then be removed.¹⁵

The Commission Recommendation

6.5 In his 10 December 2007 Explanatory Memorandum, the Minister of State for Competitiveness at the Department for Business, Enterprise and Regulatory Reform (Stephen Timms) explains that publication of this Recommendation coincides with the publication of the Commission’s proposals to amend the current regulatory framework. He further explains that, although the Recommendation is not law in itself, the use of it is written into the binding EC Framework Directive and that “the Commission could infract a country for not doing at least one review of each market to determine whether it is competitive and, where not, to impose remedies to fix any dominance problems. Under the Framework Directive the Commission is required to regularly review the Recommendation.”

6.6 He notes that when the current telecoms rules were drawn up in 2003 the Commission recommended that the national regulators look at 18 relevant markets in closer detail to decide whether or not to regulate and, if so, how. Before they conduct a review beyond these markets, NRAs must explain to the Commission why they think their national market meets the “three cumulative criteria” test listed in Article 2 of this Recommendation — high barriers to market entry, a market structure that does not tend towards effective competition and the insufficiency of competition law to adequately address the market failure alone. Markets that meet this Article 2 test are those where there is a justified suspicion that they might not be competitive. The Commission Recommendation now reduces the number of markets to be regulated from 18 to 7 (he lists the 7 remaining markets and the removed markets in a table, which is at the Annex to this chapter of our report). It entered into effect immediately it was proposed, i.e., on 13 November 2007, and (unlike the remainder of the Commission proposals) does not require negotiation with the Council or the European Parliament.

6.7 The second document is an accompanying paper which sets out the background to the review and the revision of the Recommendation on relevant markets. It explains the methodology of why and how the existing Recommendation, which was adopted by the Commission in February 2003, is being revised to take account of market developments and experience of applying the regulatory framework since 2003.

¹⁵ For full details on the background and the Commission’s revised Recommendation, see http://ec.europa.eu/information_society/doc/factsheets/tr9-listofmarkets.pdf

The Government's view

6.8 The Minister says that the reduction from 18 to 7 in the number of markets regulators have to analyse is “good news, in better regulation terms, as it simplifies the regulatory environment and reduces the burden on regulators and industry”. The idea, he says, is that effective wholesale regulation will protect retail users, where normal competition law will then apply; the reduction in the number of markets needing to be analysed will, he says, allow regulators to focus more closely on markets where there are bottlenecks, or not yet effective competition, and which are crucial for competitiveness e.g. the broadband market.

6.9 The Minister then outlines some concerns about the extent of the reductions in the number of markets to be regulated, as follows:

“Before the Commission published its proposals on 13 November the UK tried to persuade the Commission not to delete three of these markets: these were Market 14 (Wholesale Trunk Segments of leased lines), Market 10 (Transit Markets) and Market 15 (Mobile Access). The Government wrote to the Commission during inter-service consultation on the proposals to set out its concerns (copy of letter at Annex C).¹⁶

“Our views expressed in the letter are consistent with the feedback we received (except for one mobile operator, who argued that market 15 — mobile access — was not needed as this market is competitive in the UK) and with the views of ECTA (EU competitors’ association), UKCTA (UK competitors’ association) and the European Regulators Group, where they have expressed an opinion on these three markets.

“We questioned the justification for removing so many markets in the absence of competition in some of the proposed deleted markets across the EU. We were of the view that the removal of these markets could harm competitors in domestic markets but it would also harm the competitiveness of cross-border operators, for whom wholesale access to individual circuits is essential if they are to be able to compete with incumbents on cross-border communications services. In addition, neither Market 14 nor Market 10 was identified as a candidate for deletion in the Commission’s original consultation, indeed, the Commission originally argued in favour of retaining these wholesale markets (it also argued that market 15 should be retained).

“We also asked that the Commission delayed the publication of the Recommendation to allow for more consultation while the rest of the package was negotiated in 2008. The Commission’s desire to de-regulate as many markets as possible, for better regulation purposes, meant that the Commission decided to go ahead with the deletions and they are now in force.”

Conclusion

6.10 **We clear the document, though not without sharing the Minister’s reservations.**

¹⁶ Reproduced at Annex 2 of this chapter of our report.

6.11 As the Minister indicates, the Commission’s approach does not bode well for the negotiating process that is about to begin, particularly with regard to the proposed European Electronic Communications Market Authority. We accordingly consider it relevant to the debate on the Commission Communication “Report on the outcome of the Review of the EU regulatory framework for electronic communications networks and service” in the European Standing Committee.¹⁷

Annex 1 — Summary of changes to the Recommendation

No.	Old Text	New No.	New Text
1.	Access to the public telephone network at a fixed location for residential customers. Note 1	1	Access to the public telephone networks at a fixed location for residential and non-residential customers.
2.	Access to the public telephone network at a fixed location for non-residential customers. Note 1	1	As above
3.	Publicly available local and/or national telephone services provided at a fixed location for residential customers. Note 1	-	Deleted
4.	Publicly available international telephone services provided at a fixed location for residential customers. Note 1	-	Deleted
5.	Publicly available local and/or national telephone services provided at a fixed location for non-residential customers. Note 1	-	Deleted
6.	Publicly available international telephone services provided at a fixed location for non-residential customers. Note 1	-	Deleted
7.	The minimum set of leased lines. Note 2	-	Deleted

¹⁷ See chapters 1 and 2 of this report.

No.	Old Text	New No.	New Text
8.	Call origination on the public telephone network provided at a fixed location. Note 3.	2.	Call origination on the public telephone network provided at a fixed location. Note 4.
9.	Call termination on individual public telephone networks provided at a fixed location. Note 5.	3.	Call termination on individual public telephone networks provided at a fixed location. Note 6.
10.	Transit services in the fixed public telephone network. Note 7.	-	Deleted.
11.	Wholesale unbundled access (including shared access) to metallic loops and sub-loops for the purpose of providing broadband and voice services. Note 8.	4.	Wholesale (physical) network infrastructure access (including shared or fully unbundled access, and access to ducts) for the purpose of providing broadband and/or voice services at a fixed location.
12.	Wholesale broadband access. Note 9.	5.	Wholesale broadband access, (including virtual network access or its equivalent), for the purpose of providing broadband services at a fixed location. Note 10.
13.	Wholesale terminating segments of leased lines.	6.	Wholesale terminating segments of leased lines, irrespective of the technology used to provide leased or dedicated capacity.
14.	Wholesale trunk segments of leased lines. Note 11.	-	Deleted.
15.	Access and call origination on public mobile telephone networks. Note 12.	-	Access and call origination on mobile public telephone networks. [latest news is that this market will be deleted]
Old No	Old Text	New No	New Text
16.	Voice call termination on individual mobile networks. Note 13.	7.	Voice call termination on individual mobile networks.
17.	The wholesale national market for international roaming on public mobile networks. Note 14.	Deleted	

18.	Broadcasting transmission services, to deliver broadcast content to end users. Note 15.	Deleted	
------------	-----------------------------------------------------------------------------------------	---------	--

Notes

1	These six markets are identified for the purpose of analysis in respect of Article 17 of the Universal Service Directive. Together, markets 1 through 6 correspond to ‘the provision of connection to and use of the public telephone network at fixed locations’, referred to in Annex I(1) of the Framework Directive. This combined market is also referred to in Article 19 of the Universal Service Directive (for possible imposition of carrier call-by-call selection or carrier selection).
2	(which comprises the specified types of leased lines up to and including 2Mb/sec as referenced in Article 18 and Annex VII of the Universal Service Directive). This market is referred to in Annex I(1) of the Framework Directive in respect of Article 16 of the Universal Service Directive (the provision of leased lines to end users). A market analysis must be undertaken for the purposes of Article 18 of the Universal Service Directive which covers regulatory controls on the provision of the minimum set of leased lines.
3	For the purposes of this Recommendation, call origination is taken to include local call conveyance and delineated in such a way as to be consistent with the delineated boundaries for the markets for call transit and for call termination on the public telephone network provided at a fixed location. This market corresponds to that referred to in Annex I(2) of the Framework Directive in respect of Directive 97/33/EC (call origination in the fixed public telephone network).
4	For the purposes of this Recommendation, call origination is taken to include local call conveyance, delineated in such a way as to be consistent, in a national context, with the delineated boundaries for the market for call transit and for call termination on the public telephone network provided at a fixed location.
5	For the purposes of this Recommendation, call termination is taken to include local call conveyance and delineated in such a way as to be consistent with the delineated boundaries for the markets for call origination and for call transit on the public telephone network provided at a fixed location. This market corresponds to the one referred to in Annex I(2) of the Framework Directive in respect of Directive 97/33/EC (call termination in the fixed public telephone network).
6	For the purposes of this Recommendation, call termination is taken to include local call conveyance, delineated in such a way as to be consistent, in a national context, with the delineated boundaries for the market for call origination and the market for call transit on the public telephone network provided at a fixed location.
7	For the purposes of this Recommendation, transit services are taken as being delineated in such a way as to be consistent with the delineated boundaries for the markets for call origination and for call termination on the public telephone network provided at a fixed location. This market corresponds to the one referred to in Annex I(2) of the Framework Directive in respect of Directive 97/33/EC (transit services in the fixed public telephone network).
8	This market corresponds to that referred to in Annex I(2) of the Framework Directive in respect of Directive 97/33/EC and Directive 98/10/EC (access to the fixed public telephone network, including unbundled access to the local loop) and to that referred to in Annex I (3) of the Framework Directive in respect of Regulation No 2887/2000.
9	This market covers ‘bit-stream’ access that permit the transmission of broadband data in both directions and other wholesale access provided over other infrastructures, if and when they offer facilities equivalent to bit-stream access. It includes ‘Network access and special network access’ referred to in Annex I(2) of the Framework Directive, but does not cover the market in point 11 above, nor the market in point 18.
10	This market covers ‘bit-stream’ access that permits the transmission of broadband data in both directions and other equivalent forms of wholesale access provided over other infrastructures when they offer facilities equivalent to bit-stream access.
11	Together, the wholesale markets 13 and 14 correspond to those referred to in Annex I(2) of the Framework Directive in respect of Directive 97/33/EC and Directive 98/10/EC (leased line interconnection) and to those referred to in Annex I(2) of the Framework Directive in respect of Directive 92/44/EEC (wholesale provision of leased line capacity to other suppliers of electronic communications networks or services).
12	Referred to (separately) in Annex I(2) of the Framework Directive in respect of Directives

	97/33/EC and 98/10/EC.
13	This market corresponds to the one referred to in Annex I(2) of the Framework Directive in respect of Directive 97/33/EC (call termination on public mobile telephone networks).
14	This market corresponds to the one referred to in Annex I(4) of the Framework Directive.
15	National regulatory authorities have discretion with respect to the analysis of the market for 'Conditional access systems to digital television and radio services broadcast' in accordance with Article 6(3) of the Access Directive. Article 6(3) of the Access Directive provides that Member States may permit their NRAs to review the market for conditional access system to digital television and radio services broadcast, irrespective of the means of transmission.

Annex 2 —Text of the letter sent to the Commission during inter-service consultation prior to publication on 13 November

UK CONCERNS ABOUT THE POTENTIAL DELETION OF MARKETS 14, 10 and 15 FROM THE RECOMMENDATION ON RELEVANT MARKETS (INFSO ecomms framework inter-service consultation)

Objectives of the ecomms review

The UK wholeheartedly supports the aims of the Commission to ensure that the regulatory framework for electronic communications continues to deliver internal market benefits over the next five to ten years. We also support the Commission's drive for better regulation and the need to reduce regulation. We support, therefore, the proposed deletion of the majority of retail markets. However, we have some serious concerns about the extent of the cuts that may be proposed to the list of wholesale markets in the Recommendation on Relevant Markets.

We have specific concerns, in descending order of priority, about the removal of markets 14 (wholesale trunk segments of leased lines), 10 (transit services in the fixed network) and 15 (mobile access and origination).

My views expressed here are without prejudice to our position on the other important aspects of the Framework proposals; I am writing to you now as a matter of urgency because once the Recommendation is adopted on 13 November it will come into force immediately, 18 months before the rest of the package is agreed.

Negative impact on competition

Market 14, and to a lesser extent market 10 and market 15, will continue to be essential over the next five years or so to ensure that competition across the EU continues to grow, and that new entrants continue to be able to compete effectively with national incumbent operators. The removal of these markets could harm competitors in domestic markets, for whom wholesale access to individual circuits is essential if they are to be able to compete with incumbents.

The Commission should support the ability of all operators to compete in the provision of communications services to all citizens, a central objective of Commissioner Reding's proposals.

Impact on European Consumers and Citizens

We are not interested in wholesale regulation for its own sake but only because of the vital role it can play in stimulating effective retail competition. In a well regulated market, consumers receive benefit from lower prices, greater choice of service providers and innovative services. We are concerned that the inability of regulators to regulate effectively in key wholesale markets will have a significant adverse effect on consumers. We consider it is too soon to remove these markets and fear that if they are prematurely deleted, consumers in some markets will have to wait much longer to feel any benefit from competition.

Does this proposed “reduction” of regulation really prevent National Regulators’ ability to review these markets?

National regulators can still review markets not on the list but they must first prove to the Commission that the markets meet the “three-criteria” test set by DG COMP. If, as we believe, there will be an ongoing need to regulate markets 14 and 10 in many Member States, the regulatory burden on regulators to prove the “three-criteria” are met will increase from the situation today. We also have some concerns that weaker NRAs might choose not to review some markets if they are not on the list, even where these markets would meet the “three-criteria” test.

Detail

Market 14 (Wholesale Trunk Segments of leased lines)

- This is a critical market for the success of competition in the broadband market; without leased line access the success of LLU could be critically undermined.
- This is a market where there is significant competition on some routes (typically between major conurbations) and none in many less populated areas. The use of the incumbent network is, therefore, the only way that competitors may be able to provide services in rural areas.
- In the absence of regulation incumbents could make it impossible for competitors to economically reach their customers.
- Such a scenario could also affect mobile operators who require backhaul services using leased lines.
- It is likely that this market, at least in many undeveloped/rural areas, will not tend towards competition at all.

We would expect similar concerns to apply to all Member States, especially where it is very unlikely that there will be competing infrastructure in rural areas for the foreseeable future.

Market 10 (Transit Markets)

Our views on the negative impact of the removal of market 10 are similar to those of the ERG and ECTA.

- This market is competitive in only a small number of Member States.

- Its deletion could adversely affect the smallest of operators who have — for legitimate economic reasons — to rely on the incumbent for end-to-end interconnectivity.
- Transit services are essential for smaller operators to reach low traffic-volume areas. Removal of the requirement to assess this market for SMP could cause economic distortions between the incumbent and its competitors that would deepen the digital divide between urban and rural areas.

Market 15 (Mobile Access)

Our views on the negative impact of the removal of market 15 are similar to those of ECTA. We believe that the ongoing assessment of this market, although competitive in many Member States, is critical to the future wireless competition landscape (for both voice and data) in the medium term. Premature removal would severely undermine the efforts the Commission and Member States have made to ensure MVNO (mobile virtual network operator) access.

- The Roaming debate clearly identified that parts of “the bundle” of services offered at retail level are not competitive;
- There is still a lack of MVNO access in many markets, thus forestalling competition and innovation;
- Removing the market would give the wrong signals to operators and would undermine the ability of regulators to analyse their national markets (where they have been found competitive); and
- Despite the absence of regulation of this market in many Member States, many NRAs do not believe this market is effectively competitive, and the lack of regulation stems from the well-known legal difficulty of proving a dominant position in oligopolistic markets. Having to pass the “three-criteria” test would make NRAs’ task even harder.

Conclusion

I urge the Commission to re-think the deletion of markets 14, 10 and 15 and to consider a second round of consultation to gather views on these markets, which could have a huge impact on the competitiveness of EU electronic communications providers and the European citizens and enterprises which rely upon these services.

Yours

STEPHEN TIMMS

Minister of State for Competitiveness

Department for Business, Enterprise and Regulatory Reform

7 Minimum criteria for environmental inspections

(29157) 15225/07 + ADD1 COM(07) 707	Commission Communication on the review of Recommendation 2001/331/EC providing for minimum criteria for environmental inspections in the Member States
----------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------

<i>Legal base</i>	—
<i>Document originated</i>	14 November 2007
<i>Deposited in Parliament</i>	21 November 2007
<i>Department</i>	Environment, Food and Rural Affairs
<i>Basis of consideration</i>	EM of 4 December 2007
<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

7.1 Recommendation 2001/331/EC¹⁸ sets out minimum criteria for environmental inspections on controlled industrial installations whose activities in relation to air emissions, water discharges, waste disposal and recovery activities are authorised by permits or licences, the aim being to ensure that legislation to protect the environment is applied evenly across the Community. The Recommendation is not legally binding, but sets out good management practice, and its requirements include the need for regulators to draw up an inspection plan covering all controlled sites, to keep records of their inspection findings and any follow-up action taken, to present a copy of their report to the relevant company personnel, and to make such reports available to the public within two months of an inspection. In addition, regulators are required to carry out investigations of serious accidents, incidents, and occurrences of non-compliance.

7.2 The Recommendation also requires Member States to report to the Commission on its operation, so as to enable it to make further proposals, if appropriate. The Commission has accordingly summarised in this Communication the information contained in the reports provided by the Member States in 2001 and 2003, and has set out for discussion a number of options for improving the Recommendation in advance of making formal proposals.

The current document

7.3 As regards the implementation to date of the Recommendation, the Commission says that, because the information provided was often incomplete, or related to inspections at regional level, it has been impossible to draw conclusions at national level. However, it notes that, although almost all Member States have partially implemented the

18 OJ No L 118, 27.4.01, p.41.

Recommendation, only few have achieved this fully, and that there are large disparities in the way in which inspections are carried out, due in part to differing interpretations of the definitions and criteria laid down, as well as to such factors as the political priority given to this activity.

7.4 The Commission has accordingly suggested a number of areas in which the Recommendation could be improved:

Scope of the Recommendation

The Commission points out that, although the measure applies to all industrial installations giving rise to emissions etc, some Member States apply it only to those falling under the Integrated Pollution, Prevention and Control Directive (96/61/EC): also, the current scope focuses mainly on industrial and waste treatment, and does not, for example, extend to waste shipments (where it says recent studies have suggested around 50% of shipments were illegal), or to Community legislation on nature protection, both of which it says are of high importance.

Clarification of definitions

The Commission observes that Member States have put different interpretations on a number of terms in the Recommendation, notably “inspection, audit and control”, “inspection authority” “inspection plan and inspection programme”, “cross-border mechanism”, and “routine and non-routine inspections”.

Criteria for carrying out and following up inspections

The Commission says that, in many Member States, inspection plans do not contain any strategic elements, and that a more risk-based approach would be desirable: it would also like to see a more comprehensive evaluation of the success of these plans.

Reporting

Although the first phase of the reporting exercise produced a large amount of information, the Commission says that this is not always comparable, and does not allow clear conclusions to be drawn on the efficiency of the inspection systems in place. It therefore suggests that a simpler reporting system, more targeted to measuring the success of inspection systems, should be developed.

Access to information

Although the Recommendation requires inspection plans and reports to be made available to the public, the Commission says that this is not always done, for example because of difficulties in separating confidential and non-confidential information.

7.5 In the light of these observations, the Commission has suggested the way forward. It first considers whether the incomplete implementation of the Recommendation means that the inspection requirements should be legally binding, but concludes that this would not be appropriate because of the very general nature of the criteria laid down. Instead, it

says that the Recommendation should be amended to broaden the scope so as to cover as far as possible all environmentally significant activities; that certain definitions should be clarified; and that a simpler reporting system should be established, enabling comparable information to be provided more readily.

7.6 However, the Commission says that specific legally binding requirements for the inspection of certain installations or activities should be included in sectoral legislation (such as the Seveso II Directive on the control of major accident hazards), thereby enabling the requirements to be adapted to the specific risks involved. Other environmental legislation under review where the inclusion of inspection requirements will be considered includes measures relating to the use of hazardous substances in electrical and electronic equipment, and the disposal of such equipment as waste; the greenhouse gas emission trading scheme; the depletion of the ozone layer; water quality; and the protection of wild flora and fauna. Such steps would be complemented by the development of guidance and cooperation between Member States.

The Government's view

7.7 In his Explanatory Memorandum of 4 December 2007, the Minister for Marine, Landscape and Rural Affairs at the Department for Environment, Food and Rural Affairs (Mr Jonathan Shaw) says that the Government welcomes the suggestion that some of the definitions used in the existing Recommendation should be clarified in order to enable the inspection criteria to be applied more uniformly in all Member States, and that it also supports the Commission's initial view that this should be kept as a non-binding Recommendation. He adds that the Government would like to see more evidence to justify applying minimum inspection criteria to other sectors; that it is important that Community inspection requirements are not made overly bureaucratic (for example, by laying down the frequency of inspections, the degree of thoroughness, and the precise checks to be made); and that any further development of the minimum criteria does not run counter to the UK's risk-based approach.

7.8 Finally, the Minister suggests that there is a potential subsidiarity issue over whether the Commission or Member States should determine detailed enforcement rules on how to carry out inspection, and that this will need to be explored further if the Commission puts forward a legislative proposal at a later stage. He also says that the Government would seek to ensure that any such proposal is supported by a Community impact assessment.

Conclusion

7.9 We note that the Government generally supports the conclusions in this Communication, including the view that the measures in question should continue to be contained in a non-binding Recommendation. Moreover, to the extent that the Communication could give rise to issues of subsidiarity, it makes sense to consider these if and when the Commission puts forward proposals to introduce minimum inspection criteria into existing environment legislation. Consequently, whilst we think it right to draw this document to the attention of the House, we see no reason to withhold clearance.

8 Cotonou Agreement: the 10th European Development Fund

(28807) 11918/07 COM(07) 410	Draft Council Regulation on the Financial Regulation applicable to the 10th European Development Fund
------------------------------------	-------------------------------------------------------------------------------------------------------

<i>Legal base</i>	Article 62 of the Cotonou Agreement; QMV
<i>Department</i>	International Development
<i>Basis of consideration</i>	Minister's letter of 30 November 2007
<i>Previous Committee Report</i>	HC 41–xxxiv (2006–07), chapter 4 (2 October 2007)
<i>To be discussed in Council</i>	Before 31 December 2007
<i>Committee's assessment</i>	Politically important
<i>Committee's decision</i>	Cleared

Background

8.1 The 2003 Cotonou Agreement (successor to the Lomé Agreement) is the latest development assistance agreement between the EC and the ACP (African, Caribbean and Pacific) countries. It seeks to create a more favourable context for sustainable development and poverty reduction, and to reverse the processes of social, economic and technological marginalisation in the ACP States. Political dialogue between the Community and each of the partner States (or regions) plays a key role in determining the nature and objectives of the assistance provided, and is based on respect for human rights, democratic principles and the rule of law, and on good governance. There are special consultation procedures and appropriate sanctions for dealing with human rights violations and serious corruption. It seeks to encourage greater participation by civil society, the private sector and trade unions, with a view to advancing democratic processes and transparency and ensuring that cooperation projects prove more effective than in the past. Revisions to strengthen the political dimension were agreed in 2005, which fell into three categories:

- *New political and security concerns*: new Articles concerning the fight against terrorism, combating the proliferation of weapons of mass destruction and co-operation with the International Criminal Court;
- *Co-operation strategies*: making the UN Millennium Development Goals¹⁹ the focus of ACP-EU cooperation and new provisions regarding support for ACP States facing post-conflict and post-natural disaster situations; and

¹⁹ The eight UN Millennium Development Goals (MDGs) that, in 2000, the UN set itself to achieve, most by 2015: eradicate extreme poverty and hunger; achieve universal primary education; promote gender equality; reduce child mortality; improve maternal health; combat HIV/AIDS, malaria and other diseases; ensure environmental sustainability; develop a partnership for development — each with associated targets and benchmarks to measure progress.

- *Implementation procedures*: in particular, clarifying the respective roles and responsibilities of ACP States and EC Delegations.

8.2 The European Development Fund (EDF) is the main channel for EC aid to the ACP countries and the Overseas Colonies and Territories (OCT). It is separate from the main EC budget. Member States provide money using a different contribution key to the main budget and the Commission manages and disburses the money on their behalf.

8.3 On 19 April and 25 October 2006, we considered the Council Decision that gave effect to the December 2005 European Council's agreement on an EDF10 of €22,682 (£15,795) million. The main elements are: €18,940 (£13,189.4) million (83.5% of the total envelope) to finance national and regional indicative programmes; €2,242 (£1,561.2) million (9.9%) for intra-ACP and inter-regional programmes; and €1,500 (£1,044.6) million (6.6%) to finance the Cotonou Investment Facility which is managed by the European Investment Bank. Germany (20.5%), France (19.55%) and UK (14.82%) are the largest contributors. The UK share is €3,361.5 (£2,340 million: rising from £318 (€456.6) million in 2008 to £426 (€611.7) million in 2013). In clearing the Council Decision, we endorsed the Minister's determination, in the face of the continuing endeavour of the Commission (abetted by some Member States) to "budgetise" the EDF (i.e., incorporate it into the overall EU budget) by keeping this option open in the amended agreement, to re-affirm long-held UK opposition to such budgetisation.²⁰

8.4 Later, on 22 November 2006, we cleared an Implementing Regulation which stemmed from the Internal Agreement that, as well as establishing the EDF10, further defined the various financial envelopes and the contribution key for the Member States, set up the EDF Committee (representatives of the Member States and the Commission, with a similar Committee at the EIB for the management of the Investment Facility) and provided for the adoption by the Council, acting unanimously, of the implementing regulation and the adoption, by qualified majority, of a financial regulation.²¹

The draft Financial Regulation

8.5 In a helpful Explanatory Memorandum of 25 July 2007, the Parliamentary Under-Secretary of State at the Department for International Development (Mr Gareth Thomas) explained that, the other relevant documents having been agreed and having received the necessary scrutiny clearance, the Financial Regulation now needed to be agreed by Council before EDF10 can come into force on 1 January 2008.

8.6 The legal basis for this proposal is Article 10(2) of the Internal Agreement of 17th July 2006 between the Member States on the financing of Community Aid for the period 2008–2013 in accordance with the Cotonou Agreement, which provides for a Financial Regulation to be adopted by the Council before the ACP-EC Agreement enters into force. The procedure for adoption is the Council acting by the qualified majority laid down in

20 (27384) 7625/06: see HC 34–xxxix (2005–06), chapter 8 (25 October 2006) for our full consideration of the Council Decision.

21 (27979) 14661/06: see HC 41–i (2006–07), chapter 12 (22 November 2006) for our full consideration of the Implementing Regulation.

Article 8 of the Internal Agreement, after an opinion from the European Investment Bank and the Court of Auditors.

8.7 He explained that, for EDF10, the Commission decided to simplify the regulatory coverage by separating what was covered by the former EDF9 Financial Regulation into two areas: the EDF10 Implementation Regulation (agreed by the Council in May 2007) covers programming and decision making and the EDF10 Financial Regulation is now restricted to financial matters, providing the detailed rules for the financial management of EDF10 and elaborating roles and procedures outlined in other relevant documents, such as the ACP-EC Agreement and Implementation Regulation. He said that the main elements of the Regulation were detailed rules governing:

- payment of Member States' contributions to the fund;
- the transfer of balances from previous EDFs;
- roles and responsibilities of National and Community authorising and accounting officers;
- internal and external auditing and the annual discharge (approval) of accounts by the European Parliament;
- procurement procedures; and
- procedures concerning EDF resources managed by the European Investment Bank.

8.8 As well as replacing the Financial Regulation that governed the previous EDF (EDF9, which ends on 31 December 2007), the Minister said that the new draft Regulation included a number of modifications to bring it further into line with the Financial Regulation that applies to the general budget of the European Community (as revised on 13 December 2006) and also reflected “the specificity of the EDF, the financing of which remains outside the EU budget”.

8.9 The Minister noted the importance of the General Budget Regulation (as amended on 13 December 2006) as the basis of the Commission's efforts to reform its internal financial management, and the need for and benefits of harmonising the EDF Financial Regulation with it as far as possible, and welcomed Commission efforts to simplify the Regulation. He explained that discussions had recently begun in the ACP Working Group, with a view to the Presidency securing agreement on the Regulation before the end of the year. During this process, he said that he would be seeking the following clarifications:

- “The implications of the proposed changes to the call for contributions for Member States. The current arrangement allows for three payments per year, allowing Member States to review the Commission's needs and rate of disbursement throughout the year. The proposed change is for 12 monthly payments, based on one agreement with Member States at the end of the previous year. We will seek a detailed explanation for this change, and an analysis of the implications for the Commission (in particular in relation to the rate of disbursement) and Member State budgeting and administrative burdens (Article 58). We would like to see a system that allows for greater efficiency for the

Commission’s budgeting and spending, whilst minimising the opportunities for excess payment to the Commission in advance of need, and minimising administrative burdens on all actors.

- “Reassurance that, in order to more closely align with the provisions of the general budget financial regulation, removal in the new regulation of several references to the European Anti-Fraud Office (OLAF), does not alter that body’s role with regard to the EDF.
- “That the new regulation will provide the same opportunities for Member States and others to co-finance programmes with the Commission, as is possible in the EDF9 regulation.”

8.10 Though technical, we agreed with the Minister that the points upon which he proposed to seek reassurance were important, relating as they did to the balance between the Commission and Member States in what remains highly politically, highly visible “non-budgetised” activity, and a lack of clarity about the continuation of the present role of OLAF. We accordingly asked if he would let us know when he was satisfied that they had been adequately addressed, retained the Regulation under scrutiny, and reported this to the House in view of the widespread interest in EC development assistance.²²

The Minister’s letter

8.11 In his 30 November 2007 letter, the Minister says that there has subsequently been substantive debate on the proposal, the most controversial element of which has been the proposal to change the system of Member State contributions to the EDF. On this issue, the Minister recalls that the Commission originally proposed a change to the current system — from three payments per year (based on four Council Decisions) to twelve payments per year based on one (possibly two) Council Decisions — arguing that this would improve their budgeting and forecasting process and reduce their administrative burden by reducing the number of Council Decisions and therefore internal procedures. The Minister continues as follows:

“Several Member States stated that this would have a negative impact on their administrative burden and did not see an advantage in the new system for the effectiveness of the EDF. The European Investment Bank indicated its preference to retain the current system, arguing that it would also see an increase in its administrative burden and have no positive impact on their forecasting and spending.

“The UK’s view was that the change in the number of payments would have little administrative impact. However, along with other Member States, including Germany and the Netherlands, the UK wanted to ensure that Member State oversight of EDF finances (spending rates and forecasting) was not diluted and that opportunities would remain to adjust contribution levels throughout the year depending on the state of EDF resources.

22 See headnote.

“After substantial discussion on this issue, the number of contributions and degree of oversight has been resolved. We expect the final proposal on Member State contributions to broadly remain as it is currently, with Member States making three payments a year. However, we expect the total number of decisions will reduce from four to three. Each of the three payments will have its own Council Decision. In addition, the Decision on the first payment will also include agreement on the annual total.”

8.12 Secondly, regarding the role of the European anti-fraud office (OLAF), the Minister says that, in discussions in the working group, the Commission indicated that references to OLAF had been removed to harmonise the text with the corresponding passages of the financial regulation of the Community’s general budget:

“The UK and other Member States referred to the specific nature of the EDF and the need to ensure that OLAF’s role was clearly reflected in the regulation. The EC has since agreed to reinsert references to OLAF and we expect to see these in the final proposal. The alignment between the EDF Financial Regulation and that for the general budget, has also led to the insertion of a number of articles specifically relating to fraud and financial management. These include articles 6 and 13. We welcome this.”

8.13 Finally, he says that several Member States, including the UK, asked the Commission to clarify the situation regarding co-financing:

“The EC circulated a note summarising the opportunities for co-financing and outlining the relevant articles in the Financial Regulation, as well as the Implementation Regulation. Opportunities for co-financing remain the same as under the 9th EDF, i.e. the Commission can engage in co-financing with a range of partners including with Member States, development agencies and institutions, and international or private financial institutions. Additional clauses have been added to reflect the option for Member States to make additional, voluntary contributions to the EDF.”

8.14 The Minister concludes with the hope that this Regulation can now be adopted by the Council by the end of the year in time to allow EDF10 to come into force as soon as ratification is complete.

Conclusion

8.15 The Minister’s and our shared concerns having now been satisfactorily addressed, we clear the document.

9 Road safety

(27904) Draft Directive on road infrastructure safety management
 13874/06
 + ADDs 1–2
 COM(06) 569

<i>Legal base</i>	Article 71 EC; co-decision; QMV
<i>Department</i>	Transport
<i>Basis of consideration</i>	SEM of 8 November 2007 and Minister's letter of 4 December 2007
<i>Previous Committee Report</i>	HC 34–xlii (2005–06), chapter 7 (7 November 2006)
<i>Discussed in Council</i>	2 October 2007
<i>Committee's assessment</i>	Politically important
<i>Committee's decision</i>	Cleared

Background

9.1 In the 2001 White Paper on Transport Policy and its 2003 Communication on a road safety action programme²³ the Commission foreshadowed an initiative on road infrastructure safety.

9.2 In October 2006 the Commission proposed this draft Directive to complement legislation on driver and vehicle safety, by introducing a comprehensive system of road infrastructure safety management. It asserted that lives could be saved and accidents avoided if road infrastructure and design was managed according to the latest best practice of safety engineering. To achieve this the proposed Directive would introduce procedures for road safety impact assessments, road safety audits, management of high-risk road sections and network safety management and safety inspections. These would apply to roads in the trans-European road network (TERN), itself part of the Trans-European Transport Network, but not to tunnels, which are already covered by an earlier Directive, 2004/54/EC.

9.3 The draft Directive would provide for:

- procedures for assessing the likely safety effects of a road project, and alternative designs, before a decision is taken to construct it;
- procedures to be implemented to expose individual safety problems that have not been foreseen by road designers to ensure that problems are rectified;

²³ (22660) 11932/01 (22776) 12597/01: see HC 152–xv (2001–02), chapter 2 (30 January 2002) and *Stg Co Deb*, European Standing Committee A, 13 March 2002, cols. 3–28 and (24592) 9713/03: see HC 63–xxviii (2002–03), chapter 11 (2 July 2003).

- require road authorities to identify and manage both high risk road sections and sections with the greatest accident cost-reduction potential and to warn motorists of high risk sections;
- procedures for recurrent, routine road inspections and inspection of roadworks;
- requirements for data collection for individual accidents; and
- implementation, including a requirement for Member States to report their implementation plans, a duty on road authorities to adopt training curricula for road safety auditors and safety inspectors and procedures for reporting on the measures five years after implementation and every four years thereafter.

9.4 When we considered this proposal in November 2006 we said this draft Directive clearly might have some utility. However, there were, as the Government had highlighted, some concerns. But we were unable to say at that stage whether there were issues which we would particularly wish to draw to the attention of the House. Before considering the matter further we wished to hear in due course as to what extent negotiations had:

- moved the proposal towards a Directive based on strategic objectives and accompanying guidance notes;
- clarified whether, if there had not been much such movement, the Commission was planning a highly prescriptive approach; and
- clarified the subsidiarity issue.

We noted that the Government had not yet conducted consultations on this proposal. But we wanted also to hear about any views expressed by UK interested parties and to see in due course a Regulatory Impact Assessment. Meanwhile we did not clear the document.²⁴

The Supplementary Explanatory Memorandum and the Minister's letter

9.5 The Parliamentary Under-Secretary of State, Department for Transport (Jim Fitzpatrick) reports that progress in negotiations was initially slow, as Member States had a number of concerns that required detailed discussion and as Council Working Group discussions were halted for a while when it appeared that the European Parliament might reject the proposal. Although resumed, the European Parliament's first reading process is therefore not yet complete and is not expected to be finished before the spring of 2008.

9.6 The Minister says that, as a result of discussion in the Council Working Group and successful negotiation in concert with like-minded Member States:

- the proposed Directive is now much less prescriptive on the details of the systems to be adopted — it sets only strategic objectives, with non-binding guidance on more detailed concepts included in annexes;

²⁴ See headnote.

- this will allow national interpretation and implementation, whilst ensuring the Commission has sufficient powers to intervene more strongly in those Member States where road safety management is less mature — as UK practice is already in line with the proposed guidance it should not pose any compliance difficulties;
- originally there were to be procedures for assessing the likely safety effects of a road project, requiring significant changes to the well-developed procedures currently followed in the UK — the current draft instead sets out broad criteria for conducting road safety impact assessments and requires Member States only to endeavour to adhere to them; and
- originally there was to be provision for road safety audit procedures to expose individual safety problems that had not been foreseen by road designers. These would have been unnecessary in the UK as road safety audit procedures are already well-established. The current draft instead sets out broad criteria for conducting road safety audits and requires Member States only to endeavour to adhere to them.

9.7 The Minister comments further that the draft Directive would:

- require road safety auditors to hold certification. Although this is not a current UK requirement the Government is aware that the Institution of Highways and Transportation (IHT) has plans to introduce a certification process, working in partnership with the Highways Agency. The costs of introducing certification are low and the likelihood is that the industry will promote certification with or without the new legislation; and
- still require Member States to warn road users about high-risk sites or routes by appropriate measures — which could include, but does not require, signposting. The Government would propose to meet these requirements by using prescribed signs already in use and understood by UK road users. This stance will not lead to a proliferation of road signs.

9.8 On the question of subsidiarity the Minister says that, as the current draft addresses issues of principle at a high level and more detailed guidelines on implementation are included in non-binding annexes, practices and procedures that are already working well in the UK would not be undermined by Community legislation.

9.9 The Minister tells us that the Government has not formally consulted with interested parties. But it continues discussions with the devolved administrations, which have very similar infrastructure management policies and are content with the negotiated changes, and with the IHT. Kent County Council, which is responsible for a small part of the TERN network, is also involved. As for an impact assessment he says:

- the Government has not produced its own Regulatory Impact Assessment because the proposal has no effect on business;
- earlier it was not possible to estimate the full cost implications for Government as aspects of the proposal required clarification. In the course of negotiation it became clear that the potential for financial impact in the UK was likely to be negligible;

- the one area that is not part of current UK practice is the certification of road safety auditors. This may involve about 1000 people and certification may cost them or their employers around £100–200 each to become formally qualified. The IHT and the Highways Agency is spending in the order of £50,000 to set up the certification scheme. However, this scheme is very likely to be introduced whether or not this draft Directive is adopted, so these costs would be incurred in any case; and
- the Commission originally estimated that if the Directive was applied on motorways and main roads the reduction of fatalities across the Community would be around 1,300 every year, corresponding to an equivalent economic value of more than €5 billion per year. However, as the UK already meets the standards to be set by the Directive, these casualty savings would be almost entirely in other Member States.

9.10 The Minister says that, as a result of the changes in the text, the Government feels that this proposed Directive will positively support action to improve road safety across the Community. At the Transport Council of October 2007 the Government acquiesced in a general approach in favour of the revised text. The Minister apologises that we were not informed that this might happen. He explains that:

- it became apparent, in July 2007, that the European Parliament would not after all reject the proposal, so allowing resumption of Council Working Group negotiations;
- those negotiations made such progress in July and September 2007 that the Portuguese Presidency felt it would be possible to secure a general approach at the October 2007 Council; and
- unfortunately, absence of a Department for Transport staff member on sick leave meant that the scrutiny implications of the change to the agenda were overlooked.

The Minister expresses regret that the Department fell short of its objective to keep us “fully informed, ahead of Council Meetings, of developments on any proposal on which a general approach or political agreement might be reached”.

Conclusion

9.11 **The revision of the draft Directive the Minister reports clearly allays, in our view justifiably, the concerns the Government had earlier expressed. As we have no further questions we clear the document.**

9.12 **As we have made plain we regard agreement to a general approach whilst draft legislation is still under scrutiny as a breach of the spirit, at least, of the Resolution of the House on the Scrutiny of European Business.²⁵ However we accept the Minister’s explanation of what happened in this case and note his continuing commitment to keeping us fully informed of possible general approaches.**

²⁵ (27840) 13080/06: see HC 41–xix (2006–07), 25 April 2007.

10 Labour and social legislation: seafarers

(29005) 14000/07 COM(07) 591	Commission Communication: <i>Reassessing the regulatory social framework for more and better seafaring jobs in the EU</i> (first phase consultation of the social partners at Community level provided for in Article 138(2) of the Treaty)
------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

<i>Legal base</i>	Article 138 (2) EC; —; —
<i>Document originated</i>	10 October 2007
<i>Deposited in Parliament</i>	19 October 2007
<i>Department</i>	Transport
<i>Basis of consideration</i>	EM of 12 November 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

10.1 There is a range of generally applicable Community labour and social legislation. However maritime occupations, including sea fishing, are excluded from some of this legislation.

10.2 Recently there have been attempts at the international level to rectify a perceived erosion of living and working conditions on ships and a disparity across the world in the way standards are enforced. Member States and the Commission have strongly supported this, notably through the new consolidated conventions agreed in the International Labour Organisation (ILO), namely the Maritime Labour Convention, 2006 (MLC) and the Work in Fishing Convention, 2007 (WIF).

10.3 Under the social provisions chapter of the EC Treaty the Commission is required to promote consultation of management and labour, the social partners, at Community level. Article 138(2) EC reads: “To this end, before submitting proposals in the social policy field, the Commission shall consult management and labour on the possible direction of Community action.”

The document

10.4 The Commission presents this Communication as the first step in an Article 138(2) EC consultation. In the document the Commission discusses the implementation of various existing Community instruments under three broad headings:

- living and working conditions, information and consultation;
- health and safety; and
- the free movement of workers and the coordination of social security systems.

10.5 In relation to the first heading the Commission notes four different scenarios by which Community legislation covers the living and working conditions of seafarers, fishermen or both and information for and consultation of workers in those sectors. These are:

- non-exclusion, whereby seafarers are covered by the same provisions as other workers;
- specific provisions, whereby seafarers are subject to specific provisions in a more general instrument;
- option for Member States to exclude, whereby Member States may choose to exclude provisions for seafarers when transposing Directives into national legislation; and
- exclusion, whereby seafarers are excluded from the scope of an instrument.

10.6 The Commission expands on the latter two scenarios, discussing the implementation of six Directives. The first three Directives allow Member States the option of excluding seafarers when implementing them. These are:

- Directive 2002/74/EC on protection of employees in the event of insolvency of their employer — the UK makes use of this option to exclude;
- Directive 94/45/EC on European works councils — the UK makes partial use of the option — that is merchant seamen are excluded from acting as representatives or as special negotiating body members (permissible at employer discretion), but does not exclude them from a right to be informed and consulted; and
- Directive 2002/14/EC on information and consultation — the UK makes partial use of the option — that is merchant seamen are excluded from acting as representatives (permissible at employer discretion), but does not exclude them from a right to be informed and consulted.

In the case of the other three Directives, seafarers are explicitly excluded from the provisions. These are:

- Directive 98/59/EC on collective redundancies — the UK makes use of the exclusions;
- Directive 2001/23/EC on transfers of undertakings — the UK does not make use of the exclusion; and
- Directive 96/71/EC on the posting of workers — the UK makes use of the exclusion.

The Commission concludes that, with the exception of the last Directive, existing practices in Member States or variations in implementation practices between Member States indicate grounds for reassessing the provisions of the Directives.

10.7 In relation to the heading on health and safety the Commission notes that of the 28 relevant Directives only two do not apply to the maritime sector:

- Directive 90/270/EEC on minimum health and safety requirements for work with display screen equipment, on which the Commission offers no substantive comment; and
- Directive 89/654/EEC on minimum safety and health requirements for the workplace.

This Directive does not apply to seafarers because workplaces which are also means of transport, including ships and fishing vessels, were considered to be sufficiently different to other workplaces to merit separate regulation. Thus there are specific Directives on health and safety aspects of maritime work:

- Directive 92/29/EEC on the minimum health and safety requirements for improved medical treatment on board vessels; and
- Directive 93/103/EEC on minimum health and safety requirements for work on board fishing vessels. The effectiveness of this Directive is currently being reviewed by the Commission, which notes particularly that there is still a need to tackle the high level of work-related accidents in the fishing sector.

10.8 The Commission comments that:

- international agreements containing health and safety provisions to which Member States are signatories are a significant factor for consideration, especially the recent ILO instruments, MLO and the WFC;
- the Community seeks to complement such instruments where it is useful; and
- it is committed to a strategy, during 2007 to 2012, aimed at improving health and safety at work and strengthening its cooperation with the ILO and other international organisations.

10.9 Under the third heading the Commission says that:

- free movement of workers is fundamental to Community law and applies to the maritime transport sector; and
- Community legislation provides that workers do not lose social security protection when moving within the Community and ensures basic principles of equality of treatment and non-discrimination in the application of national social security rules in individual Member States.

10.10 In relation to social security the Commission continues that:

- two Regulations provide for the simple coordination of social security systems in Member States, including specific provisions for seafarers;
- however, those provisions do not extend to all seafarers serving in the Community because they only apply to social security schemes within the Community, the European Economic Area and Switzerland and because they do not apply to certain third country nationals;

- furthermore, the Regulations only apply to social security schemes established by national legislation and do not apply to non-statutory schemes and collective agreements which are often found in the maritime sector;
- the MLC and the WIF, once in force, will ensure a certain level of social security protection for workers in the maritime and fishing sectors; and
- further protection could be achieved by increasing the number of international agreements with third countries covering social clauses and equal treatment clauses.

10.11 In the Communication the Commission also discusses the role of social dialogue,²⁶ noting that:

- the sectoral committees for maritime transport and sea fishing have a long-standing commitment to decent working conditions in the context of globalisation and compliance with international agreements for seafarers;
- the social partners are active in the ILO and International Maritime Organization;
- the social partners are currently seeking legislation standardising application of the provisions of the MLO across the Community and discussions continue on this; and
- it invites the social partners in the sea fishing sector to embark on a similar dialogue in respect of the application in the Community of the WIF.

10.12 The Commission concludes that:

- exclusion of maritime workers from some Community legislation might not be justified and should be reviewed;
- in particular, the rights of seagoing workers to protection in cases of insolvency or the transfer of undertakings would benefit from a more coherent approach;
- where sufficiently strong reasons exist to maintain exclusions or derogations, consideration should be given to the possible need for further sector specific Community instruments;
- such an exercise would involve examinations of procedures in individual Member States;
- any future proposals for Community legislation arising from this consultation would be considered on the basis of a thorough analysis of their impact on the competitiveness of Community shipping; and

26 "European social dialogue is a unique and indispensable component of the European social model, with a clearly defined basis in the EC Treaty. It refers to the discussions, consultations, negotiations and joint actions undertaken by the social partner organisations representing the two sides of industry (management and labour)." See http://ec.europa.eu/employment_social/social_dialogue/index_en.htm .

- any future proposals would take account of other agreements on international standards.

In that context, the Commission invites the social partners to respond to five questions:

“Do you share the Commission’s analysis of the justifications for the exclusions and derogations from EU labour legislation concerning seafaring professions?”

“Should the elimination of the exclusions that are no longer justified lead to the inclusion of seafaring professions within the general scope of application of the relevant directives? Which should be the priorities for action in this respect?”

“In the case of exclusions that you consider justified due to the particularities of the sector or other reasons, is an equivalent level of protection for seafaring professions guaranteed by other means? Do you consider that specific regulation within the relevant directive or a specific legal instrument of EU law for the seafaring professions could be warranted?”

“What means do you find more appropriate in order to enhance health and safety on board, in particular on small fishing vessels?”

“Taking into account the division of legal responsibilities between the Community and Member States as regards social security, what means of action do you consider more appropriate in order to improve the social security protection of workers in seagoing professions?”

The Government’s view

10.13 The Parliamentary Under-Secretary of State, Department for Transport (Jim Fitzpatrick), comments that:

- the Communication contains no specific proposals for legislation;
- it is a timely consultation document aimed at the social partners;
- it indicates possibilities for future approaches to address any shortcomings in Community legislation in respect of the protection of seafarers in terms of living and working conditions, health and safety and social security taking into account the provisions of wider international agreements, notably the recent MLO and WIF;
- both these conventions were developed and agreed in the ILO, with significant support and input from the Government;
- the underlying objective of making the Community maritime sector more attractive to job seekers is consonant with Council policy of December 2005 on boosting employment prospects in the Community maritime sector; and
- this was a main plank of the Government’s approach to transport policy during its Presidency in the second half of 2005.

He concludes that the policy implications of any specific proposals arising as a result of this consultation will have to be assessed as and when they emerge.

Conclusion

10.14 **The welfare of seafarers is an important issue and, whilst we clear the document, we draw it to the attention of the House. We shall, of course, scrutinise any legislative proposals that emerge from this consultation with the social partners.**

11 Road safety

(a) (26852) 12383/05 COM(05) 431	Commission Communication: <i>The 2nd eSafety Communication — Bringing eCall to citizens</i>
(b) (28122) 15932/06 COM(06) 723	Commission Communication: <i>Bringing eCall back on track — Action Plan (3rd eSafety Communication)</i>

<i>Legal base</i>	—
<i>Department</i>	Transport
<i>Basis of consideration</i>	Minister’s letter of 27 November 2007
<i>Previous Committee Report</i>	(a) HC 34–ix (2005–06), chapter 6 (9 November 2005) (a) and (b) HC 41–ix (2006–07), chapter 3 (7 February 2007)
<i>To be discussed in Council</i>	Not known
<i>Committee’s assessment</i>	Politically important
<i>Committee’s decision</i>	Cleared

Background

11.1 The Commission’s third European Road Safety Action Programme, for the period 2002–2010, set a target of halving the annual number of road deaths in the Community by 2010 (that is from about 47,000 to 25,000 annually). In the context of that programme the Commission published in September 2002 a Communication on “information and communications technologies for safe and intelligent vehicles” (the 1st eSafety Communication). This suggested that, while much of the development and use of ICT-enabled vehicles is an industry responsibility, there is a need for and merit in collaboration between the private and public sectors. Areas for collaboration highlighted were facilitating more cooperative intelligent vehicle and intelligent infrastructure systems and assisting in provision of a business case for widespread and rapid deployment. The Commission

discussed action to promote intelligent vehicle safety systems, adapt regulatory and standardisation provisions and remove societal and business obstacles.²⁷ The subject is sometimes referred to as eSafety.

11.2 In its Communication “i2010 — a European Information Society for growth and employment” the Commission announced its intention to launch “flagship ICT initiatives on key social challenges” including safe and clean transport.²⁸

11.3 In September 2005 the Commission published a Communication, document (a), in which it made proposals to carry forward one of the suggestions from its earlier Communication on the use of ICT in road safety: promotion of a pan-European in-vehicle emergency call service, to be known as eCall — it would manually or automatically generate a call from a vehicle following an accident, establishing a voice link to the emergency service, whilst transmitting vehicle and location data. It set this in the context of its intention to launch a flagship initiative, the Intelligent Car, as part of the i2010 programme. Amongst the actions the Commission said Member States should undertake in order to bring forward the introduction of eCall was signing the European Memorandum of Understanding (MoU) for Realisation of Interoperable In-Vehicle eCall.²⁹

11.4 In November 2006 in a further Communication, document (b), the Commission asserted that slow progress in the deployment of eCall shown by some Member States, especially the large ones, who were crucial for keeping industry committed, had endangered the realisation of the already agreed deployment plan. The purpose of the Communication was to summarise the background to and rationale for Community action, to support and facilitate progress and to set out Commission actions “necessary for solving the current deadlock and for bringing eCall back on track”.

11.5 When we considered the first document in November 2005 we:

- noted both the justifiable caution with which the Government was handling the Commission’s proposals for the introduction of eCall and the possibility of significant benefits to be gained;
- welcomed the Government’s intention to study further possible costs and benefits, to produce a Regulatory Impact Assessment and to have a consultation process;
- asked to see the outcomes of these before considering the document further and kept it under scrutiny; and
- asked the Government to tell the Commission of our view that the language used in its Communication, particularly as regards project and committee names, for

27 (24592) 9713/03: see HC 63–xxviii (2002–03), chapter 11 (2 July 2003) and (24897) 12736/03 + ADD 1: HC 63–xxxiv (2002–03), chapter 18 (22 October 2003).

28 (26616) 9758/05 + ADD 1: see HC 34–ii (2005–06), chapter 1 (13 July 2005) and *Stg Co Deb*, European Standing Committee C, 8 November 2005, cols 3–22.

29 The MoU “is to secure the realisation of” eCall. It is not legally binding “rather, it is an expression of the individual and collective commitment of the signatories to work in partnership in order to realise a shared objective to the benefit of everyone”. It “creates a framework for the introduction of in-vehicle emergency call at all levels in the emergency call chain”. See http://europa.eu.int/information_society/activities/esafety/doc/esafety_library/mou/invehicle_ecall_mou.pdf

example “The eSafety partners have agreed on a Road Map for eCall roll-out” or “The eSafety Forum User Outreach Working Group”, at best obscures meaning and at worst encourages facetiousness at the expense of what is after all a serious subject.

When we reported on both documents in February 2007 we said we would not be able to consider these documents further until we had received the additional information previously promised. But we noted that, although our comments on the language used in the first Communication had been drawn to the attention of the Better Regulation Unit, this was not what we had expected — we had wanted, and still wished, our view to be drawn directly to the attention of the Commission Directorate-General responsible for the Communication.³⁰

11.6 Since that report we have also cleared recently another Commission Communication — on an “Intelligent Car Initiative”, which discussed progress on eCall and called on Member States to sign the MoU.³¹

The Minister’s letter

11.7 The Minister of State, Department for Transport (Ms Rosie Winterton) writes now to update us on eCall. She encloses a copy of the report “eCall — The Case for deployment in the UK”,³² prepared by SBD,³³ which is being published by her Department. She notes that the study found that the pan-European business case for eCall is not transferable to the UK, saying:

- given the UK’s already well established emergency call systems, for example 999/112, the total costs of implementing eCall outweigh the likely benefits;
- total predicted benefits from 2010–2020 ranged from £389 million to £1,681 million, with total costs ranging from £2,282 million to £9,053 million, giving a benefit-cost ratio of between 0.1:1 and 0.7:1;
- moreover, mobile telecommunications operators would need to upgrade their infrastructures to enable the efficient operation of the new system; and
- further discussion is required between central government, local government and the network operators to agree who would bear the cost of each connected eCall — the existing 999 service is provided free to users, the call costs being supported by the fixed and mobile network operators.

11.8 Recalling the Commission’s recently renewed call to Member States to sign the MoU and to prepare for a roll-out of pan-European eCall by 2010, in its Communication on the Intelligent Car Initiative, the Minister says that, in addition to concerns over the benefit-cost ratio in the UK:

30 See headnote.

31 (28959) 13922/07: see HC 16–i (2007–08), chapter 12 (7 November 2007).

32 See http://www.sbd.co.uk/assets/SBD_final_eCall_report_to_the_DfT_1100a_.pdf

33 SBD is a technical consultancy company in the automotive and telematics industry.

- the functional specification and technical details of eCall have not yet been finalised;
- there are uncertainties over whether the system in its current form can deliver the full potential benefits; and
- there are uncertainties over whether it would be acceptable to UK mobile network operators.

She comments that this makes the implementation date of 2010 an unrealistic target.

11.9 The Minister continues that, in addition:

- the eCall Driving Group that negotiated and drafted the MoU has been disbanded;
- so there is no longer a platform to coordinate ongoing eCall activity which would enable the Government to engage more closely in the development process and to address its concerns; and
- the Government intends to press the Commission to create such a forum. This may also help to understand the concerns of other Member States, given that only 13 have signed the MoU to date.

11.10 The Minister then tells us that, after exhaustive consideration and consultation within Government and with the devolved administrations, it has been agreed that the Government will not sign the MoU at present as it remains unconvinced, following the SBD review, that the cost of implementing eCall justifies the benefits. The Government is informing the Commission of this decision and letting it have a copy of the SBD report. She says this decision will enable the Government to:

- apply pressure on the Commission to address its concerns;
- assess the case for signing based on further investigation and evidence, whilst reserving its position on a financial commitment; and
- avoid any implication that it agrees with current eCall timescales and specifications.

The Minister continues that:

- signing would indicate a commitment to implement eCall in the UK by 2010, which the Government does not believe can be delivered;
- whilst the Government fully supports the objective of road casualty reduction, the evidence does not show eCall would bring a significant benefit to the UK in this regard;
- the negative benefit-cost ratio and the potential demands which would be placed on both industry and government mean that there is not currently a business case for implementation; and

- by signing the MoU, but with caveats, the Government would run the risk that its concerns would be underestimated and not fully addressed, as the Commission turned its attention to other Member States which had not yet signed.

11.11 The Minister also tells us that because of a lack of clarity over the technical and functional specifications of the proposed eCall system, it has not been possible to complete a full impact assessment. However, she adds that the proposal would have a significant impact on mobile network operators and other industry stakeholders, for example vehicle manufacturers, as the benefit-cost ratio is poor. By not signing the MoU, the Government will allow these stakeholders to avoid a potentially high financial commitment and they are expected to support the decision not to sign the MoU, which will give them more time to develop their own positions. She concludes that the Government intends to maintain a close dialogue with all interested parties and to seek further analysis in order to monitor and review the case for eCall in the UK.

11.12 Finally, the Minister says that she has noted our comments about drawing our view of the language used in its Communication directly to the attention of the Commission. She thinks our points are relevant to the Better Regulation Agenda, which the Government strongly supports and which includes the promotion of simplicity and clarity. She therefore shares her predecessor's view that those responsible for wider regulatory and simplification policy, the Better Regulation Unit, are best placed to take our comments into account when in discussion of such issues at Community level.

Conclusion

11.13 We are grateful to the Minister for her account of where matters stand on eCall and for the background to the Government's decision not to sign the eCall MoU at present.

11.14 We note the Minister's comments about the language used in the first Communication and her decision that the matter is better pursued by the Better Regulation Unit — we hope this will have the desired effect.

11.15 We have no further questions to raise and clear the documents.

12 Commission Legislative and Work Programme 2008

(29076) 14663/07 COM(07) 640	Commission Communication: <i>Commission Legislative and Work Programme 2008</i>
------------------------------------	---------------------------------------------------------------------------------

<i>Legal base</i>	—
<i>Document originated</i>	23 October 2007
<i>Deposited in Parliament</i>	7 November 2007
<i>Department</i>	Foreign and Commonwealth Office
<i>Basis of consideration</i>	EM of 20 November 2007
<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

12.1 The European Commission publishes its Legislative and Work Programme (CWLP) towards the end of each year. It sets out where its priorities will lie over the next twelve months, and the legislative and non-legislative proposals it intends to pursue. It is the last stage in the Commission's annual planning cycle, and follows on from publication in the Spring of its Annual Policy Strategy (APS), a preliminary document which forms the basis for a dialogue with the other EU Institutions, and this year with national parliaments, on where the Commission's priorities should lie for the following year. We carried out an inquiry into the APS as part of this dialogue and reported in July.³⁴

12.2 We considered our inquiry into the APS to have been a useful exercise which provided an opportunity for Departmental Select Committees to engage with the Commission in its policy development, and for the public examination of the Commission's planning processes. We welcomed the Commission's efforts to increase openness and transparency, but we questioned whether the level of generality in the APS would stimulate the sort of debate the Commission says it would like to see. In terms of our own work, the APS assisted us only in so far as alerting Committee Members to the issues developing in the Commission's policy agenda, but not in performing the document-based scrutiny function given to us by the House.

12.3 Finally, we considered it would have been useful, especially for those outside the EU Institutions, to have more background information on the proposals included in the APS, a closer link between policy proposals and budgetary resources, and an evaluation on the utility of the APS in preparing the way for the CLWP later in the year.

34 (28417) 6788/07: see HC 519-I (2006–07) (18 July 2007).

The Commission Communication

12.4 Following the dialogue with the EU Institutions and beyond, the Commission has now published its Legislative and Work Programme for 2008.

12.5 Against the background of the overall strategic objectives set out by the Barroso Commission at the start of its mandate — prosperity, solidarity, security and freedom, and a stronger Europe in the world³⁵ — the Communication focuses on the following priorities:

- Growth and jobs;
- Sustainable development;
- An integrated approach to migration;
- Putting citizens first;
- Europe as a world partner;
- Delivery;
- Better regulation; and
- Communicating Europe.

12.6 To give effect to these priorities, the Commission says that the Work Programme is focused and concentrates on a limited number of new policy initiatives. It includes 26 strategic initiatives grouped together into 12 packages which it commits itself to delivering during the year, and 61 priority initiatives grouped into 49 packages which it says will be delivered over the next 12–18 months. In addition, it lists 45 simplification initiatives, and withdraws 30 pending proposals. However, we note that many of the latter would in any case have expired in due course.

12.7 The Commission maintains the emphasis on better regulation and says that “all strategic and priority initiatives announced in this Work Programme will be subject to the quality discipline of impact assessment”. It also cites various examples of proposals not pursued during 2007 as a result of the impact assessment work carried out including: a proposal aiming to modernise and reinforce the organisational framework for inland waterway transport in Europe; a proposed Recommendation on proportionality between capital and control in companies; a proposal for a 14th Company Law Directive on the transfer of a company’s registered office; and a proposal for a Decision on the protection of witnesses and individuals who cooperate with the judicial process.

12.8 Much of the content of the CLWP is familiar from our examination of the APS earlier in the year, but the Communication contains no analysis of the impact which the dialogue on the APS has had on the final Legislative and Work Programme, for example which initiatives have been included or removed as a result of requests from the Council or European Parliament.

12.9 It is also remarkably quiet on some of the major initiatives for 2008 such as the Budget Review where it says simply “the Commission will prepare the 2008–09 Budget Review to optimise Europe’s capacities to address the key challenges of the next decade”. It mentions separately the “Healthcheck” on the Common Agricultural Policy (CAP) which it says will “see whether the 2003 reform regarding the single payment scheme and certain agricultural markets and its implementation in the Member States need to be fine-tuned” and “will also help to pave the way for the future design and priorities of the CAP”.

The Government’s view

12.10 In his Explanatory Memorandum of 20 November 2007, the Minister for Europe at the Foreign and Commonwealth Office (Mr Jim Murphy) says that the UK welcomes the Commission’s continuing transparent and accountable approach in publishing the CWLP and that the Government also welcomes the content of the Programme which “fits well with our approach, and in particular the document’s emphasis on delivering results, better regulation, tackling and adapting to the effects of climate change, and promoting jobs and growth, achieved through the ongoing implementation of the Lisbon Strategy”. He goes on to welcome the Commission’s ongoing commitment to work on delivery and better regulation.

Conclusion

12.11 As in previous years, we consider that the Legislative and Work Programme provides a useful summary of the Commission’s priorities for the next 12 months, which we recommend to the relevant Departmental Select Committees as indicating possible areas for inquiry. The list of strategic and priority initiatives proposed by the Commission is attached at the Annex to this chapter. We also commend the accompanying roadmaps³⁶ to the House which set out more detail on each proposal, including information on the context, objectives, timetable and impact assessment work carried out.

12.12 Like the Government, we welcome the Commission’s continuing transparent and accountable approach in publishing the CWLP and we reiterate the Government’s support for the Commission’s ongoing work on delivery and better regulation, in particular its commitment to submit all strategic and priority initiatives to impact assessment. We note the list of withdrawals of pending proposals, but consider that many of these were due to expire in any case. We therefore urge the Commission to ensure that serious attempts are made to reduce the legislative burden and, in this context, welcome the planned Strategic Review of Better Regulation scheduled for January 2008.

12.13 We note that the Commission has recently launched a consultation exercise on EC Budget Reform, and that further discussion in this Communication may therefore be premature. We note that the CAP “health check” has, however, been treated as an entirely separate proposal in the CLWP and call for this to be linked to the reform of the financing of the Community.

³⁶ http://ec.europa.eu/atwork/programmes/index_en.htm

12.14 Finally, we consider it surprising, given the profile which the 2008 APS was given by the Commission as a tool for stakeholders to use in providing feedback, that no attempt is made to indicate where consultation on the APS has had an impact on the formulation of the CLWP, and in particular where proposals have been removed or added as a result of requests from the European Parliament or the Council, or indeed national parliaments.

12.15 As each proposal comes forward it will be subject to scrutiny by us in the normal way. In the meantime, therefore, we are content to clear the document.

Annex: Summary of the proposals to be adopted by the Commission under the Work Programme for 2008

Notes: The measures are arranged according to our assessment of which Government Department is likely to be given responsibility for them, based on our experience with previous related proposals. This assessment may not always be correct.

STRATEGIC INITIATIVES				
Dept.	Subject	Type of proposal	Legal basis	Expected date of adoption
HMT	Annual Progress Report on the Lisbon Strategy	Non-Legislative action/ Other	N/A	Dec 08
Defra	White Paper on Adaptation to Climate Change	Non-legislative action/White Paper	N/A	Nov 08
DFT	Green transport package: a) Communication on greening the transport sector	Non-Legislative action/ Communication	N/A	June 08
	b) Communication on the internalisation of external costs of transport		N/A	June 08
BERR / Defra	Energy package: a) 2 nd Strategic Energy Review Communication	a) Non-legislative action/ Communication	N/A	Nov 08
	b) Revision of oil stocks legislation (*)	b) Legislative proposal/ Directive	EC Treaty Art. 99; Art. 100(1)	Nov 08
	c) Recasting of Directive 2002/91/EC of 16 December 2002 on the Energy Performance of Buildings (*)	c) Legislative proposal/ Directive	EU Treaty, Art. 175(1)	Nov 08
	d) Review of the Energy Taxation Directive	d) Legislative proposal/ Directive	EU Treaty, Art. 93	Nov 08

Defra	Legislative proposals arising from the Communication on the <i>Health Check</i> in the Common Agricultural Policy (*)	Legislative proposal/ Regulation	Art. 37 EC Treaty	May 08
HO	Migration package: a) Communication on Entry/exit system and other border management tools (e.g. Electronic Travel Authorization) b) Report on the evaluation and future development of Frontex c) Communication on European Border Surveillance System	Non-Legislative action/ Communication Report Non-Legislative action/ Communication	N/A N/A N/A	Feb 08 Feb 08 Feb 08
HO	Asylum package: a) Policy Plan on Asylum b) proposal amending Council Directive 2003/9/EC on reception conditions for asylum-seekers c) proposal amending Council Regulation (EC) No 343/2003 on the criteria and mechanisms to determine the Member State responsible for assessing asylum applications d) modification of the asylum procedures directive e) modification of the directive on the recognition of refugee status and on the approximation of forms of subsidiary protection	a) Non-Legislative action/ Communication b) Legislative proposal/ Directive c) Legislative proposal/ Directive d) Legislative proposal/ Directive e) Legislative proposal/ Directive	N/A EC Treaty, Art. 63(1)(b) EC Treaty, Art. 63(1)(a) EC Treaty, Art. 63(1)(d) EC Treaty, Art. 63(1)(c), 2(a), 3(a)	July 08 July 08 July 08 Dec 08 Nov 08
DoH	Health package: a) Communication and Council Recommendation on Patient Safety and Quality of Health Services b) Council recommendation on health care associated infections	a) Non-Legislative action/ Communication b) Non-Legislative action/ Recommendation	N/A N/A	Nov 08 Dec 08

FCO	2008 ‘Enlargement Package’:			
	a) Strategy Paper on Enlargement	a) Non-legislative action/ Communication	N/A	Oct 08
	b) Progress Reports	b) Non-legislative action/ Other	N/A	Oct 08
FCO	European Neighbourhood Policy: country progress reports	Non-legislative action/ Other	N/A	April 08
FCO	Communication ‘Concrete follow up measures to the Joint EU-Africa Strategy’	Non-legislative action/ Communication	N/A	Sept 08
CO	Better Regulation Package:			
	a) Strategic Review	a) Non-legislative action/ Communication	N/A	Jan 08
	b) Second progress report on simplification	b) Non-legislative action/ Communication	N/A	Jan 08
	c) Progress Report on Administrative Burden	c) b) Non-legislative action/Other	N/A	Jan 08

PRIORITY INITIATIVES				
Dept.	Subject	Type of proposal	Legal basis	Expected date of adoption
HMT	Budget review	Non-legislative action/ Communication	N/A	4 th Quarter 08
HMT	Commission Communication on EMU@10	Non-legislative action/ Communication	N/A	May 08
BERR	Green Paper on European territorial cohesion	Non-legislative/ Green paper	N/A	3 rd Quarter 08
HMT	Amendment of Capital Requirements Directives 2006/48/EC and 2006/49/EC	Legislative proposal/ Directive	EC Treaty, Art. 47(2)	Oct 08
BERR	Regulation for a European Private Company Statute	Legislative proposal/ Regulation	EC Treaty, Art. 308	Sept 08
BERR	Communication “Small Business Act (SBA) for Europe”	Non-Legislative action/ Communication	N/A	Tbc
HMT	Review of existing legislation on VAT reduced rates	Legislative proposal/ Directive	EC Treaty, Art. 93	July 08

DoH	Pharmaceuticals Package:			
	a) Communication on the future of the single market in pharmaceuticals for human use	a) Non-legislative action/ Communication	N/A	Oct 08
	b) Directive on Pharmaceuticals — Information to patients	b) Legislative proposal/ Directive	EC Treaty, Art. 95	Oct 08
	c) Strengthening and rationalising EU Pharmacovigilance	c) Legislative proposals/ Directive and Regulation	EC Treaty Art. 95	Oct 08
DWP	Commission Recommendation on Active Inclusion	Non-legislative action/ Recommendation	N/A	Oct 08
DIUS	Proposal for a Regulation on a Dedicated Legal Framework for the Construction and Operation of new Pan-European Research Infrastructures	Legislative proposal/ Regulation	EC Treaty, Art. 171	July 08
DIUS	Communication “Towards joint programming of research”	Non-Legislative action/ Communication	N/A	March 08
HMT	Euro area initiatives:			
	a) Convergence Report — 2008	a) Non-legislative action/ Communication	N/A	May-June 08
	b) (Possible) proposal(s) for Council Decision(s) under Art. 122(2) on euro area entry of one or more new Member States	b) Legislative proposal/ Decision	EC Treaty, Art. 122(2)	May-June 08
	c) Possible Proposals for a Council Regulation amending Regulation (EC) No 2866/98 on the conversion rates between the euro and the currencies of the Member States adopting the euro	c) Legislative proposal/ Regulation	EC Treaty, Art. 123(5)	May-June 08
Defra	Communication launching the GMES (Global Monitoring for Environment and Security) programme and its long-term governance and financing framework	Non-legislative action/ Communication	N/A	Oct 08
Defra	Sustainability package:			
	a) Communication and Action Plan on Sustainable Industrial Policy (SIP)	a) Non-legislative action/ communication	N/A	March 08
	b) Sustainable Production and Consumption (SPC) Action Plan	b) Non-legislative action/ Communication	N/A	Feb 08

BERR	Regulation (EC) No 761/2001 of the European parliament and of the Council of 19 March 2001 allowing voluntary participation by organisations in a Community eco-management and audit scheme (EMAS) (*)	Legislative proposal/ Regulation	EC Treaty, Art. 175,	Feb 08
BERR	Regulation (EC) No 1980/2000 of the European Parliament and of the Council of 17 July 2000 on a revised Community eco-label award (*)	Legislative proposal/ Regulation	EC Treaty , Art. 175(1)	Feb 08
Defra	Biodiversity package: a) Mid-term report on the implementation of the Biodiversity Action Plan	a) Non-legislative action/ Other	N/A	Nov 08
	b) Communication on policy options to tackle invasive alien species	b) Non-legislative action/ Communication	N/A	Sept 08
Defra	Green Paper on agricultural product quality policy	Non-Legislative action/ Green Paper	N/A	Oct 08
Defra	Council Regulation — Review of the Less Favoured Areas Scheme (delimitation of designated areas)	Legislative proposal/ Regulation	EC Treaty, Art. 37	Dec 08
Defra	Communication on Sustainable Development of Community Aquaculture	Non-legislative action/ Communication	N/A	Dec 08
Defra	Modernisation and recast of the CFP control system under Regulation (EC) No 2847/93 (*)	Legislative Proposal/ Regulation	EC Treaty, Art. 37	Oct 08
DFT	Maritime Transport package: a) Communication on the future EU Maritime Transport Policy accompanied by legislative proposals:	a) Non-legislative proposal/ Communication	N/A	Oct 08
	b) Revision of Regulation (EC) No 1406/2002 establishing a European Maritime Safety Agency	b) Legislative proposal/ Regulation	TBC	Oct 08
	c) Legislative proposal on a Maritime Space without Barriers	c) Legislative proposal/ Regulation	EC Treaty, Art. 71, 75	Oct 08

DFT	Air transport package: a) Communication “Developing the single European Sky” b) Proposal to amend the Single European Sky Regulations c) Extension of the competence of the European Aviation Safety Agency towards airports and ATM / ANS d) Launch of the Development Phase of SESAR (2008–2013)	a) Non-legislative action/ Communication b) Legislative proposal/ Regulation c) Legislative proposal/ Regulation d) Other	N/A EC Treaty, Art. 80 EC Treaty, Art. 80 N/A	June 08 June 08 June 08 June 08
HO	Proposal for a directive on the conditions of entry and residence of seasonal workers	Legislative proposal/ Directive	EC Treaty, Art. 63(3)	Nov 08
HO	Proposal for a directive on the procedures regulating the entry into, the temporary stay and residence of Intra-Corporate Transferees (ICT) and on the conditions of entry and residence of remunerated trainees	Legislative proposal/ Directive	EC Treaty, Art. 63	Nov 08
HO	Communication on the next multi-annual strategy to establish an area of freedom, security and justice	Non-Legislative action/ Communication	N/A	June 08
HO	Green Paper on Migration and Education	Non-Legislative action/ Green paper	N/A	April 08
DWP	Commission Communication on “A renewed commitment to social justice in Europe: deepening the open method of coordination in social protection and social inclusion”	Non-legislative action/ Communication	N/A	tbc
BERR	Communication on anticipating and managing change	Non-Legislative action/ consultation	N/A	July 08
BERR	Proposal for revision of Council Directive 94/45/CE of 22 September 1994 (European Works Councils)	Legislative proposal/ Directive	EC Treaty, Art. 137(2)(b)	June 08
BERR DCLG	Proposal for a Directive implementing the principle of equal treatment outside employment	Legislative Proposal/ Directive	EC Treaty, Art. 13	June 08
DWP/ DoH	Proposal for a Directive amending Directive 92/85/EEC of 19 October 1992 on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breast-feeding	Legislative proposal/ Directive	EC Treaty, Art. 137	Sept 08

DoH	Green paper on Health Professionals in Europe	Non-Legislative action/ Communication	N/A	4 th Quarter 08
DoH	Commission Communication on a European Action in the field of Rare Diseases	Non-Legislative action/ Communication	N/A	Nov 08
DoH	Directive on quality and safety of organ donation and transplantation accompanied by an Action plan for closer cooperation between MS on organ donation and transplants	Legislative proposal/ Directive Non-Legislative action/ Communication	EC Treaty, Art. 152 N/A	Nov 08
BERR	Communication on Critical Communication and Information Infrastructure Protection (CIIP)	Non-legislative action/ Communication	N/A	tbc
DoH	Communication on telemedicine and innovative technologies for chronic disease management	Non-legislative action/ Communication	N/A	Oct 08
DCMS	A programme to protect children using the Internet and the new media (2009–2013)	Legislative proposal/ Decision	EC Treaty, Art. 153	Dec 08
BERR	Communication reviewing the functioning of the Roaming Regulation	Non-legislative action/ Communication	N/A	Dec 08
MoJ	Legislative Proposal on strengthening Eurojust	Legislative proposal/ Decision	EU Treaty, Art. 31(2), 34(2)(c)	July 08
MoJ	Communication on E-Justice	Non-legislative action/ Communication	N/A	June 08
MoJ	Legislative instrument in the field of successions and wills	Legislative proposal/ Regulation	EC Treaty, Art. 67	Nov 08
HO	Communication on violent radicalisation	Non-legislative action/ Communication	N/A	30 June 08
BERR	Proposal for a Framework Directive on Consumer Contractual Rights (*)	Legislative proposal/ Directive	EC Treaty, Art. 95	Dec 08
DIUS	Communication on Multilingualism: Addressing the challenge of European Society	Non-Legislative action/ Communication	N/A	Sept 08
DFID	Communication EU Development Aid : Doing more, better and faster — Delivering on our commitments	Non-Legislative action/ Communication	N/A	March 08
DFID	Communication 'The EU, Africa and China: Towards trilateral dialogue and cooperation on Africa's peace, stability and sustainable development'	Non-Legislative action/ Communication	N/A	Sept/Oct 08

DFID	Communication 'Economic Development and regional integration in the ACPs'	Non-Legislative action/ Communication	N/A	Oct 08
Defra	Forest package:			
	a) Communication on measures to reduce deforestation	a) Non-Legislative action/ Communication	N/A	July 08
	b) Communication on the prevention of the placing on the market in the EU of illegally harvested timber and timber products (with possible accompanying legislative proposal)	b) Non-Legislative action/ Communication	N/A	May 08

13 EU Special Representative to the African Union

(29082)	Draft Joint Action to appoint a European Union Special Representative to the African Union
—	
—	

<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 5 December 2007
<i>Previous Committee Report</i>	HC16–ii (2007–08), chapter 20 (14 November 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 September 2007); further information requested

Background

13.1 EU Special Representatives (EUSR) are appointed to represent Common Foreign and Security Policy 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.

13.2 An EUSR is appointed by the 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 i.a. a political backing to an 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.

13.3 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

13.4 In his 12 November 2007 Explanatory Memorandum, the Minister for Europe at the Foreign and Commonwealth Office (Mr Jim Murphy) explained that the 19 November 2007 GAERC would consider 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".³⁷

13.5 He also explained that the EUSR would also be head of a new Delegation; and that 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 Common Foreign and Security Policy (CFSP).

13.6 The Minister 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; and
- "strengthen the AU's crisis management capabilities."

³⁷ (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.

13.7 He went on to say that the appointment would be announced at the 8–9 December EU-Africa summit, when “a new joint strategy and action plan will be endorsed containing commitments on both the EU and AU sides in order to guide the EU-Africa partnership over the coming years”; the new EUSR/Head of Delegation and his/her staff would have primary responsibility for implementing the EU commitments in the joint strategy. 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.

13.8 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 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 EM 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.

13.9 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.”³⁸ 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).

13.10 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.”³⁹

We also recalled that this position was subsequently confirmed in evidence to the Foreign Affairs Committee by the previous Foreign Secretary.⁴⁰

13.11 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”;
- 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

13.12 In his 5 December 2007 letter, the Minister for Europe responds as follows:

“You ask for a clear exposition of the Government’s policy on the question of double-hatting. The Government’s policy remains unchanged. As the then Minister for Europe stated in the Explanatory Memorandum of 7 October 2005 to which you refer (5th Report 05–06, 26896), we will consider the merits of future such proposals on their own terms. We have found in the specific case of an EUSR to the AU compelling operational reasons to support the use of double-hatting.

“As regards the legal basis for double-hatting, the two positions, EUSR and Head of the Commission Delegation, are appointed using separate procedures.

- The following articles of the Treaty on European Union are specified as the legal base for the Joint Action appointing an EUSR to the AU: Articles 14, 18(5) and 23(2). Article 14 is the legal base for the Council to adopt Joint Actions, Article 18(5) is the legal base for appointing a Special Representative with a mandate in relation to particular policy issues and Article 23(2) specifies the voting procedures. Whereas decisions under the Common Foreign and Security Policy are usually taken by the Council acting unanimously, there are certain exceptions whereby the Council can act by qualified majority voting.

39 (26896)—: HC 34–v (2005–06), chapter 42 (12 October 2005); see headnote.

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

These include the appointment of a Special Representative in accordance with Article 18(5).

- The appointment of a Head of the Commission Delegation is an internal Commission decision following Commission procedures.

“In the case of the double-hatted EUSR/Head of the Commission Delegation, his/her mandate will be 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-ordinate EU policies with non-EU- actors, without prejudice to the respective competences;
- and strengthen the AU’s crisis management capabilities.

“The EUSR/Head of the Commission Delegation will act under the authority and operational direction of the Secretary General/High Representative for CFSP, Mr Javier Solana, as far as his/her tasks as EUSR are concerned, and under the authority and operational direction of the European Commission as far as his/her tasks of Head of the Commission Delegation are concerned.

“As Head of the Commission Delegation to the AU, the incumbent will represent the European Commission and the European Community vis-à-vis the AU on matters falling under Community competence. This will include strengthening the EU-AU partnership in areas outlined in the joint EU-Africa strategy such as economic and social growth, and addressing issues of mutual interest and concern such as energy, environment and climate change. The incumbent will assume the role of spokesperson of the Community in areas of Community competence, report regularly to the Commission and liaise closely with the delegations of EU Member States on progress made.

“As EUSR to the AU, the incumbent will represent the EU vis-à-vis the AU in all matters falling under the Common Foreign and Security Policy (CFSP). This will include insuring an adequate level of political representation, reflecting the importance of the EU as partner to the AU, offering advice and providing support to the building up of the AU’s crisis management capabilities and supporting the actions of EUSRs with mandates in AU member states or regions. Other duties include maintaining close contacts and promoting co-ordination with key international partners of the AU present in Addis Ababa, especially the United

Nations, but also with non-state actors on the whole range of the CFSP/ESDP issues covered by the EU-AU relationship, as well as facilitating the co-operation between the AU and African Sub-regional organisations, especially in those areas where the EU is providing support.

“The Council through the Political and Security Committee will provide the EUSR with strategic guidance and political direction within the framework of the mandate.”

Conclusions

13.13 We are grateful to the Minister for this further information. We now have 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 are less convinced than he is that agreement to this proposal does not indicate a shift in the Government’s overall attitude.

13.14 The Minister refers, quite correctly, to his predecessor’s statement that the Government would “consider the merits of future such proposals on their own terms”. What he chooses not to mention, however, is 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”. We should be grateful if the Minister would 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. Does he agree that, in so doing, and now praying in aid the elastic phrase “compelling operational reasons” he has effectively made it redundant?

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

14 European Globalisation Adjustment Fund

(a) (28817) 11985/07 COM(07) 415	Draft Decision on the mobilisation of the European Globalisation Adjustment Fund
(b) (28994) 13864/1/07 COM(07) 600	Draft Decision on the mobilisation of the European Globalisation Adjustment Fund

<i>Legal base</i>	Article 159 EC; co-decision; QMV
<i>Department</i>	HM Treasury
<i>Basis of consideration</i>	Minister's letter of 30 November 2007
<i>Previous Committee Report</i>	(a) HC 41–xxxvi (2006–07), chapter 6 (10 October 2007) (b) HC 16–v (2007–08), chapter 4 (5 December 2007)
<i>To be discussed in Council</i>	(a) 9 October 2007 (b) Not known
<i>Committee's assessment</i>	Politically important
<i>Committee's decision</i>	Cleared; further information requested

Background

14.1 Regulation (EC) No 1927/2006 established, from 1 January 2007, a European Globalisation Adjustment Fund (EGF) designed to counterbalance negative impacts of globalisation, enabling the Community to show solidarity with workers affected by redundancies resulting from changes in world trade patterns. Calls on the fund by Member States can be made where major structural changes in world trade patterns lead to serious economic disruption, notably a substantial increase of imports into the Community or a rapid decline in Community market share in a given sector or a delocalisation to third countries, which results in:

- (a) at least 1,000 redundancies over a period of four months in an enterprise in a Member State, including workers made redundant in its suppliers or downstream producers, or
- (b) at least 1,000 redundancies, over a period of nine months, particularly in small or medium-sized enterprises, in a given sector in one region or two contiguous regions at NUTS II level,⁴¹ or

41 NUTS (Nomenclature of Units for Territorial Statistics) II levels are defined for use in relation to the Cohesion Funds.

- (c) small labour markets or, in exceptional circumstances, even if the conditions in (a) and (b) are not entirely met, when redundancies have a serious impact on employment and the local economy.

14.2 When we scrutinised the proposal that led to this Regulation we were told by the Government that it believed that the EGF could play a useful part in the response to the consequences of globalisation, but it would want to ensure that measures supported by the fund did not undermine existing national policies or overlap with other Community funding streams such as the Structural and Cohesion Funds.⁴²

14.3 In July 2007 the Commission proposed a draft Decision, document (a), to approve the first two applications, from France, for EGF assistance. When we considered this document in October 2007 we:

- noted that we had been told, when we scrutinised the proposal that led to Regulation (EC) No 1927/2006, that the Government would want to ensure that measures supported by the EGF did not undermine existing national policies or overlap with other Community funding streams;
- said that therefore we were pleased to see the Government's intention to have the first applications under the Regulation rigorously examined by the Council in relation to both that consideration and compliance with the other eligibility criteria;
- recognised, like the Government, that consideration of these cases was likely to set a precedent for future applications; and
- asked, before considering further the proposed Decision approving these applications, to hear from the Government about the outcome of its efforts to ensure rigorous consideration of the matter.⁴³

14.4 In October 2007 the Commission proposed a further draft Decision, document (b), to approve two more applications, from Germany and Finland, for assistance from the EGF. When we considered this document earlier this month we delayed further consideration of it until we knew how matters were progressing in relation to the French applications.⁴⁴

14.5 Meanwhile both documents remained under scrutiny.

The Minister's letter

14.6 The Economic Secretary to the Treasury (Kitty Ussher) writes now, in relation to document (a), to report the Government's efforts to ensure rigorous consideration of the matter. She says:

42 (27356) 7301/06: see HC 34–xxv (2005–06), chapter 5 (19 April 2006) and HC 34–xlii (2005–06), chapter 14 (7 November 2006).

43 See headnote.

44 *Ibid.*

- the Government maintained a very rigorous approach in the Council Budget Committee’s discussions;
- a number of other Member States took a similar stance, calling on the Commission to explain how the intervention criteria had been met and asking for clarification about numbers of redundancies and the amounts of assistance being requested; and
- the Council Legal Service was asked to provide an opinion on the scope of eligible EGF assistance.

14.7 The Minister continues that:

- when the Presidency called for a first vote in the Budget Committee, the Government, not being satisfied with the Commission’s initial responses to requests for further information, voted against the proposal in a blocking minority, so ensuring further examination;
- following clarification from the Council Legal Service on the intervention criteria and a fourth discussion a qualified majority in support of the proposal emerged in the Budget Committee. The Government maintained its scrutiny reserve and abstained; and
- the proposal was then adopted by the ECOFIN Council and the Government again abstained.

14.8 The Minister adds that an “EGF contact persons group”, in which the Government is represented (through the Department for Work and Pensions) monitors interpretation of the EGF Regulation, the more technical aspects of the intervention criteria and the application process. In that group a number of Member States, including the UK, have called on the Commission to ensure that its scrutiny of EGF applications is robust.

Conclusion

14.9 We note this account of the Government’s attempts “to ensure rigorous consideration” of the first EGF applications. We observe that doubt must remain as to the utility of such expenditure. We observe further that it seems improbable that approval of EGF applications will be often successfully opposed. So we clear both the documents, but urge the Government to continue to seek rigorous consideration of all future EGF applications.

14.10 Regrettably, we need also to consider observance of the scrutiny process in relation to the first EGF applications, document (a). The first Budget Committee vote on the proposal to approve these applications was on 20 September 2007, the fourth discussion, which led to a vote in favour, was on 27 September 2007 and the ECOFIN Council adopted the measure on 9 October 2007.

14.11 In her Explanatory Memorandum of 3 October 2007 the Minister neither reported the first two events nor predicted the third. Rather she said “The UK Government will be working with like-minded Member States to ensure that careful

consideration is given to whether these criteria have been respected ahead of a final position being reached by Council on these two applications”. Moreover the Minister did not respond to our request of 10 October 2007 for a report of the outcome (which was by then already known) of the Government’s efforts to secure proper consideration of the proposal until 30 November 2007.

14.12 We should be grateful to the Minister for an explanation of this seemingly casual approach to the scrutiny process.

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

Department for Business, Enterprise and Regulatory Reform

(29128)
15130/07
— Report on the annual accounts of the European Foundation for the Improvement of Living and Working Conditions for the financial year 2006 together with the Foundation's replies.

(29161)
15355/07
COM(07) 705 Draft Council Regulation introducing autonomous trade preferences for Moldova and amending Regulation (EC) No.980/2005 and Commission Decision 2005/924/EC.

Department for Communities and Local Government

(29134)
15136/07
— Report on the annual accounts of the European Union Fundamental Rights Agency (formerly the European Monitoring Centre on Racism and Xenophobia) for the financial year 2006 together with the Monitoring Centre's replies.

Department for Environment, Food and Rural Affairs

(29150)
15152/07
— Report on the annual accounts of the Community Plant Variety Office for the financial year 2006 together with the Office's replies.

(29188)
15525/07
COM(07) 712 Draft Council Decision on the conclusion of the Agreement between the European Community and Australia on trade in wine.

(29195)
15601/07
COM(07) 731 Third Commission progress report on the implementation of Council Decision 96/411/EC on improving Community agricultural statistics.

(29212)
15356/07
COM(07) 742 Draft Council Regulation temporarily suspending customs duties on imports of certain cereals for the 2007/08 marketing year.

(29221)
15925/07
COM(07) 751 Draft Council Decision on the conclusion of an Agreement in the form of an exchange of letters between the European Community and New Zealand pursuant to Article XXVIII of GATT 1994 relating to the modification of the WTO tariff quota for New Zealand butter provided for in the EC Schedule CXL annexed to the GATT 1994.

Foreign and Commonwealth Office

- (29018) Draft Council Regulation amending Regulation (EC) No.889/2005
14171/07 imposing certain restrictive measures in respect of the Democratic
COM(07) 626 Republic of Congo.
- (29084) Draft Council Regulation amending Regulation (EC) No 889/2005
— imposing certain restrictive measures in respect of the Democratic
— Republic of Congo.
- (29230) Council Joint Action repealing Joint Action 2005/557/CFSP on the
— European Union civilian-military supporting action to the African
— Union missions in the Darfur region of Sudan and in Somalia.
- (29233) Council Joint Action amending Joint Action 2007/405/CFSP on the
— European Union police mission undertaken in the framework of
— reform of the security sector (SSR) and its interface with the justice
system in the Democratic Republic of the Congo.
- (29239) Joint Action on support for IAEA activities in the areas of nuclear
— security and verification and in the framework of the implementation
— of the EU Strategy against the Proliferation of Weapons of Mass
Destruction.

Home Office

- (29144) Report on the annual accounts of the European Agency for the
15146/07 Management of Operational Cooperation at the External Borders of
— the Member States for the financial year 2006 together with the
Agency's replies.

Department for Innovation, Universities and Skills

- (29158) Commission Communication: *Delivering lifelong learning for*
15292/07 *knowledge, creativity and innovation* — Draft 2008 joint progress
+ ADD 1 report on the implementation of the 'Education & Training 2010'
COM(07) 703 Work Programme.

HM Revenue and Customs

- (29244) Draft Council Decision authorizing the Federal Republic of Germany
16227/07 and the Republic of Poland to apply measures derogating from
COM(07) 771 Article 5 of Council Directive 2006/112/EC on the common system of
value added tax.

Department for Transport

(29210)
15703/07
COM(07) 731

Draft Council Decision on the signature and provisional application of the Agreement between the European Community and the Government of Mongolia on certain aspects of air services.

Draft Council Decision on the conclusion of the Agreement between the European Community and the Government of Mongolia on certain aspects of air services.

HM Treasury

(29087)
14752/07
COM(07) 687

Preliminary Draft Amending Budget No.7 to the general budget for 2007.

(29160)
15354/07
+ ADD 1
COM(07) 715

Draft Council Regulation adjusting with effect from 1 July 2007 the remuneration and pensions of officials and other servants of the European Communities and the correction coefficients applied thereto.

(29178)
15456/07
+ ADD 1
COM(07) 684

Commission Communication on the rate of contribution to the pension scheme of officials and other servants of the European Communities.

(29218)
15864/07
COM(07) 752

Draft Council Decision authorising the United Kingdom to continue to apply a measure derogating from Articles 26(1)(a), 168 and 169 of Directive 2006/112/EC on the common system of value added tax.

Department for Work and Pensions

(29190)
15549/07
COM(07) 733

Commission Communication —*Key messages from the Employment in Europe 2007 Report.*

Formal minutes

Wednesday 12 December 2007

Members present:

Michael Connarty, in the Chair

Mr Adrian Bailey

Mr David S Borrow

Ms Katy Clark

Jim Dobbin

Mr Greg Hands

Keith Hill

Angus Robertson

Mr Anthony Steen

1. Police Cooperation in Criminal Matters and the European Arrest Warrant

Meg Hillier MP, Parliamentary Under-Secretary of State, Mr Peter Storr, International Director, Dr Paul Chandwani, International Team, Office for Security & Counter Terrorism, Mr Ben Ray, Legal Advisors Branch, and Ms Fenella Taylor, Home Office, gave oral evidence.

2. Scrutiny of Documents

The Committee considered this matter.

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 15 read and agreed to.

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

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

3. Special Report

Draft Special Report (European Intergovernmental Conference: Government Response to the Thirty-Fifth Report from the Committee, Session 2006-07 and Government Response to the Third Report from the Committee, Session 2007-08), proposed by the Chairman, brought up, read the first and second time, and agreed to.

The Government's response to the Thirty-Fifth Report from the Committee, Session 2006-07 and Government Response to the Third Report from the Committee, Session 2007-08 was appended to the Report.

Resolved, That the Report, be the First Special Report of the Committee of the House.

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

[Adjourned till Wednesday 9 January at 2.30 p.m.]

Standing order and membership

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

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

The expression “European Union document” covers —

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

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

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

Current membership

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