



House of Commons
European Scrutiny Committee

**Fourteenth Report of
Session 2007–08**

Documents considered by the Committee on 20 February 2008,
including the following recommendation for debate:

The EU and Serbia

Report, together with formal minutes

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Notes

Numbering of documents

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

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

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

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

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

Abbreviations used in the headnotes and footnotes

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

Euros

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

Further information

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

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

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1 The EU and Serbia

(a) (29213) 15616/07 + ADDs 1–2 COM (07) 743	Draft Council Decisions on the signing and on the conclusion of the Stabilisation and Association Agreement between the European Communities and its Member States and the Republic of Serbia
(b) (29214) 15690/07 + ADDs 1–2 COM (07) 744	Draft Council Decision concerning the signing and conclusion of the Interim Agreement on trade and trade-related matters between the European Community and the Republic of Serbia
(c) (29427) — —	Interim Political Agreement on Co-operation between the European Union and its Member States and the Republic of Serbia

<i>Legal base</i>	(a) and (b) Articles 300 and 310 EC; unanimity (c) —
<i>Department</i>	Foreign and Commonwealth Office
<i>Basis of consideration</i>	(a) and (b) Minister’s letter of 13 February 2008 (c) EM of 15 February 2008
<i>Previous Committee Report</i>	HC16–x (2007–08), chapter 4 (30 January 2008) and HC16–viii (2007–08), chapter 5 (16 January 2008); also see (26575) 8884/05: HC 34–i (2005–06), chapter 48 (4 July 2005); and (29103) 14999/07; (29104) 15001/07; (29100) 14995/07; (29099) 14993/07; (29101) 14996/07; (29102) 14997/07: HC 16–v (2007–08), chapter 1 (5 December 2007)
<i>To be discussed in Council</i>	18 February 2008 General Affairs and External Relations Council
<i>Committee’s assessment</i>	Politically important
<i>Committee’s decision</i>	For debate in European Committee

Background

1.1 The Stabilisation and Association Process is the process devised by the EU to bring the countries of the Western Balkans closer to the EU and to help prepare them for eventual membership. The Stabilisation and Association Agreement (SAA) is a key step on the path to EU membership.

1.2 As with other such SAAs, the one proposed with Serbia will establish a far-reaching legal relationship between the EU and Serbia, entailing mutual rights and obligations. It will ensure the gradual implementation of a free trade area and reforms designed to achieve the adoption of EU standards in areas such as justice, freedom and security. To this end

provisions are made in the Agreement for political dialogue between the EU and Serbia, and enhanced regional cooperation. A provision is also included for the establishment of a Stabilisation and Association Council, which will supervise the implementation of the Agreement.

1.3 The Commission completed negotiations for an SAA with Serbia on 10 September 2007. On 7 November 2007 Serbia and the Commission initialled the text of the Agreement. The next stage will be signature of the Agreement by Serbia and EU Member States, followed by ratification by the European Parliament and the national parliaments of all signatories. The Agreement will come into force shortly after all parties have completed ratification.

The Council Decisions

1.4 The purpose of the first Council Decision is to obtain Council approval to the text of the Stabilisation and Association Agreement and “to engage the procedures for the signature and final conclusion” of the Agreement.

1.5 In parallel, the Commission is proposing that an Interim Agreement (IA), comprising the Community competence elements (trade, agriculture, industrial and competition provisions of the SAA) be signed at the same time as the SAA, to come into force as soon as possible after signature, to take account of the fact that ratification of the SAA may take up to a year following signature.

Previous consideration

1.6 When we considered them on 16 January 2008, the Minister for Europe at the Foreign and Commonwealth Office (Mr Jim Murphy) recalled that the Government’s strategic goal for the Western Balkans is to move it towards EU and NATO membership, as the long-term answer to the instability that dogged the Balkans in the 1990s, and the best way to embed democracy and development in the region, within which context he saw Serbia as central and it being “strongly in our interests that Serbia stays on the EU path.”

1.7 He also noted the June 2007 General Affairs and External Relations Council (GAERC) statement that “the pace and conclusion of the negotiations on the SAA would in particular depend on Serbia’s progress in developing the necessary legislative framework and administrative capacity to implement its obligations under the Agreement, and on full co-operation with ICTY” and said that, as the Commission proposal made clear, before a final decision to sign the SAA, the Commission would report on the political conditionality to the Council, and they would jointly review the progress made by Serbia.

1.8 For our part, we said that we had no concerns over the nature of the SAA or of its conclusion with Serbia *per se*: on the contrary; however, what had bedevilled this process since we first considered this draft¹ was the continuing failure of the Serbian authorities to arrest and hand over to the International Criminal Tribunal for (former) Yugoslavia (ICTY) the most egregious fugitives — Ratko Mladic and Radovan Karadzic — which

1 See headnote.

ICTY judges to be wilful. Although the ICTY had been prepared to indicate to the Commission and Council that cooperation had improved sufficiently to warrant continued negotiation and, latterly, initialling of a text, it was plainly not yet able to certify that “full cooperation” obtained.

1.9 We shared the Government’s unspoken hope that, at some stage, it would be able so to do, enabling the Commission and the Council to agree to move to signature and, in the case of the interim agreement, implementation. We also hoped that, when that time came, the situation was then such that the justification for so doing was clear cut. But, given the controversy that had dogged the process thus far, and the surrounding political complexities, we felt that it might not be so straightforward.

1.10 We also noted that the SAA — or, in effect, its political dimension — would then come before the House for ratification. However, given the history and the overall situation, we asked that the Minister should first justify why signature was then warranted before the Council took a final decision so to do; and in the meantime retained the documents under scrutiny.

1.11 The Minister then wrote on 23 January to alert us to possible developments ahead of the 28 January GAERC: there was “an ongoing debate” as to whether or not to sign Serbia’s SAA; the Presidency, supported by a number of Member States, had made clear their preference for SAA signature; but other Member States opposed this, given their reservations about the level of ICTY cooperation from Serbia; the most likely outcome was, instead, the creation of a Task Force, “to assist Serbia in their efforts to meet the conditions necessary for further progress in the EU”. He went on to say that the Government approach would:

“be guided by recognition of the need to demonstrate to Serbia the EU’s commitment for its European perspective, while at the same time recognising we are fully committed to ICTY conditionality, which must remain firmly embedded in the EU accession process.”

1.12 Noting “the pace at which this issue is evolving” and the possibility that “developments will take place rapidly”, the Minister concluded by saying that he would “endeavour to keep the Committee up to speed as the debate unfolds.”

1.13 For our part, we found it disturbing, if not entirely surprising, that some Member States — including, regrettably, the Presidency — seemed to be willing to overlook the key issue of ICTY conditionality. Though the Minister did not say clearly where he stood, we presumed that he was among those not prepared to jettison this requirement in order to move the political process forward, and that the latter part of his approach was predominant — a position that we endorsed.

1.14 We also considered that a Task Force whose role was “to assist Serbia in their efforts to meet the conditions necessary for further progress in the EU” was altogether too ambiguous for any clear meaning to be extracted from it.

1.15 By the time that we came to consider the Minister’s letter on 30 January, however, this had become somewhat clearer, via the Conclusions on the Western Balkans issued after the

28 January GAERC, which referred to a new Political Agreement between the EU and Serbia.²

1.16 In political terms, we asked, was this Political Agreement not a device designed to circumvent the SAA, whose signature — and consequential benefits — had hitherto been dependent on the Serbian authorities providing full cooperation to the International Criminal Tribunal for (former) Yugoslavia (ICTY)? Would the SAA now be sidelined until “the necessary steps have been finalised” (cf. the Conclusions)? What were those necessary steps? Did they still include the ICTY certifying that full cooperation had been established with the Serbian authorities?

1.17 We also asked the Minister to explain whether the ‘Political Agreement’ referred to in the Council Conclusions was an ‘agreement’ for the purposes of the Resolution of 17 November 1998 on the scrutiny of European Business.

1.18 We also said that we expected the Task Force report to be deposited along with an Explanatory Memorandum explaining the Government’s views thereon before any agreement was reached in the Council; and in the meantime retained the documents under scrutiny.

The Minister’s letter of 13 February 2008

1.19 Recalling his previous letter, the Minister confirms that, in the event, rather than signing the SAA, the GAERC invited Serbia to sign an interim Political Agreement. He “fully endorses the invitation as well as the Political Agreement itself”. He describes the Agreement as “primarily political in nature, seeking to highlight the areas in which the EU will work to deepen its relations with Serbia”, and describes it as “an important signal of the EU’s commitment to Serbia and its desire to see Serbia continue to make progress towards the EU”. He also says that the Task Force will “formulate recommendations on how to achieve rapid progress in the areas set out in the Agreement”, and notes the Committee’s “wish for any Task Force report to be deposited along with an Explanatory Memorandum.”

1.20 He also notes that the Agreement was “drawn up at short notice and was originally scheduled for signature on 7 February. However, due to internal disagreements within the Serbian Government, the Serbian side has not yet taken up the invitation to sign”. He hopes “it will do so shortly.”

1.21 Turning to “the questions posed in your conclusions”, the Minister then says that

“the Political Agreement does not in our view circumvent or replace the SAA. Signature and ratification of the SAA will still be required by Serbia to proceed further down the EU accession process. The invitation annexed to the GAERC conclusions reiterates that *‘The Stabilisation and Association process remains the right vehicle to take forward [the EU/Serbia] relationship.’*”

2 See http://www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/en/gena/98460.pdf, pages 17–19.

1.22 He then says that he shares our concern that the key issue of ICTY conditionality should not be jettisoned or overlooked and notes that, “as the discussion on 28 January demonstrates, there is currently no consensus within the EU that the necessary conditions have been met for SAA signature”. He continues as follows:

“The Government’s position is that the political process must move forward in a way that upholds ICTY conditionality and ensures this remains embedded in the accession process.

“Although the issue did not arise at the most recent GAERC, the Government would be ready — in the interest of sending a clear signal of EU commitment to Serbia’s European future — to contemplate signature of an SAA if there were clear agreement that ICTY conditionality were to remain clearly embedded in the accession process and to apply at the next relevant stage.

“The Serbian Government has recently improved its co-operation with the ICTY. That co-operation has included the establishment of a National Security Council; better access to documents requested by the Prosecutor’s office; 1 million Euro reward announced for information leading to the capture of Ratko Mladic; and arrests of General Tolimir and Vlastimir Doroevic in 2007. But we believe that further improvements in co-operation are still needed. Key indictees — notably Mladic and Karadzic — remain in hiding, whilst increased political commitment and improved co-ordination by the Serbian security services are still required in order to locate them.”

1.23 Finally, the Minister declares that the Agreement “is not an agreement to which the Scrutiny Reserve Resolution applies”, but says that, given the Committee’s interest therein, he “thought it might be useful” to provide us with an Explanatory Memorandum.

The Minister’s Explanatory Memorandum

1.24 The Minister describes the agreement as “a political framework for making progress on political dialogue, free trade, visa liberalisation and education co-operation”. He says that the invitation reiterates Serbia’s crucial role in the Western Balkans, both for ensuring stability and as a motor for the economic development and prosperity of the region, makes clear that the European Union “wishes to deepen its relationship with Serbia, based on diverse ties including cultural, historical and economic” and “offers intensified political co-operation with Serbia, with a view to accelerating its progress towards the EU, including candidate status”.

1.25 He attaches the latest draft of that agreement, which is reproduced at Annex 1 of this chapter of our Report.

The Government’s view

1.26 The Minister reiterates the position taken in his letter, that the Agreement “in no way circumvents or replaces the Stabilisation and Agreement Association”, and that “signature and ratification of the SAA is still required by Serbia to proceed any further down the EU accession process”.

1.27 He continues as follows:

“Our strategic goal for the Western Balkans region is to move it towards EU and NATO membership. We see this as the long-term answer to the instability that dogged the Balkans in the 1990s, and the best way to embed democracy and development in the region. Serbia is central to this strategy. It is the largest state in the Western Balkans and has the capacity to drive the integration process of the region. Most importantly, significant Serb minority communities in three neighbouring countries mean that Serbia’s political health is crucial to regional stability. For all these reasons, it is strongly in our interests that Serbia stays on the EU path.”

1.28 He then covers a number of aspects that have either been overtaken by events (first tirit) or have been made in earlier correspondence, viz:

- the Interim Political Agreement could be signed as soon as 7th February 2008;
- while recognising that the SAA process remains the right vehicle to take forward the EU’s relationship with Serbia, the Government fully endorses the invitation as well as the Political Agreement itself;
- the Agreement is primarily political in nature, seeking to highlight the areas in which the EU will work to deepen its relations with Serbia;
- a Task Force will also be set up to formulate recommendations on how to achieve rapid progress in the areas set out in the Agreement; and
- the Government believes the Agreement is an important signal of the EU’s commitment to Serbia and that we want to see Serbia continue to make progress towards the EU.

1.29 Finally, he states that “the Interim Political Agreement reiterates that the European Union and Serbia will sign a Stabilisation and Association Agreement as soon as the necessary steps have been finalised”.

Conclusion

1.30 Presumably, “by” in the Minister’s remarks at 1.26 above should have been “for”. Be that as it may, this and his other remarks raise more questions than they answer.

1.31 We had previously noted that the signature — and consequential benefits — of the SAA had hitherto been dependent on the Serbian authorities providing full cooperation to the International Criminal Tribunal for (former) Yugoslavia (ICTY).

1.32 We also asked the Minister to explain what “the necessary steps” were that would have to be “finalised” before the SAA could be signed, and whether they still included the ICTY certifying that full cooperation had been established with the Serbian authorities. We still await an answer.

1.33 Instead, the Minister cites limited steps taken by the Serbian authorities which he regards as improved cooperation with ICTY, but fails to say whether the ICTY itself

regards them in the same light. Rather than saying whether signature of the SAA will continue to depend upon “full cooperation” with the ICTY, he now muddies the waters by saying that he “would be ready — in the interest of sending a clear signal of EU commitment to Serbia’s European future — to contemplate signature of an SAA if there were clear agreement that ICTY conditionality were to remain clearly embedded in the accession process and to apply at the next relevant stage”.

1.34 We do not know what “clear agreement that ICTY conditionality” remaining “clearly embedded in the accession process”, and this being applied “at the next relevant stage”, means. We were under the impression that “the next relevant stage” was signature of the SAA, and that this was in turn dependent upon “full cooperation” by Serbia with the ICTY. Instead, what is now on offer is an agreement that offers the benefits of an SAA without what has hitherto been a crucial pre-condition being met, and which seems to make a mockery of the Council’s own conclusion that “*the Stabilisation and Association process remains the right vehicle to take forward [the EU-Serbia] relationship*” (c.f 1.21 above).

1.35 On 5 December last, we considered four Council Decisions, for revised European Partnerships for Albania, Bosnia and Herzegovina and Serbia, including Kosovo, and (reflecting her Candidate Status) an Accession Partnership for Macedonia, along with the annual Progress Reports on each of them that review the progress against the EU’s conditions for membership — the Copenhagen Criteria — and the priorities set out in each country’s European Partnership, and which report on each country’s political and economic situation, democracy and rule of law, border controls, human rights, environment and social policies. We noted that, overall, the picture in these documents was sobering, with many of the same problems that continue to dog Bulgaria and Romania in the areas of judicial reform, corruption and organised crime undercutting and hampering what little progress has been made; that, hanging over everything, is the continuing inability of the different ethnic groups to resolve their differences and work together, both within a more-or-less established polity (such as Macedonia) or, more worryingly, and despite all the EU and wider international community’s best endeavours, within the uncertain polities of Bosnia and Herzegovina and Kosovo; and that EU membership must remain a distant prospect. Though clearing the documents relating to the Partnership process (which needs to continue, and the revised Agreements were plainly well-drawn), we felt that the House should be given an opportunity to debate the situation in the Balkans and the EU’s role therein, and accordingly recommended these unhappy Progress Reports for debate in the European Committee.³

1.36 We feel the same sense of concern now — with the Council seemingly undermining one of the much vaunted “Three Cs”⁴ that it embraced after the most recent accession, viz., Conditionality, while seeking unconvincingly to maintain that it is upholding it — and therefore recommend that, since they too revolve around the accession process in the Western Balkans, these Council Decisions and the Interim

3 See headnote.

4 Consolidation, Conditionality and Communication. See Enlargement Commissioner Rehn’s interview thereon at http://ec.europa.eu/commission_barroso/rehn/pdf/interviews/bridge_3rd_2006_en.pdf.

Political Agreement also be debated along with these earlier documents in European Committee B.⁵

Annex: Interim Political Agreement on Co-operation between the European Union and its Member States and the Republic of Serbia

“THE EUROPEAN UNION and its MEMBER STATES of the one part, and the REPUBLIC OF SERBIA, of the other part,

RECOGNISING that Serbia has a crucial role to play in the Western Balkans, both for ensuring stability and for the economic development and prosperity of the region,

WISHING to deepen the relationship between the European Union and Serbia, which draws on a rich and diverse range of cultural, historic and economic links and ties between their peoples,

RECOGNISING that the Serbian people are part of the European family and that a deepening relationship between the European Union and Serbia, leading to membership, will bring concrete benefits to the people of Serbia,

REAFFIRMING that the Stabilisation and Association process remains the right vehicle to develop this relationship,

CONVINCED of the benefits that a Stabilisation and Association Agreement will bring to both the European Union and Serbia and of the positive effects this will have for the Western Balkans region as well,

REITERATING their commitment to sign a Stabilisation and Association Agreement as soon as the necessary steps have been finalised,

HAVE AGREED as follows:

- 1) The European Union and Serbia will intensify their political co-operation with a view to accelerating Serbia’s progress towards the EU, including candidate status.
- 2) The European Union and Serbia will deepen their relationship *inter alia* through stimulating economic progress, as well as commercial relations by developing a free trade area.
- 3) The European Union will continue to foster contacts between its peoples and the people of Serbia, in particular contacts between students. In view of the importance of facilitating travel for Serbians in the European Union, the European Commission will start a dialogue with Serbia on visa liberalisation.

⁵ Although we also subsequently recommended that this debate should await a further Commission Communication on the Western Balkans, we agree that, in the light of subsequent developments in the region, the debate should now take place.

4) The European Union will take rapid steps towards increasing the number of Serbian students who study in the Union, both through the ERASMUS Mundus programme and bilateral initiatives. In this context the European Union will urgently examine ways of increasing the funding available.

In view of the above, the European Union is committed to:

- Supporting the efforts of Serbia to strengthen democracy and the rule of law;
- Contributing to political, economic and institutional stability in Serbia;
- Providing a framework for political dialogue between the European Union and Serbia, thereby allowing for the development of close political relations;
- Supporting the efforts of Serbia to develop its economic and international co-operation, *inter alia* through helping Serbia prepare its laws for eventual membership of the European Union, including integration into the EU's single market;
- Supporting Serbia's efforts to complete its transition into a functioning market economy;
- Developing a free trade area between the European Community and Serbia;
- Fostering regional co-operation.

With a view to achieving the above-mentioned objectives, the European Union will establish a Task Force to examine ways of achieving rapid progress. The work of the Task Force will start immediately with a view to formulating recommendations to Serbia and the Council of the European Union as quickly as possible.

Signed in Brussels, 7 February 2008”

2 Diplomatic and consular protection of Union citizens in third countries

(29353) 5947/08 + ADDs 1–2 COM(07) 767	Commission Communication: <i>Effective consular protection in third countries: The contribution of the European Union Action Plan 2007–2009</i>
	Commission Staff Working Documents: Impact Assessment and Summary of Impact Assessment

<i>Legal base</i>	—
<i>Document originated</i>	5 December 2007
<i>Deposited in Parliament</i>	17 January 2008
<i>Department</i>	Foreign and Commonwealth Office
<i>Basis of consideration</i>	EM of 5 February 2008
<i>Previous Committee Report</i>	None; but see (28304) 6192/07: HC 41–xvi (2006–07), chapter 2 (28 March 2007) and HC 41–x (2006–07), chapter 5 (21 February 2007)
<i>To be discussed in Council</i>	To be determined
<i>Committee’s assessment</i>	Legally and politically important
<i>Committee’s decision</i>	Not cleared; further information requested

Background

2.1 Article 20 TEC provides that “every citizen of the Union shall, in the territory of a third country in which the Member State of which he is a national is not represented, be entitled to protection by the diplomatic and consular authorities of any Member State, on the same conditions as the nationals of that State. Member States shall establish the necessary rules among themselves and start the international negotiations required to secure this protection.” The same right is also embodied in Article 46 of the Charter of Fundamental Rights of the European Union.

2.2 During the past 2–3 years, the Commission has begun to address what it sees as a need to improve the consular support given to EU citizens in third countries, particularly in crisis situations. Having previously made some informal suggestions, and supported those made by others,⁶ its 2007 Green Paper 6192/07 was its most formal contribution to date in this area.

⁶ e.g., Commission Communication COM (2006) 331 of 28 June 2006 and the report by Michel Barnier to the President of the Council of the European Union and President of the European Commission “For a European civil protection force: Europe aid.”

The Green Paper

2.3 The Green Paper recalled that Decision 95/553/EC⁷ makes provision for action by the Member States in cases such as, for example, arrest and detention, accident or serious illness, acts of violence, death and repatriation and for advances of money for citizens in difficulty. The Green Paper also noted the creation within the Council of a working party on consular cooperation (COCON) to organise exchanges of information on national best practices and draw up guidelines on the consular protection of EU citizens in third countries. The Commission nonetheless argued further measures would fulfil more effectively the rights enshrined in Article 20 TEC and Article 46 of the EU Charter of Fundamental Rights and put forward a number of proposals covering the full range of consular services:

- improving the information available to EU citizens on consular matters, both on their rights, and on seeking advice and assistance;
- improving the links with third countries to ensure that all EU citizens have access to consular assistance, including seeking agreement from third countries for Commission delegations to exercise a duty of protection in appropriate cases;
- broadening the entitlement to consular assistance, to include non-EU family members of EU citizens;
- establishing EU procedures to identify and repatriate remains of EU citizens who die abroad;
- simplifying procedures for providing financial advances to citizens of other EU Member States;
- establishing common consular offices, to provide assistance to all EU citizens in third countries; and
- the Commission becoming involved in organising joint consular training for officials.

2.4 When we first considered it on 21 February 2007, the then Minister for Europe at the Foreign and Commonwealth Office (Mr Geoffrey Hoon) described the paper's contention that these articles mean that every EU citizen had a right to consular assistance as "problematic". He said that the Government, in common with the majority of other EU Member States, provided consular assistance as a matter of policy, rather than of obligation, and the exercise of that policy was discretionary. He acknowledged that Article 20 EC placed an obligation on Member States to exercise their consular assistance policies in a non-discriminatory way as among EU citizens, but said that this was not the same as creating a right to consular assistance. He also noted that, under existing international law, consular relations were between States, which meant that the active role the Green Paper

7 Decision of the representatives of the Governments meeting within the Council of 19 December 1995 regarding protection for citizens of the European Union by diplomatic and consular representations OJ No. L 314, 28.12.95, p.73.

envisaged for the EU institutions in the delivery of consular assistance to EU citizens was likely to involve legal difficulties.

2.5 He instead preferred building on existing national capacities and continuing to improve coordination between Member States, rather than creating new systems which might complicate or duplicate effort. He noted that the Commission has no expertise in providing consular assistance, and was therefore concerned at the idea of the Commission becoming involved in consular service delivery (e.g. the provision of training for consular staff). He was also carefully examining the resource implications, to ensure they did not duplicate existing structures and/or create an unsustainable financial burden. He concluded by noting that a public consultation, to which the Government would respond, was due to end with a public meeting on 31 March 2007, after which, he said, the timetable was unclear.

2.6 For our part, we noted that:

- consular services are the responsibility of Member States;
- the provision of consular services is the area in which diplomatic missions interface with members of the public most often and most critically, with matters of great sensitivity often at issue, in the most challenging circumstances and when the individuals concerned are at their most distressed and vulnerable;
- consular services are, unsurprisingly and quite rightly, at the top of Ministers and officials' agenda, at home and abroad;
- a good level of cooperation between Member States already existed, and work was underway to improve it further, whereas it was difficult, if not impossible, to envisage circumstances in which missions staffed by officials responsible to the Commission could begin to provide a service of the same standard, with the level of immediate accountability that ensured that it remains thus; and
- while there might be scope for practical support in specific circumstances, we hoped that the Government would resist the expansionist elements in these proposals with vigour and determination.

2.7 We also noted that in its own report on the Green Paper, our counterpart committee in the French Sénat had noted that the Commission had not demonstrated that the aim of its initiative would be better achieved by action at EU or Community level rather than by pragmatic cooperation between the Member States, and considered that the Member States were best placed to advise their citizens of those third countries where they may be at risk and that the EU would bring no real “added value” if it assumed responsibility for informing citizens on this question. We respectfully shared these doubts and supported those observations.

2.8 We looked forward to seeing the Government’s response to the consultation process, and asked to know in what way UK views would be expressed at the open meeting; and in the meantime retained the Green Paper under scrutiny.⁸

The then Minister’s letter of 21 March 2007

2.9 The Minister enclosed a copy of the Government’s response to the Green Paper, which we annexed to our more recent Report,⁹ which in turn contains a detailed summary of his letter. In essence, he reiterated the points made in his February Explanatory Memorandum: consular services are the responsibility of Member States (with services being as of right in some Member States and being a matter of policy in others); the Commission has no locus under the treaty — in particular, while Article 20 EC places an obligation on Member States to exercise their consular assistance policies in a non-discriminatory way as among EU citizens, this is not the same as creating a right to consular assistance — and is also handicapped by the inter-state basis of the relevant international conventions on consular assistance; the way forward was continuing to work on what was already effective cooperation between Member States, which view was, he said, shared by many other Member States.

2.10 On the question of subsidiarity, while agreeing that too few Member States’ nationals might be aware of the implications of Article 20 EC, and that efforts by the Commission and Council to improve public awareness and improve coordination amongst Member States were unlikely to raise issues of subsidiarity, he continued to be concerned by the notions “related to the provision of consular assistance by EU institutions, and particularly the Commission”, and to “believe consular assistance is most effectively provided by Member States themselves”.

2.11 Notwithstanding these concerns, however, he saw many of the Commission’s proposals as a welcome contribution to consideration of more effective and efficient ways to deliver consular assistance, including closer cooperation with other Member States. Others, however, were, he felt, unclear and the benefits not apparent, perhaps as a result of the Commission’s lack of direct experience of consular work; the Green Paper was also unclear on how some of the proposals would be achieved and often failed to take sufficient account of the practical, and legal, realities of consular operations.

2.12 We concluded that, while it would have been helpful to have had a clearer insight into which of the Commission’s proposals the Minister saw as a welcome contribution and which ones he saw as unclear and lacking evident benefits, his fundamental position was nonetheless clear, and corresponded to our own. We also felt that it would be helpful to know if it corresponded to that of the House as a whole, which we regarded as an equally important contribution to the public debate that the Green Paper was aimed at stimulating, and accordingly recommended the Green Paper be debated in the European Standing Committee.¹⁰

2.13 That debate took place on 15 May 2007, at the conclusion of which it was resolved:

⁸ See headnote.

⁹ See headnote: (28304) 6192/07: HC 41–xvi (2006–07), chapter 2 (28 March 2007).

¹⁰ Ditto.

“That the Committee takes note of European Union Document No. 6192/07 and the UK response to the European Commission’s Green Paper on *Diplomatic and consular protection of Union citizens in third countries* submitted to the Commission on 26th March 2007; joins the Government in welcoming the Commission’s contribution to the ongoing debate on how to improve the efficiency and effectiveness of the consular assistance provided by Member States to one another’s nationals; but notes the legal, political and practical difficulties to many of the proposals; and agrees with the Government’s approach as laid out in its written response to the Commission.”¹¹

The Commission Communication

2.14 The “European Union Action Plan 2007–2009” is accompanied by an Impact Assessment and a summary thereof. The Commission says that protection by diplomatic and consular authorities of Union citizens in third countries is one of its 2007 strategic policy objectives. It describes its Action Plan as “a non-exhaustive roadmap for measures that the Commission intends to propose in 2007–2009”. The public consultation launched by its Green Paper, the Commission asserts, “revealed a significant interest in this matter”. A public hearing held on 29 May 2007 is summarised thus:

“Civil society, other European institutions and individual respondents argued for more impetus to be given to Article 20 TEC as a tangible expression of Union citizenship. Several Member States called for caution and recalled that they have primary responsibility for ensuring protection to their nationals.”

2.15 The Commission notes that Member States already apply high standards of protection and cooperation between themselves but says that “more can be done to facilitate the application of Article 20 TEC and ensure the best possible protection of Union citizens in third countries”. All measures taken in this field, at national and/or Community level should, it says, be fully consistent with this objective; the aim of this Action Plan is “to assist Member States to fulfil their obligations in this field, in order to assist citizens in need of help” and “to propose actions aiming to give substance to Article 20 TEC and to address present and foreseeable shortcomings in this area”.

2.16 The Commission examines the extent of Member State representation globally, estimating that 0.53% of EU citizens need consular assistance while travelling outside the EU — some 425,000 cases per year, of which 37,000 concern individuals in countries in which their Member State is not represented. It says that the “relatively low number of requests for consular assistance might be due to the limited knowledge by citizens of Article 20 TEC”. It acknowledges that Member States have already put in place some coordination mechanisms in this field, as demonstrated during the tsunami in 2004 and the 2006 Lebanon crisis, via the “Lead State” framework of consular cooperation.¹² It sees this as “a positive step towards more effective burden-sharing in crises situations”, but says

¹¹ *Stg Co Deb*, European Standing Committee, 15 May 2007, cols 3–16.

¹² The “Lead State” framework is designed to strengthen consular cooperation and improve protection for EU nationals in times of crisis in third countries where few Member States are represented: one or more Member States are designated as a “Lead State” in the third country to ensure the protection of unrepresented Union citizens on behalf of the other Member States; in case of evacuation, the “Lead State” is responsible for the evacuation of all Union citizens to a safe place.

that “there is still room for improved cooperation, coordination and burden-sharing”. It argues that “calls for improved consular protection will almost certainly increase in the future as Union citizens become more aware of their rights under Article 20 TEC and as a result of the increase in international travel. Natural disasters, terrorist attacks and political instability are other reasons for concern.”

2.17 It concludes that:

“The entry into force of the Reform Treaty will provide a clear legal basis for EU law in this area. The modified wording of Article 20 TEC enables the Council to adopt directives ‘establishing the coordination and cooperation measures necessary to facilitate such protection’.”

2.18 The Commission nonetheless acknowledges that:

“the effective strengthening of the right to protection by diplomatic and consular authorities enshrined in Article 20 TEC is a complex challenge which cannot be achieved by one single initiative, but requires a comprehensive package of measures based on a long-term strategy. It is indeed the case that Member States have primary responsibilities in this area. The Commission wishes to help them discharge those responsibilities. A progressive and gradual approach is therefore necessary.

“The legal and technical complexity of certain measures requires in-depth analysis and preparation in close cooperation with Member States.”

2.19 The Impact Assessment says that the public consultation identified the following shortcomings:

- Poor awareness of EU citizens about their right to diplomatic and consular protection in third countries;
- Unclear scope of protection under Article 20 EC;
- Limited representation of Member States in third countries and lack of clear burden-sharing between Member States;
- Lack of consent of third countries to secure protection under Article 20 EC;

and identifies four policy options:

- “Option 1: A status quo policy option involving no new actions;
- “Option 2: An option including mainly non-legislative actions focusing on awareness-raising of Article 20 EC;
- “Option 3: An option comprising the actions listed in option 2 plus eleven additional non-legislative and legislative actions which seek to address the four identified problems; and
- “Option 4: A very ambitious option measures including all actions listed in options 2 and 3 with additional actions which are legally and technically complex and need more examination and likely to be long term in nature.”

2.20 The specific proposals in the Action Plan are based on Option 3,¹³ and relate to:

- greater efforts to inform the public of their rights under Article 20 TEC, including by printing the article in passports, and the establishment of a Commission website on consular protection;
- efforts to harmonise and simplify Member States’ consular practices, including in the areas of protection to family members who are third country nationals, procedures for the repatriation of remains, and procedures for financial advances;
- establishment of common EU consular offices in third countries;
- exchange of best practice and training; and
- obtaining the consent of third countries for the provision of consular assistance by EU Missions to the nationals of non-represented Member States.

The Government’s view

2.21 The Minister for Europe at the Foreign and Commonwealth Office (Mr Jim Murphy) begins his comments with commendable clarity:

“We welcome co-operation with the Commission where it is appropriate, but we believe it is important to respect the correct division both of formal responsibility and of practical expertise. British citizens abroad should continue to expect high quality consular assistance and services when they require them from British Embassies, Consulates and High Commissions across the world.”

2.22 He continues in the same vein, as follows:

“Member States have long held the unanimous view that the provision of consular assistance to their citizens is primarily a matter for national authorities. Some of the proposals in this Action Plan, as with the original Green Paper, involve a greater role for the Commission and Council Secretariat that sit uneasily with this position.”

2.23 He again says that, from a legal perspective, there are difficulties with the approach taken in the Action Plan, which he enumerates as follows:

“First, the Commission argue that these articles establish or confirm a legal right to consular assistance. We do not accept this interpretation. Under the domestic law of some Member States, such as Sweden and Finland, nationals do have a right. But in many others, including the UK, France, Germany, the Netherlands, Bulgaria and the Czech Republic, consular assistance is provided as a matter of policy. Article 20 TEC merely provides for the provision of consular assistance to unrepresented Member States’ nationals on the same terms as it is provided to their own. Nor does it require setting minimum or equal standards for consular assistance amongst Member States.

13 Which is reproduced at the Annex to this chapter of our Report.

“Secondly, a number of specific proposals contained in the action plan could be seen as extending the Commission’s remit into areas of Member States’ competence. In particular the possibility in future of the Union ‘exercising its protection through the Commission delegations’; and there are other references — for example that ‘the Commission will propose to set up a common office in co-operation with Member States’ to initiatives where the lead would more properly be taken by Member States themselves.”

2.24 In summary, he notes that the proposals in the Action Plan essentially cover the same areas as those in the 2006 Green Paper, to which the Government responded in detail:

“While some of these may be useful in improving co-operation and co-ordination, others, as outlined above, raise legal difficulties, while some imply changes to our own practices that would be impracticable or unacceptable.”

2.25 Turning to the financial implications of the proposals in the Action Plan, the Minister says that they could be significant:

“It is not clear at this stage whether costs involved would be met from EU budgets or Member States’ budgets. Until proposals are fully developed and a decision is made on what suggestions to take forward, it is impossible to say what the cost may be.”

2.26 He nonetheless continues to agree with his predecessor that there is scope to improve consular cooperation at EU level and Member States’ consular assistance further still, through joint work and coordination, and says that he will continue to work to these ends, through the EU’s Consular Working Group, COCON. He says that it will be for the Slovenian EU Presidency to suggest how to progress this Action Plan, and that their likely next step will be a discussion in COCON in early February; “at that discussion it will be for Member States to indicate how they would like to take forward the content of the Commission Communication”.

Conclusions

2.27 We look forward to hearing a full account from the Minister about the outcome of this meeting and his views thereon. Depending upon what proposals are then still in play, we should like to know which ones the Minister supports, and why, and which ones he will continue to oppose, and to be given some indication of which Member States share his position and which do not.

2.28 For our part, we hope that Member States will insist that the Commission should think again. The case that the Commission makes for its greater involvement is specious. It talks of civil society (not defined or quantified), other European institutions (ditto) and individual respondents (ditto) having “argued for more impetus to be given to Article 20 EC as a tangible expression of Union citizenship” (whatever that might mean), and appears to see that as sufficient to override the fact that “several Member States called for caution and recalled that they have primary responsibility for ensuring protection to their nationals.” It implies that the fulfilment by Member States of their obligations in this field would somehow be insufficient, and somehow fall short of “giving substance” to Article 20 TEC. It seems to base the whole

of its approach on 37,000 requests for consular assistance by individuals in countries in which their Member State is not represented — seemingly taking no account of the existing mechanisms for help to such individuals by other Member State missions in the countries concerned. It is no doubt true that “there is still room for improved cooperation, coordination and burden-sharing”, but that is, presumably, why the COCON group was established. Beyond sensible measures to raise awareness and improve access to information, we see no basis for the implication that development of the “Lead Country” mechanism will not suffice. We would prefer that, rather than continue to make unclear and uncosted proposals of dubious legal and practical validity, the Commission should return in due course with a revised Action Plan that respects Member States’ decades-long experience of providing effective consular services and their responsibilities in both Community and international law, and which instead puts forward appropriately modest and properly-costed proposals that are both consistent with its proper role and demonstrate added value.

2.29 When the Minister responds to us, we should also be grateful for his view on the Commission’s assertion that the entry into force of the Reform Treaty “will provide a clear legal basis for EU law in this area”, and that the modified wording of Article 20 EC enables the Council to adopt Directives “establishing the coordination and cooperation measures necessary to facilitate such protection”.

2.30 We should also like to know if the Minister shares the Commission’s view that the existing practice, of notification under Article 8 of the Vienna Convention on Consular Relations, is inadequate, and that Member States should negotiate a “consent clause” with third countries. Also, is the Minister content with the notion of the Commission seeking third country authorisation for its delegations to exercise protection “in matters of Community competence”? And could he explain what such matters might be?

2.31 In the meantime, we shall retain the document under scrutiny, and expect that no Conclusions, or other action based upon this Action Plan, will be agreed without further reference to us.

Annex: Commission's preferred option

<p>Policy Option 2</p>	<p>Legislative action: INFORMATION:</p> <p>(1) A recommendation to Member States to print Article 20 EC in new passports and to affix a sticker on the outside rear cover of existing passports</p> <p>Non-legislative action:</p> <p>(2) Publish guidelines and other measures connected with the implementation of Article 20</p> <p>(3) Set up an EU web-site on "Europa" on consular protection</p> <p>(4) Put posters explaining the rights of EU citizens to consular protection in airports, ports, railway stations etc.</p> <p>(5) Assess the extent and nature of discrepancies in Member States' legislations and practices in the field of consular protection</p> <p>(6) Publish updated contact details of embassies and consulates of the Member States represented in each third country</p> <p>(7) Explore the possibility of a coordinated presentation of travel advice</p> <p>(8) Explore the need for sharing best practices and provide training for key actors</p>
<p>Policy Option 3</p>	<p>All measures mentioned under Policy option 2 plus:</p> <p>Legislative action: SCOPE:</p> <p>(9) Examine the possibility of ensuring that citizens receive a similar level of protection irrespective of their nationality</p> <p>(10) Ensuring consular protection for the identification and repatriation of remains</p> <p>(11) Simplify the procedures for repatriating remains</p> <p>(12) Examine the possibility of ensuring protection to EU citizens' family members who are not EU nationals</p> <p>(13) Explore the need to simplify procedures for financial advances required under Decision 95/553</p> <p>Non-legislative action: INFORMATION:</p> <p>(14) Examine the possibility of setting up an EU telephone number on consular protection</p> <p>SCOPE:</p> <p>(15) Recommend to Member States, which have not yet ratified the 1973 Council of Europe Convention on transfer of corpses, to accede to it</p> <p>STRUCTURES:</p> <p>(16) Examine the possibility of setting up a compensation system between Member States</p> <p>(17) Set up a "common office" in one area as a pilot project to be evaluated.</p> <p>(18) Publish arrangements on burden-sharing between Member States in third countries (guidelines, the idea of "lead State" etc).</p>

	<p>CONSENT:</p> <p>(19) Propose to insert a “consent clause” in “mixed” agreements concluded with third countries and recommend Member States to insert “consent clauses” in their bilateral agreements concluded with third countries</p> <p>(20) Consider the possibility of obtaining the consent of third countries to allow the Union to exercise protection through the Commission delegations in cases falling under Community competence</p>
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3 Agreement to “general approaches” on documents still under scrutiny

(a) (28990) 13534/07 —	Draft Council Decision on the improvement of cooperation between the special intervention units of the Member States in crisis situations
(b) (28237) 5055/07 COM(06) 817	Draft Council Decision establishing the European Police Office
+ ADD 1	Commission staff working document: impact assessment
+ ADD 2	Commission staff working document: summary of impact assessment
(c) (29165) 10327/07 —	Draft Council Decision establishing the European Police Office — Finalisation of Chapter I
(d) (29166) 14593/07 —	Draft Council Decision establishing the European Police Office — Finalisation of Chapters II and III
(e) (29167) 15336/07 —	Draft Decision establishing the European Police Office — Revised drafts of Chapters VI, VII and IX

<i>Legal base</i>	(a) Articles 30, 32 and 34(2)(c) EU; consultation; unanimity (b) to (e) Articles 30(1)(b), 30(2) and 34(2)(c) EU; consultation; unanimity
<i>Department</i>	Home Office
<i>Basis of consideration</i>	(a) Minister’s letter of 13 November 2007 and oral evidence of 12 December 2007 (b) to (e) Minister’s letter of 18 December 2007 and oral evidence of 16 January 2008
<i>Previous Committee Report</i>	(a) HC 16–ii (2007–08), chapter 7 (14 November 2007) (b) to (e) HC 16–v (2007–08), chapter 5 (5 December 2007)
<i>To be discussed in Council</i>	(a) No date set (b) February
<i>Committee’s assessment</i>	(All) Politically important
<i>Committee’s decision</i>	(a) to (e) Not cleared; further information requested

“General approach”

3.1 “General approach” is the term for an agreement by the Council of Ministers to the draft of a piece of EU legislation before it is submitted to the European Parliament for its opinion. The Government argues that a general approach is not covered by the Resolution of the House of 17 November 1998 (the Scrutiny Reserve Resolution) because it relates to an agreement to a proposal which has not completed all its legislative stages. The Resolution is silent about general approaches, whereas it expressly names “political agreements” and “common positions” as agreements in which the Government should not take part if the document concerned is still under scrutiny. But the Cabinet Office Guidance to Departments says:

“Working with the [Parliamentary] Committees to complete scrutiny before a general approach is ... the best way to ensure that the spirit of the Scrutiny Reserve Resolution is not breached”.

Moreover, in our Report of 25 April 2007, in another case where a Home Office Minister had taken part in a general approach on a document still under scrutiny, we said that:

“In the light of the experience of this case, we now make it clear that we reject any general proposition that agreement to a ‘general approach’ does not amount to agreement for the purpose of the Resolution of the House on the Scrutiny of European Business, or that the reaching of a ‘general approach’ is not subject to that Resolution. In a European Union of 27, it seems to us to be quite unreal to suggest that the

reaching of a ‘general approach’, after all the bargaining of national positions there will have been, does not, in fact, amount to substantive agreement.”¹⁴

Document (a) — Draft Decision on cooperation between the special intervention units of the Member States

3.2 The draft Decision sets out rules which would apply if a Member State wished to ask one or more others for the assistance of their “special intervention” units in a “crisis situation”. “Special intervention unit” means any law enforcement unit which is specialised in the control of crisis situations. “Crisis situations” means any situation where a Member State reasonably believes that there is a criminal offence presenting a serious direct threat to persons, goods, infrastructure or institutions. A State which was asked for assistance would be under no obligation to agree to the request. If it did agree, it would be reimbursed in full by the requesting State for the cost of the assistance (equipment, expertise or action by officers of the requested State in the territory of the requesting State).

3.3 The Parliamentary Under-Secretary of State at the Home Office (Meg Hillier) told us in her Explanatory Memorandum of 8 November 2007 that UK law would need to be amended before the UK could request assistance under the proposed Decision. At present, the Government has no plans for such legislation and does not contemplate requesting assistance. But the Government supports the proposal because of its benefits for Member States with limited capacity to deal with a crisis.

3.4 On 14 November 2007, we considered the draft Decision and the Explanatory Memorandum on it. This was our first opportunity to scrutinise the document. By then, however, the Minister had agreed to a general approach on it at the Council meeting on 8 November.

3.5 In our Report of 14 November, we expressed regret that the Minister had agreed to the general approach while the draft Decision was under scrutiny. Moreover, it appeared unnecessary for the Minister to have done so for two reasons. First, there had been ample time to provide the Explanatory Memorandum before the Council meeting (the draft Decision was issued on 12 October and deposited in Parliament on 17 October, but the Explanatory Memorandum was not signed until 8 November). Second, we had been given no reason why the general approach could not have been postponed. We considered it important to pursue these matters with the Minister and so we invited her to give oral evidence.

3.6 When she appeared before us on 12 December, we asked the Minister why she waited until 8 November to send us her Explanatory Memorandum, the day of the Council meeting. The Minister apologised and said:

“We should have sent something [earlier] and I will be looking to make sure that we do that in future. ... I think we need to establish a better relationship with the Committee. I have spoken to Tony McNulty ... and we both agree that we need to

improve our relationships and our approach and working with the Committee and I hope that after today we can establish a better working relationship ...”¹⁵

3.7 In response to further questioning, the Minister told us that the Government had “allowed the general approach to go forward” at the Council meeting on 8 November because it did not want to hold up a measure that would be of benefit to some of the smaller and newer Member States and in which the UK had no interest. She stressed that she had made clear to the Council that the draft Decision was still under scrutiny in the UK Parliament. She also told us that a general approach is not a binding agreement and she cited two occasions when a Member State has re-opened discussion of an issue after a general approach had been agreed.¹⁶

3.8 We asked the Minister to tell us the Government’s view of the meaning of the term “general approach”. She answered:

“I am very hopeful that the Cabinet Office will clarify this so that we have a clearer view across government because I think it is open to interpretation in the current Cabinet Office guidelines, as your own report on this issue correctly highlighted”.¹⁷

Documents (b) to (e) — draft Decision to establish EUROPOL as an EU body

3.9 EUROPOL (the European Police Office) was set up by the EUROPOL Convention 1995 to provide criminal intelligence to Member States’ law enforcement agencies to help them prevent and detect serious cross-border organised crime. At present, EUROPOL’s remit can be amended only by a Protocol to the Convention. But the Protocols do not come into effect until they have been ratified by all Member States. This causes long delays. In December 2006, the Commission proposed that the Convention should be replaced by this draft Council Decision (document (b)).

3.10 In February, April and May 2007, we reported our concerns about the draft Decision and kept it under scrutiny.¹⁸ The Minister of State at the Home Office (Mr Tony McNulty) did not respond to our Report of 9 May until 7 November. His response prompted us to ask if he had agreed to some general approaches on the draft Decision. In his reply of 26 November, the Minister said that:

- the UK had taken part in a general approach on Chapter I of the draft Decision (document (c)) on 12 June and on Chapters II and III (document (d)) on 8 November:
- the Portuguese Presidency would ask the JHA Council on 6 December to agree to a general approach on Chapters VI, VII and IX (document (e)); and that

15 Qq 2 & 3.

16 Qq 11, 12 & 21.

17 Q17.

18 (28237) 5055/07: HC 41–ix (2006–07), chapter 6 (7 February 2007); HC 41–xvii (2006–07), chapter 5 (18 April 2007); and HC 41–xxi (2006–07), chapter 4 (9 May 2007).

- despite the general approaches, the UK would be able to re-open the discussion if it wished.

3.11 On 28 November, the Minister provided an Explanatory Memorandum on documents (c), (d) and (e). We reported on the revised text of the Chapters on 5 December. Our main conclusions were as follows.

- On 4 June the Council Secretariat issued a revised draft of Chapter I and invited the JHA Council to reach a general approach on it. The Council did so on 12 June. The Minister took part in that agreement even though he:
 - knew our reservations about the draft Decision;
 - had not deposited a copy of the revised draft;
 - had not responded to our Report of 9 May;
 - had not explained why the Government had decided to take part in the general approach; and
 - was well aware of the Committee’s view that agreement to a general approach amounts to an agreement for the purposes of the Scrutiny Reserve Resolution.

In our opinion, therefore, the Government had breached at least the spirit of the Scrutiny Reserve Resolution by taking part in the general approach on Chapter I of the draft Decision.

- Moreover, the Government had repeated the breach at the JHA Council on 8 November when it had agreed to a general approach on the revised drafts of Chapters II and III. The Minister did not tell us until 7 November that the Portuguese Presidency intended to submit Chapters II and III for “conclusion” at the Council the next day. Even then, the Minister did not provide the revised texts. There was, therefore, no opportunity for us to scrutinise Chapters II and III before the Government agreed to the general approach on them.

In the light of these points, we invited the Minister to give us oral evidence and, meanwhile, we kept document (b) to (e) under scrutiny

3.12 In his letter of 18 December, the Minister told us that:

- The Government had agreed to a general approach on Chapters VI, VII and IX at the Council on 6 December; the Portuguese Presidency had made clear that any outstanding issues could be discussed at a later stage.
- The Government had maintained its Parliamentary scrutiny reserve on the whole of the draft Decision (in common with most other Member States) and had reserved the right to re-open discussion of the text.
- Commenting on the delay in depositing the revised texts of Chapters I, II and III, the Minister told us that depositing them in one go on 22 November 2007 was a

well-intentioned effort to assist the Committee, and he was sorry if it had caused any difficulty or misunderstanding.

3.13 When he gave oral evidence to us on 16 January 2008, the Minister referred to the Cabinet Office’s review of its guidance on general approaches. He said that:

“I do hope that the Cabinet Office review will get us to a place where ... to all intents and purposes general approach is treated in exactly the same fashion for scrutiny purposes as any other level of agreement.”¹⁹

3.14 The Minister also gave us progress reports on the negotiations about the provisions in the draft Decision on:

- the criminal offences within EUROPOL’s competence;
- the funding of EUROPOL;
- the proposal to apply the Community Staff Regulations to EUROPOL; and
- the proposal to confer on the Director and staff of EUROPOL the privileges and immunities of the European Community.

3.15 He told us that, in the Government’s view, the list of offences in the Europol Convention is more appropriate than the list in the European Arrest Warrant.²⁰ He also told us that most Member States, including the UK, were willing to go along with the Commission’s proposal for EUROPOL to be funded from the EU budget, rather than by direct contributions from each Member State, if the cost would be no greater.²¹ However, it was not clear whether the change to EU funding could be achieved without also applying the EC Staff Regulations to EUROPOL and conferring on its staff the privileges and immunities of the European Community. Applying the Staff Regulations might increase costs and cause difficulties for recruitment and secondment; and there seemed no operational or compelling reasons to apply the privileges and immunities. The interactions between these three issues are being looked at in the working group of officials and would be considered by the Council before the end of February.²²

Conclusion

3.16 We accept the apology of the Parliamentary Under-Secretary of State at the Home Office (Meg Hillier) for the delay in sending us her EM on document (a). We warmly welcome her wish, which is shared by the Minister of State (Mr Tony McNulty), to improve the Home Office’s working relationship with us. We shall gladly do our part to help them improve the scrutiny of EU documents on Home Office subjects. We are grateful to both Ministers for their frankness and openness when they met us.

19 Q5.

20 Q11.

21 Qq 13 & 14.

22 Qq 18–23.

3.17 We remain firmly of the view that the Government should not agree to a general approach while the document to which it relates remains under scrutiny in the House. We hope that the Cabinet Office review will come to that conclusion and that the Scrutiny Reserve Resolution will be amended accordingly. We also hope that the review will be completed and the conclusions announced shortly.

3.18 We agree with the Minister that the key issues which remain to be settled on the EUROPOL Decision concern the list of offences, funding, the application of the EC Staff Regulations and the applicability of the immunities and privileges of the EC to an EU body. We share his broad approach to those issues. We ask the Minister to send us progress reports on the negotiations. Meanwhile, we shall keep documents (b) to (e) under scrutiny. We have also decided to keep document (a) under scrutiny pending the European Parliament's first reading of the draft Decision.

4 Protection of the environment through criminal law

(28370) 6297/07 + ADDs 1–2 COM (07) 51	Draft Directive on the protection of the environment through criminal law
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<i>Legal base</i>	Article 175(1) EC; codecision; QMV
<i>Department</i>	Ministry of Justice
<i>Basis of consideration</i>	Minister's letter of 29 January 2008
<i>Previous Committee Report</i>	HC 41–xiv (2006–07), chapter 4 (14 March 2007) and see (27117) 15444/1/05: HC 34–xvi (2005–06), chapter 4 (25 January 2006)
<i>To be discussed in Council</i>	No date set
<i>Committee's assessment</i>	Legally and politically important
<i>Committee's decision</i>	Not cleared; further information requested

Background

4.1 On a number of occasions, the Commission has sought to include, in proposals made under the EC Treaty, provisions requiring the creation of criminal offences or criminal penalties, but these have been removed in the course of discussions within the Council.²³ In cases where the Council considered it necessary to provide for criminal penalties, a Framework Decision has been adopted in support of the measures adopted under the EC Treaty.

²³ See, for example, Directive 2004/48/EC on the enforcement of intellectual property rights, OJ No. L 195, 2.6.04, p.16.

4.2 In the case of environmental offences, the Commission proposed a Directive in 2001 on the protection of the environment through the criminal law. The proposal was not agreed by the Council, which instead adopted Framework Decision 2003/80/JHA.²⁴ In its judgment of 15 September 2005 in Case No C176/03 *Commission v. Council* the ECJ annulled the Framework Decision on the grounds that its adoption infringed Article 47 EU²⁵ by encroaching on the powers conferred on the Community by Article 175 EC.

4.3 We considered the draft Directive on 14 March 2007, noting that it was intended to replace the Council Framework Decision which had been annulled by the ECJ in Case C176/03 *Commission v. Council* and provided for various types of conduct relating to the environment to be made a criminal offence when committed intentionally or “with at least serious negligence”. We also noted that the scope of the Directive did not appear to be limited to the enforcement of Community law, but extended to national law concerned with the protection of the environment. We considered that the proposal greatly exceeded the scope of Community competence, and that of the ‘offences’ referred to, only one — relating to the illegal shipment of waste under Regulation (EC) 1013/2006 — was clearly and exclusively linked to an environmental measure adopted at EC level.

4.4 We also commented that the proposal was far too vague to serve as a basis for criminal law measures, since it used a number of terms such as the “quality of ... animals and plants”, “dangerous activity” and “unlawful significant deterioration” the meaning of which was far from clear and that, as the proposal was in the form of a Directive, Member States would have little flexibility in making sense of those terms in their own legal systems.

4.5 We therefore supported the Minister in seeking to limit the scope of the proposal to that which is clearly within Community competence and asked him for an account in due course of further negotiations to this end on this proposal.

The Minister’s reply

4.6 In her letter of 27 November 2007 the Parliamentary Under-Secretary of State at the Ministry of Justice (Bridget Prentice) explained that, following the judgment of the ECJ in Case No C440/05 *Commission and Parliament v. Council* (ship source pollution), the proposal was undergoing substantial revision, notably by restricting its scope so that it would apply only in respect of infringements of Community law and the corresponding national implementing measures. The Minister also explained that the obligations in respect of penalties would not prescribe the level of penalty but would require only that Member States meet such infringements with effective, proportionate and dissuasive criminal sanctions.

4.7 In her letter of 29 January 2008 the Minister explains that a report from the European Parliament was expected on the Commission’s original proposal and informs us of the changes which are proposed in the current Presidency working text.

24 OJ No. L 29, 5.2.03, p.55.

25 Article 47 EU provides “Subject to the provisions amending the Treaty establishing the European Economic Community with a view to establishing the European Community, the Treaty establishing the European Coal and Steel Community and the Treaty establishing the European Atomic Energy Community, and to these final provisions, nothing in this Treaty shall affect the Treaties establishing the European Communities or the subsequent Treaties and Acts modifying or supplementing them.”

4.8 The Minister reports that the definition of “unlawful” in Article 2 (which defines the scope of the Directive) has been amended so as to apply only to Community legislation, or a national law, administrative regulation or decision that gives effect to relevant Community legislation, and that for this purpose an annex listing the relevant Community legislation has been added. The Minister adds that Article 2 has also been amended to include a new definition of “protected wild fauna and flora species” which would restrict the scope of the offences under Article 3 to those species which are the most endangered.

4.9 The Minister refers us to a new definition of “protected habitat” which has been included for the purpose of the offences referred to in Article 3. The Minister explains that the Government does not support this, because it considers first that a provision creating an offence relating to habitats is outside the scope of Community competence as described in the ECJ judgment in Case C440/05, since there is no clear prohibition prescribed in the relevant Community law. The Minister also comments, secondly, that the offence-creating provision does not provide the precision which is required to ensure compatibility with the European Convention on Human Rights and, thirdly, that “the obligation is far too broad from a policy perspective”. In this regard, the Minister explains that the effective protection of habitats across the EU “can and does involve a variety of measures depending on the specific issues relating to any one kind of habitat” and these measures range from “contractual obligations and conditions attached to grants and subsidies to more robust enforcement including administrative and criminal sanctions”.

4.10 The Minister reports on a number of detailed changes to Article 3 (which prescribes the conduct which is to amount to an offence). In all cases, the conduct must now be unlawful. The provision on protected flora and fauna has been divided into provisions dealing, respectively, with the possession, taking, destruction and killing of protected fauna and flora and provisions dealing with unlawful trade in fauna and flora. Article 4 has also been amended to provide that inciting, and aiding and abetting the acts referred to in Article 3 are also to be made criminal.

4.11 The Minister further explains that, in accordance with the ECJ judgement on Case C-440/05, all those parts of Article 5 which sought to prescribe the nature and severity of penalties have been deleted, so that the provision now requires only that Member States ensure that the offences referred to in Articles 3 and 4 are punishable by effective, proportionate and dissuasive criminal penalties. Similarly, the provisions (in Article 7) prescribing levels of fines for legal persons held liable under Article 6 has been amended so that the provision now requires only that such financial penalties are effective, proportionate and dissuasive.

Conclusion

4.12 **We thank the Minister for this information on the negotiation of the Directive. It is apparent that a number of improvements have been made following the judgment of the ECJ in the ship source pollution case (Case C-440/95).**

4.13 **We look forward to sight of a revised text in due course so that the significance of these improvements can be assessed. In the meantime, we shall hold the present document under scrutiny.**

5 Recognition and enforcement of judgments given *in absentia*

(29358) 5213/08 + COR1 —	Draft Council Framework Decision on the enforcement of judgments <i>in absentia</i>
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<i>Legal base</i>	Articles 31(a) and 34(2)(b) EU; consultation; unanimity
<i>Document originated</i>	14 January 2008
<i>Deposited in Parliament</i>	17 January 2008
<i>Department</i>	Office for Criminal Justice Reform
<i>Basis of consideration</i>	EM of 30 January 2008
<i>Previous Committee Report</i>	None; but see (22876) 13425/01: HC 152–viii (2001–02), chapter 1 (28 November 2001); HC 152–xvii (2001–02) (30 January 2002); (24754) 11447/03: HC 63–xxxiv (2002–03), chapter 8 (22 October 2003); HC 42–ix (2003–04), chapter 37 (4 February 2004); (24921) 13052/03: HC-63–xxxvii (2002–03), chapter 8 (12 November 2003); HC 42–xxi (2003–04), chapter 6 (26 May 2004); HC 42–xxvi (2003–04), chapter 7 (7 July 2004)
<i>To be discussed in Council</i>	No date set
<i>Committee’s assessment</i>	Legally and politically important
<i>Committee’s decision</i>	Not cleared; further information requested

Background

5.1 A number of Framework Decisions adopted since 2002 have provided for the recognition and enforcement of a range of judicial decisions in criminal matters. In essence, these Framework Decisions provide that a decision given in one Member State, if it complies with various conditions, should be recognised and enforced in another Member State in the same way and on the same basis as a judicial decision reached in that state.

5.2 The Framework Decisions in question (Framework Decision 2002/584/JHA of 13 June 2002 on the European Arrest Warrant,²⁶ Framework Decision 2005/214/JHA of 24 February 2005 on the application of the principle of mutual recognition to financial penalties,²⁷ and Framework Decision 2006/783/JHA of 6 October 2006 on the application of the principle of mutual recognition to confiscation orders)²⁸ are based on the principle

26 OJ No. L 190 of 18.7.02, p.1.

27 OJ No. L 76 of 22.3.05, p.16.

28 OJ No. L 328 of 24.11.06, p.59.

of mutual recognition which, in turn, implies a degree of trust and confidence between the judicial systems of the Member States.

5.3 Central to such trust and confidence is the assurance that a person who is the subject of the decision has been treated fairly and, in particular, that the requirements of Article 6 ECHR on the fairness of trials, have been met in that person's case. In this context, both we and our predecessors have drawn attention to the inadequacy of these Framework Decisions in cases where a person has been tried or otherwise dealt with in his absence.

5.4 In relation to the European Arrest Warrant, we and our predecessors were concerned that the EAW did not unequivocally entitle a Member State to insist on a right to retrial as a condition of extradition of any person who had been tried in his absence. Instead, Article 5(1) only permitted the extraditing State to seek "an assurance deemed adequate to guarantee" that the person would have "an opportunity to apply for a retrial". We noted that the UK had been criticised by the Commission for providing (in section 20 of the Extradition Act 2003) that a person in these circumstances must be discharged if the court is not satisfied that he would have a right to a retrial.

5.5 In relation to the proposal which became Framework Decision 2005/214/JHA on the recognition of financial penalties our predecessors drew attention to the inadequate protection for persons who had had a penalty imposed against them in their absence, and found this particularly serious in an instrument which dealt with proceedings which would be regarded as criminal for the purposes of the right to a fair trial under Article 6 ECHR. The previous Committee noted that the certificate which would be presented for enforcement in another Member State required only that a box be ticked confirming that the person had been informed "personally or via a representative competent according to national law" of the proceedings against him or that he had indicated that he did not contest the case. The previous Committee considered that such a "tick-box" certificate was inadequate and that it should require a judicial officer in the issuing State, not merely to tick a box, but to make a positive statement setting out the grounds for his belief that the minimum rights of the defendant under Article 6(3) ECHR had been respected. The Committee considered that this was needed to minimise the risk of the courts acting in breach of Article 6 ECHR by enforcing an order which had been made in breach of the defendant's rights under Article 6 ECHR.

5.6 The certificate provided for in Framework Decision 2006/783/JHA is of a similar "tick-box" nature requiring only an indication that the person has been informed personally or via a representative competent according to national law of the proceedings against him or that he has indicated that he does not contest the case.

The draft Framework Decision

5.7 The draft Framework Decision is proposed by Slovenia, France, Czech Republic, Sweden, Slovakia, Germany and the United Kingdom. It takes the form of amendments to the European Arrest Warrant (Framework Decision 2002/584/JHA), Framework Decision 2005/214/JHA on the application of the principle of mutual recognition to financial penalties, Framework Decision 2006/783/JHA on the application of the principle of mutual recognition to confiscation orders and the draft Framework Decision on the application of

the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty.

5.8 The recitals to the proposal note that the various Framework Decisions on the principle of mutual recognition “do not deal consistently with the issue of judgments rendered *in absentia*” and the solutions provided by them “are not satisfactory as regards cases where the person could not be informed of the proceedings”.

5.9 The proposal amends the EAW by inserting a new Article 1(4) defining a “decision rendered *in absentia*” as a “custodial sentence or a detention order, when the person did not personally appear in the proceedings resulting in this decision”. A new Article 4a is inserted conferring a right on the executing State not to execute any European Arrest Warrant if the judgment is given *in absentia* unless the EAW states (i) that the person was summoned in person or informed by a competent representative and in due time of the date and place of the hearing and of the fact that a decision may be given if the person does not appear, (ii) that after being served with the judgment and “expressly informed about the right to a retrial and to be present at that trial” the person expressly stated that he does not contest the *in absentia* decision and did not request a retrial, or (iii) if not personally served with the judgment that he will be served with it at the latest 5 days after his extradition and will be informed about the right to a retrial and will have an [unspecified] number of days in which to request a retrial.

5.10 The relevant part of the certificate (section (d)) will be replaced by a new section which, in the case of judgments given *in absentia*, will require a confirmation that the person was summoned in person or informed via a competent representative and in due time of the place and date of the hearing. In a departure from the present form of certificate, the new section will require the time and place when and where the person was summoned or informed to be specified on the form and a description given of how the person was informed. As an alternative, in the case where a person does not contest the decision, the certificate will require a statement as to when and how the person expressly stated this fact. The further alternatives cover the case where a person has been informed of a right to a retrial but has not made a request within the prescribed period, or where a person will be informed about the right to a retrial. In these cases, the certificate does not require any further statement by the issuing authority.

5.11 Framework Decision 2005/214/JHA (on the mutual recognition of financial penalties) will be similarly amended by the insertion of a new definition of a decision rendered *in absentia* as a decision rendered when the person did not personally appear. The provisions of Article 7 (grounds for non-recognition) are amended by the insertion of a new indent (g) which permits non-recognition where the certificate shows that the person was not informed personally (or via a competent representative) of his right to contest the case and of the time limits for such remedy. A new indent (i) provides for recognition to be refused where the decision was given *in absentia* unless the certificate states that the person was summoned personally or informed via a competent representative and in due time of the date and place of the hearing, or states that the person has expressly stated that he does not contest the case, or after being served with the judgment and informed of his right to a retrial either expressly states that he does not contest the judgment or that he has not requested a retrial with at least an [unspecified] number of days.

5.12 Section 3 of the certificate, dealing with *in absentia* decisions, will be amended to require a confirmation that the person was summoned in person or informed via a competent representative and in due time of the place and date of the hearing. In a departure from the present form of certificate, the new section will require the time and place when and where the person was summoned or informed to be specified on the form and a description given of how the person was informed. In the alternative case where a person does not contest the decision, the certificate will require a statement as to when and how the person expressly stated this fact. Further alternatives cover the case where a person has been informed of a right to a retrial but has not made a request within the prescribed period, or where a person will be informed about the right to a retrial. In these cases, the certificate does not require any further statement by the issuing authority.

5.13 The like amendments are proposed for Framework Decision 2006/783/JHA on confiscation orders and for the draft Framework Decision on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty.

The Government's view

5.14 In her Explanatory Memorandum of 30 January 2008 the Attorney General (Baroness Scotland of Asthal) states that the aim of the proposal is to improve cooperation and safeguard rights in cross-border cases where judgments are given in the absence of the defendant and that it does so by clarifying and making more consistent the grounds for refusing recognition under the Framework Decisions in question.

5.15 The Attorney General notes that the measure is “positively helpful” in that it makes the EAW more consistent with UK law, in particular section 20 of the Extradition Act 2003 as regards the right to a retrial. In respect of the question of fundamental rights, the Attorney General notes that proceedings in the absence of the accused are not in principle incompatible with the ECHR if the hearing is attended by minimum safeguards. However, the Attorney General also notes that unless the person concerned “has clearly waived his right to be present by deliberately absenting himself, the person concerned must be subsequently able to obtain from the court a fresh determination of the merits of the charge, in respect of both law and fact”. The Attorney General further explains that the proposal is designed to be compatible with the case law of the European Court of Human Rights and that it will “better enable Member States executing requests for co-operation that individuals’ rights are respected”.

5.16 On the policy implications of the proposal, the Attorney General explains that, although the reform is modest, it meets an urgent practical need and notes that in cases concerning the functioning of the EAW “practitioners are concerned that some requests might not provide the necessary guarantees for citizens sentenced abroad”.

5.17 On the detail of the proposal the Attorney General explains that the existing Framework Decisions do not have a consistent means of identifying what constitutes a decision *in absentia* and that further discussion is expected on the proposed definition. As far as the amendments to the EAW are concerned, the Attorney General explains that they will entitle a Member State to refuse extradition, where there has been a conviction *in absentia*, unless a number of conditions are met and that:

“in essence these conditions are that either (a) the person was summoned in person or via a representative with specified information having been given in due time as to the date and place of the hearing that led to the sentence and the possibility of a trial *in absentia*, or (b) that the person was served with the decision and afforded a right to a retrial of which he did not avail himself, or (c) will be served with the decision on surrender and will have a right to a retrial.”

5.18 The Attorney General adds that the form of certificate is amended to reflect these changes, that “the existing EAW form does not clearly require adequate information to be provided and the revisions are intended to avoid the need for executing authorities to raise queries” and that similar amendments will be made to the forms of certificate relevant to the other Framework Decisions. The Attorney General also provides a description of the amendments proposed to the three other Framework Decisions in issue.

Conclusion

5.19 **Given the consistent criticism by us and our predecessors of the adequacy of the safeguards under these Framework Decisions, we can only welcome these steps in the direction of better compliance with the requirements of Article 6 ECHR. In particular, we welcome the admission by the Attorney General that the existing form of certificate for the European Arrest Warrant “does not clearly require adequate information to be provided”.**

5.20 **In this regard, we repeat the point made by our predecessors that the certificates in all cases where there has been a conviction *in absentia* should contain a statement by a person holding judicial office setting out the grounds for that person’s belief that the requirements of Article 6(3) ECHR have been met in the case in question. Although the forms of certificate now proposed are clearly an improvement, we consider that this further improvement would give more secure grounds for mutual trust and confidence. We invite the Attorney General to consider this point.**

5.21 **We also raise a number of points of detail. First, in relation to the European Arrest Warrant, the new Article 4a and the certificate do not appear consistent as to when personal service is required of the judgment. In our view, personal service should be required in all cases, and we invite the Attorney General’s comments. Secondly, we ask the Attorney General why no provision is made for factual descriptions of how and when a person was informed of his rights in the circumstances of paragraphs 2.3 and b.3 of the certificates (rights to retrial and requests for retrial) and why the period within which a request for retrial may be made has been left blank.**

5.22 **We note that the Office for Criminal Justice Reform will be undertaking public consultation on the proposal and we shall be grateful to be informed of the results of that exercise. We also ask the Attorney General to explain the extent to which the Devolved Administrations in Scotland and Northern Ireland have been involved in the sponsorship of this proposal by the UK.**

5.23 **We shall hold the document under scrutiny pending the Attorney General’s reply.**

6 Comitology

(29426)	Draft Commission Decision concerning a concerning a transitional
—	period for audit activities of certain third country auditors and audit
—	entities

<i>Legal base</i>	Article 46 of Directive 2006/43/EC on statutory audits of annual and consolidated accounts
<i>Department</i>	Business, Enterprise and Regulatory Reform
<i>Basis of consideration</i>	EM of 15 February 2008
<i>Previous Committee Report</i>	None
<i>To be discussed in Council</i>	Not applicable
<i>Committee’s assessment</i>	Politically important
<i>Committee’s decision</i>	Cleared

Background

6.1 Council Decision 2006/512/EC created a new comitology procedure called “regulatory procedure with scrutiny”. The new procedure provides for an enhanced role for the European Parliament in the comitology process and may be used for measures of general scope which seek to amend non-essential elements of the basic instrument where this has been adopted under co-decision.

6.2 Directive 2006/43/EC provides that all comitology measures affecting the regulatory framework governing statutory audits be adopted under the new regulatory procedure with scrutiny. From 29 June 2008, Directive 2006/43/EC extends regulation to auditors from non-EEA countries. Auditors from these countries will be permitted to continue to audit non-EEA entities that are admitted to trading on EEA-regulated markets only if they are regulated by the Member States’ audit regulator. Alternatively, they may also continue if they are subject to standards of regulation in their home country that are determined to be equivalent to EEA standards.

The document

6.3 Directive 2006/43/EC also permits auditors from countries without equivalent regimes to audit non-EEA entities traded on EEA markets for a transitional period, which is the subject of this Commission Decision. The draft Commission Decision proposes to allow a transitional period for auditors from a number of third countries. The proposed transitional period extends to financial periods beginning on or before 1 January 2011.

6.4 The proposed Decision is relevant to companies and other entities incorporated outside the EEA with securities issued on EEA “regulated markets” whose accounts are audited by an auditor from a country outside the EEA (a “third country auditor”). In the UK, markets which are regulated markets for the purposes of the Directive, include the London Stock Exchange’s main market, but not “exchange-regulated” markets such as the Alternative Investment Market or the Professional Securities Market.

6.5 Without a decision by the Commission under the Article 46 comitology procedures, third-country auditors reports will no longer be accepted for the purposes of regulated market requirements, for financial periods beginning on or after 29 June 2008, unless Member States concerned subject the third-country auditor directly to their own systems of oversight, investigations and penalties. The only exception will be in cases where the Member State is determined of the basis of its own enquiries and analyses that the system of regulation of the third-country auditors home state is equivalent to its own.

The Government's view

6.6 In his Explanatory Memorandum of 15 February 2008, the Parliamentary Under-Secretary of State for Trade and Consumer Affairs at the Department for Business, Enterprise and Regulatory Reform (Gareth Thomas) writes as follows:

“The proposed decision is intended to establish transitional arrangements to avoid undue disruption in the implementation of the Directive to the users of EU capital markets, as provided for in Article 46 of the Directive. The Government supports this objective. The proposed decision would therefore enable audit reports prepared by auditors from the specified third countries to continue to be accepted for the purposes of regulated market requirements, in relation to financial periods beginning on or before 1 January 2011. These transitional arrangements would provide for a period for adaptation by market participants and regulators, and enable the European Commission in co-operation with Member States' competent authorities to continue to assess whether third countries' regulatory regimes are equivalent to the framework of audit regulation in the EU.

“Under the terms of the proposed decision Member States' competent authorities would be able to impose sanctions on individual auditors from the third countries covered by the decision, where necessary, during the transitional period. The proposed decision also includes new disclosure requirements on third country auditors to improve the information available to investors and the regulatory authorities.”

Conclusion

6.7 We thank the Minister for his summary and comments on the proposed extension of the current transitional period governing the regulatory regime for third-country auditors. We share the Government's view on the practical benefits of this adjustment measure. Accordingly, we are content to clear the document from scrutiny.

7 Balancing fishing capacity and opportunities in 2006

(29311) 5050/08 + ADDs 1–2 COM(07) 828	Commission Report on Member States' efforts during 2006 to achieve a sustainable balance between fishing capacity and fishing opportunities
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<i>Legal base</i>	—
<i>Document originated</i>	19 December 2007
<i>Deposited in Parliament</i>	9 January 2008
<i>Department</i>	Environment, Food and Rural Affairs
<i>Basis of consideration</i>	EM of 4 February 2008
<i>Previous Committee Report</i>	None
<i>To be discussed in Council</i>	No date set
<i>Committee's assessment</i>	Politically important
<i>Committee's decision</i>	Cleared

Background

7.1 Council Regulations (EC) No 2371/2002²⁹ and 1438/2003³⁰ require Member States to submit to the Commission each year a report on their efforts in the preceding year to achieve a sustainable balance between fleet capacity and available fishing opportunities. These in turn are then used by the Commission (together with data from the Community fishing fleet register) to produce a summary report, which is presented to the Scientific, Technical and Economic Committee for Fisheries (STECF) and to the European Parliament's Committee for Fisheries and Aquaculture. The current document comprises a summary of Member States' reports for 2006, together with a technical annex and the opinions of these two Committees.

The current document

7.2 The Commission notes that only 12 Member States submitted their reports on time; that seven reports were between two weeks and two months late; and that the UK report was not received until 31 October 2007, and hence was too late for inclusion. It also says that, although many Member States followed the outline for the report laid down in Regulation 1438/2003, the quality of the information provided was not always adequate: for example, the majority of Member States did not describe their fleets in relation to the fisheries involved, and concentrated instead on their management systems and trends in capacity in relation to the effort reduction schemes in place. The Commission notes that all the parties involved, including the Member States, agree that the reports should be improved, and it says that it has convened an *ad hoc* working group within the STECF to define more detailed guidelines.

29 OJ No. L 358, 31.12.02, p.59.

30 OJ No. L 204, 13.8.03, p.21.

7.3 In the meantime, the Commission says that during 2006, the capacity of the Community fishing fleet continued its “slow but steady” reduction at an annual rate of between 2% and 3%, which has generally been the trend of the last 15 years, with almost every Member State being within its maximum fleet capacity by the end of 2006. However, it comments that this reduction appears too modest when compared with the big reductions in effort required for some major fish stocks, the steady improvements in catching technology, and the poor economic performance of large parts of the fleet. It also suggests that the impact of fishing effort measures on capacity reduction has generally been low, and that the approach adopted during reform of the Common Fisheries Policy (CFP) — to use effort management as the main driving force for fleet adjustment — has not yet yielded the expected results. It adds that future proposals to address these various issues are being considered, but it also suggests that Member States should provide better incentives for capacity adjustment, for example, by taking advantage of the opportunities provided by the operational programmes for the period 2007–13 under the European Fisheries Fund.

The Government’s view

7.4 In his Explanatory Memorandum of 4 February 2008, the Minister for Marine, Landscape and Rural Affairs at the Department for Environment, Food and Rural Affairs (Mr Jonathan Shaw) says that, whilst the Government believes that the provision of timely data is essential to the sound management of fish stocks in Community waters and accepts the factual basis of the data provided, the Commission’s conclusion that Member States have not achieved the necessary balance is somewhat simplistic, because it looks at the position in the round, and does not reflect the variety of results. He also observes that, although the UK has delivered a more than 60% reduction in its white fish trawling fleet, the late submission of its data has diluted the impact (though he adds that the information in question has been discussed in detail with Commission staff).

7.5 The Minister then discusses the reasons for the UK missing the appropriate deadlines. He says that these are various, but are indicative of the problems associated with the requirement for Member States to provide increasing amounts of data, and, in this case, a lack of guidance on exactly what information they are required to provide. He adds that these problems have been raised with the Commission, and will need to be addressed if more effective management of the CFP is to be achieved for the future.

7.6 As regards the information provided by the UK, the Minister notes that this amounted to a document of some 75 pages of text and associated technical tables, as compared with the limit of 10 pages imposed by the Commission’s guidelines. That said, he points out that the return demonstrates that the UK fishing fleet operated in 2006 within the tonnage and engine power capacity ceilings set under Council Regulation 2371/2002, with reductions in capacity of 11% in tonnage terms and 8% in engine power in the period from 1 January 2003 to 1 January 2007. In addition, it also demonstrated that the operation of the various effort control regimes by the UK fisheries administrations has resulted in a considerable reduction in fishing effort by the UK fleet.

Conclusion

7.7 In recent years, these reports by the Commission have merely confirmed that Member States were on course to meet their fleet reduction targets, and did not give rise to any significant issues. We have therefore tended to clear them without producing a substantive Report to the House.

7.8 On this occasion, however, the current document does give rise to three issues on which we feel we should comment. First, although Member States continue to be within their maximum fleet capacity, the Commission believes that the rate at which capacity is declining within the Community is too modest compared with the reduction in effort needed in some areas. Secondly, it is evident that the information being provided by Member States under these two Directives is not always adequate, and that changes are needed in the guidelines laid down by the Commission. Thirdly, alone among the Member States required to provide information, the UK failed to do so in time for its return to be included in the Commission's report for 2006 — something which is all the more regrettable, since it clearly undermines the stance which the Government has taken in pressing other Member States to do everything possible to implement and enforce the Common Fisheries Policy.

7.9 We note that steps are in hand to try and improve the guidance available to Member States, and we hope that this will lead to a general improvement in the quality of their returns, and help to avoid a repetition of the problems which the UK encountered in 2006. That said, we do not think these points require further consideration by the House, and we are therefore clearing the document.

8 Welfare standards for laying hens

(29365) 5310/08 + ADD 1 COM(07) 865	Commission Communication on the various systems for rearing laying hens, in particular those covered by Directive 1999/74/EC
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<i>Legal base</i>	—
<i>Document originated</i>	8 January 2008
<i>Deposited in Parliament</i>	18 January 2008
<i>Department</i>	Environment, Food and Rural Affairs
<i>Basis of consideration</i>	EM of 31 January 2008
<i>Previous Committee Report</i>	None, but see (18999) 6985/98: HC 155–xxviii (1997–98), chapter 3 (13 May 1998), HC 34–vi (1998–99), chapter 2 (20 January 1999) and HC 34–xii (1998–99), chapter 1 (10 March 1999)
<i>To be discussed in Council</i>	No date set
<i>Committee’s assessment</i>	Politically important
<i>Committee’s decision</i>	Cleared

Background

8.1 Council Directive 1999/74/EC³¹ lays down minimum welfare standards for laying hens. In addition to a number of general conditions relating to the need to ensure that birds are provided with adequate light, and kept in clean and secure conditions, the measure contains more detailed provisions relating to three types of production — “unenriched” cages, “enriched” cages, and alternatives systems (such as barn and free range production) — covering such aspects as the provision of adequate space for feeding, the supply of drinking water, the provision of adequate perching and nest space, and (in the case of the two cage systems) the minimum cage size. The Directive also provides that no “unenriched” cages may be built or brought into service after 1 January 2003, and that their use should be prohibited after 1 January 2012.

The current document

8.2 The Directive required the Commission to produce by 1 January 2005 a report on the various systems for rearing laying hens, accompanied by appropriate proposals taking into account the conclusions of the report. Despite this, the Commission has in fact only just produced this report, some three years after the timetable set down in the Directive. Much of what it has to say is not new, but it does:

- recognise the welfare benefits of enriched cages;

31 OJ No. L 203, 3.8.99, p.53.

- recommend that there is no need to prepare a proposal to amend Directive 1999/74/EC; and
- recommend that the 2012 deadline for ending conventional cages should be maintained.

The Government's view

8.3 In his Explanatory Memorandum of 31 January 2008, the Minister for Sustainable Food and Farming and Animal Welfare at the Department for Environment, Food and Rural Affairs (Lord Rooker) says that the report appears to be uncontroversial in simply supporting existing standards, and that the Government has welcomed it and expressed publicly its commitment to the 2012 deadline. However, he adds that the Commission's long delay in issuing the report leaves a shortened time-frame for producers to convert from conventional cage systems — a point which he says has attracted strong criticism from the British Egg Industry Council. He also notes that the report fails to deal with industry concern over the standards applicable to third country imports of powder and liquid egg for processing, or with other minor discrepancies identified in the Directive.

Conclusion

8.4 Since the report essentially concludes that the measures set out in Directive 1999/74/EC should be maintained, it does not give rise to any major new issues. Having said that, we think that, in view of the wider public interest in the welfare of laying hens, it would be right to draw its conclusions to the attention of the House, and to highlight the difficulties which the industry says has been created by the long delay in its preparation.

9 Social protection and inclusion

(29412) 5999/08 COM(08) 42	Commission Communication: Draft Joint Report on social protection and social inclusion 2008
+ ADD 1	Commission Staff Working Paper: supporting information

<i>Legal base</i>	—
<i>Document originated</i>	30 January 2008
<i>Deposited in Parliament</i>	5 February 2008
<i>Department</i>	Work and Pensions
<i>Basis of consideration</i>	EM of 7 February 2008
<i>Previous Committee Report</i>	None
<i>To be discussed in Council</i>	29 February 2008
<i>Committee's assessment</i>	Politically important
<i>Committee's decision</i>	Cleared

Background

9.1 In March 2000, the European Council approved a strategy (“the Lisbon strategy”) for the EC to become by 2010 the world’s most competitive and dynamic knowledge-based economy, capable of sustained economic growth and with more and better jobs and greater social cohesion. It said that policies to counter social exclusion should be based on an open method of coordination (OMC).³² In 2005, the European Council re-launched the Lisbon strategy with a sharper focus on economic growth and jobs. It concluded that “The objectives of full employment, job quality, labour productivity and social cohesion must be reflected in clear and measurable priorities.”³³

9.2 Since 2005, the Council of Ministers and the Commission have made an annual joint report to the Spring meeting of the European Council on social protection and social inclusion. Our predecessors concluded that the draft of the Joint Report for 2005 appeared to contain nothing new and questioned its value.³⁴ We reached the same view of the comparable documents for 2006 and 2007.³⁵

32 The open method of coordination is intended to help Member States to develop their own policies by agreeing European guidelines and timetables for short, medium and long-term goals, with quantitative and qualitative indicators and benchmarks; translating these European guidelines into national and regional policies; and periodic monitoring, evaluation and peer review.

33 European Council 22–23 March 2005, Presidency Conclusions, paragraph 31.

34 (26331) 5826/05: see HC 38–ix (2004–05), chapter 13 (23 February 2005).

35 (27318) 6800/06: see HC 34–xxii (2005–06), chapter 11 (15 March 2006); and (28293) 5553/07: see HC 41–viii (2006–07), chapter 7 (30 January 2007).

The draft of the Joint Report for 2008

9.3 The document is the Commission’s draft of the report from itself and the Council of Ministers to the European Council. It summarises recent studies by the Social Protection Committee³⁶ (SPC) under the following headings:

- efforts to reduce child poverty;
- promoting longer working-lives;
- securing privately-funded pension provision;
- reducing inequalities in health outcomes;
- long-term care; and
- future developments of the open method of coordination.

9.4 The draft joint report contains suggested “key messages”. They include the following::

- reforms of social protection and policies for social inclusion have contributed to higher economic growth and more jobs;
- but more needs to be done to prevent poverty and, in particular, child poverty;
- employment rates have risen for all categories of older workers, notably because of labour market reforms (such as the discouragement of early retirement) and the modernisation of pension systems;
- health is an important determinant of people’s life chances — further action is required to promote good health and reduce inequalities in access to health care;
- because of demographic change, the need for long-term social care is rising — providing accessible and high quality care for older people presents a major challenge for Member States; and
- the open method of coordination (OMC) usefully facilitates the exchange of information and good practice — in 2007, Member States reached agreement on ways to improve the OMC for social protection between 2008–11.

The Government’s view

9.5 The Parliamentary Under-Secretary of State at the Department for Work and Pensions (Mr James Plaskitt) tells us that the draft joint report “represents a sound synopsis of, and sign-post to, detailed study of some important issues by member states in the SPC. The Report’s messages are unsurprising, but nevertheless identify issues worthy of further attention to support sharing of information and good practice”. He also tells us that

³⁶ Article 144 of the EC Treaty requires the Council to establish the Social Protection Committee to promote cooperation on social policy between Member States and with the Commission. It is comprised of two representatives of each Member State and of the Commission. It monitors the social situation, promotes the exchange of information and good practice and prepares reports and gives opinions at the request of the Council or Commission.

Member States have contributed to and agreed the draft; and that the document has no direct policy, legislative or financial implications for the UK.

Conclusion

9.6 We draw the draft joint report to the attention of the House because of the importance of the issues to which it refers. But, as the Minister says, the messages suggested in the document are unsurprising and there are no questions about it that we need put to him. We are content, therefore, to clear the document from scrutiny.

10 Draft Budget 2008

(28965)	Draft General Budget of the European Communities for the financial
—	year 2008
—	

<i>Legal base</i>	Article 272 EC; QMV; the special role of the European Parliament in relation to adoption of the Budget is set out in Article 272
<i>Department</i>	HM Treasury
<i>Basis of consideration</i>	Minister's letter of 31 January 2008
<i>Previous Committee Report</i>	HC 41–xxxvii (2006–07), chapter 11 (17 October 2007), HC 16–v (2007–08), chapter 16 (5 December 2007) and HC 16–vii (2007–08), chapter 17 (9 January 2008)
<i>To be discussed in Council</i>	13 July 2007 and 23 November 2007
<i>Committee's assessment</i>	Politically important
<i>Committee's decision</i>	Cleared (decision reported on 17 October 2007)

Background

10.1 The Commission's Preliminary Draft Budget (PDB) is the first stage in the Community's annual budgetary procedure. We reported on the 2008 PDB in June 2006³⁷ and it was debated in European Standing Committee on 9 July 2007.³⁸ The second stage is the adoption by the Council of the Draft Budget (DB). The 2008 DB was adopted on 13 July 2007 and we reported on it in October 2007. The 2008 PDB and the 2008 DB were then considered by the European Parliament in October 2007. The DB was considered again by the Council in November 2007, after conciliation negotiations between the Council and the European Parliament. We reported on these stages in December 2007 and

37 (28681): see HC 41–xxv (2006–07), chapter 2 (13 June 2007).

38 *Stg Co Deb*, European Standing Committee, 9 July 2007, cols 3–24.

January 2008³⁹ The final stage of setting the 2008 Budget was to be adoption in mid-December 2007.

The Minister's letter

10.2 The Exchequer Secretary to the Treasury (Anna Eagle) writes now to inform us of the outcome of the European Parliament's further consideration of the DB. The Minister encloses with her letter annexes, which we reproduce, helpfully summarising the changes, in euro and sterling figures for the six budget categories, between the PDB, the DB, the European Parliament's first reading amended budget, the Council's second reading amended budget and the European Parliament's final consideration and adoption of the budget.

10.3 The Minister tells us that the adopted Budget was in line with the agreement between the Council and the European Parliament. In its plenary session of 13 December 2007 the European Parliament set total commitment appropriations of €129.15 billion (£87.05 billion), leaving a margin under the Financial Perspective of €3.69 billion (£2.49 billion), and total payment appropriations of €120.35 billion (£81.11 billion), representing approximately 0.96% of Community Gross National Income — below the level in the Commission's PDB and considerably below that of the European Parliament's first reading. She says that, although the totals were as agreed and the levels for compulsory expenditure elements were as set by the Council, the European Parliament did, within the parameters set by the conciliation agreement, amend elements of non-compulsory expenditure.⁴⁰

10.4 Items within the adopted Budget to which the Minister draws our attention are:

Heading 1a: Competitiveness for growth and employment

- the European Parliament set this sub-heading at €11.09 billion (£7.47 billion) for commitment appropriations, a total net increase of €1.08 billion (£0.73 billion) on the Council's second reading figure, with no margin below the Financial Perspective ceiling, and €9.77 billion (£6.59 billion) for payment appropriations, a total net increase of €782.00 million (£528.00 million) on the Council's second reading figure;
- €200.00 million (£134.80 million) of commitment appropriations, for Galileo, above the Financial Perspective ceiling is to be financed through the Flexibility Instrument;⁴¹
- in comparison to 2007 payment appropriations are increased by a net 49.3%;

³⁹ See headnote.

⁴⁰ Compulsory expenditure necessarily results from the Treaty, or acts under it. It mainly concerns agricultural guarantee expenditure. The Council has the final say in fixing the totals of compulsory expenditure. The European Parliament has the final say in fixing the totals of non-compulsory expenditure.

⁴¹ The financial flexibility instrument, established under the Inter-Institutional Agreement on budgetary matters, provides for additional financing for clearly identified expenditure which cannot be made available within a spending category of the budget.

- significant increases are 63.4% for the Seventh Research Framework Programme, 88.1% for the Trans-European Transport and Energy Networks, 790% for Galileo and 57.2% for competitiveness and the Innovation Framework programme;
- decreases include 13.45% for Customs 2013 and Fiscalis 2013;

Heading 1b: Cohesion for growth and employment

- the European Parliament set this sub-heading at €46.89 billion (£31.60 billion) for commitment appropriations, the same level as the Council's second reading, giving a margin of €11.06 million (£7.41 million) below the Financial Perspective ceiling, and €40.55 billion (£27.22 billion) for payment appropriations, an increase of €426.90 million (£287.80 million) above the Council's second reading figure;
- in comparison to 2007 payment appropriations are increased by a net 9.5%;
- significant increases are 3.2% for Structural Funds and 57.4% for the Cohesion Fund;

Heading 2: Preservation and management of natural resources

- the Council and the European Parliament set this heading at €55.04 billion (£37.10 billion) for commitment appropriations, a decrease of €61.00 million (£41.10 million) on the Council's second reading figure, with a margin of €3.76 billion (£2.53 billion) below the Financial Perspective ceiling and €53.18 billion (£35.84 billion) for payment appropriations, a decrease of €59.00 million (£39.80 million) on the Council's second reading figure;
- in comparison to 2007 payment appropriations are decreased by a net 1.9%;
- significant decreases are 2.9% for market related expenditure on direct aids and 44.9% for the European Fisheries Fund;
- increases are 4.5% for rural development and 31.3% for the LIFE+ financial instrument for the environment;

Heading 3a: Freedom, security and justice

- the European Parliament set this sub-heading at €728.00 million (£490.70 million) for commitment appropriations, an increase of €10.30 million (£6.80 million) on the Council's second reading figure, with a margin of €18.97 million (£12.80 million) below the Financial Perspective ceiling, and €533.20 million (£359.20 million) for payment appropriations, an increase of €24.00 million (£16.10 million) on the Council's second reading figure;
- in comparison to 2007 payment appropriations are increased by 44.2%;
- significant increases are 77.9% for solidarity and management of migration flows, 75.4% for fundamental rights and justice and 44.1% for decentralised agencies;

Heading 3b: Citizenship

- the European Parliament set this sub-heading at €614.80 million (£414.50 million) for commitment appropriations, an increase of €30.90 million (£20.90 million) on the Council's second reading figure, with a margin of €0.15 million (£0.11 million) below the Financial Perspective ceiling, and €708.30 million (£477.20 million) for payment appropriations, an increase of €58.40 million (£39.10 million) on the Council's second reading figure;
- in comparison to 2007 payment appropriations overall are decreased by 21.3% (although use of the EU Solidarity Fund should result in an overall increase in payments);
- within the overall decrease significant increases are 31.2% for Culture 2007–2013 and 22.9% for decentralised agencies;
- there is a decrease of 26.1% for actions and programmes relating to enlargement;

Heading 4: The EU as a global partner

- the European Parliament set this heading at €7.31 billion (£4.93 billion) for commitment appropriations, an increase of €95.20 million (£64.00 million) on the Council's second reading figure, with no margin below the Financial Perspective ceiling, and €8.11 billion (£5.47 billion) for payment appropriations, an increase of €375.20 million (£252.80 million) on the Council's second reading figure;
- €70.00 million (£47.18 million) of commitment appropriations, for the Common Foreign and Security Policy mission in Kosovo, above the Financial Perspective ceiling is to be financed through the Flexibility Instrument;
- in comparison to 2007 commitment and payment appropriations are increased by 7.3% and 10.3% respectively;
- significant increases to commitment appropriations are 14% for the instrument for pre-accession, 10.2% for the European Neighbourhood and Partnership Instrument, 79.2% for the Common Foreign and Security Policy, 3.3% for the Development Cooperation Instrument and 28.7% for the instrument for stability;

Heading 5: Administration

- the European Parliament set this heading at €7.28 billion (£4.91 billion) for both commitment and payment appropriations, an increase of €76.90 million (£51.90 million) on the Council's second reading figure, with a margin of €173.14 million (£116.60 million) below the Financial Perspective ceiling for commitment appropriations;
- in comparison to 2007 payment appropriations overall are increased by 4.4%; and

Heading 6 Compensation

- like the Council, the European Parliament did not propose changes to the PDB figures under this heading, leaving overall provision at €206.60 million (£139.50 million) for both commitment and payment appropriations. So there continues to be a margin of €363.70 million (£245.10 million) under the Financial Perspective ceiling for commitment appropriations.

10.5 In commenting on the final outcome on the 2008 Budget the Minister reiterates what the Government told us in December 2007 in relation to the conciliation settlement:

- the Government believes that, in the circumstances, it achieved the best possible outcome from the budget negotiations;
- the adopted Budget sets overall payment appropriation levels for 2008 below those of the PDB and well below 1% of Community Gross National Income;
- the settlement limits the extent of Financial Perspective revision to finance Galileo and the EIT and the limitation is emphasised by a number of joint declarations issued at the November 2007 Budget ECOFIN Council;
- budget growth on agriculture and administration expenditure was contained; and
- spending allocations for Afghanistan, Palestine, Kosovo and Iraq and other Government priority areas (adjustment support for Sugar Protocol countries, co-operation with developing countries in Asia, Humanitarian Aid and the Common Foreign and Security Policy) were protected.⁴²

Conclusion

10.6 **We are grateful to the Minister for this account of the outcome of the final stage of setting the 2008 Budget.**

42 See headnote.

Annex: Table 1: Summary of 2008 PDB, Draft EC Budget, EP First Reading, Council Second Reading and Adopted Budget – EUR Million

Heading	Financial Framework Ceiling	2008 PDB		Council First Reading		EP's First Reading EPIR		Council Second Reading		Adopted Budget	
		CA(1)	PA(2)	CA	PA	CA	PA	CA	PA	CA	PA
1. Sustainable Growth	56,736	57,148	50,161	56,882	49,115	57,224	52,440	56,882	49,115	57,964	50,324
1a. Competitiveness for Growth & Employment <i>Margin</i> ¹	9,847	10,270	9,539	10,004	8,990	10,346	9,993	10,004	8,990	11,086	9,773
1b. Cohesion for Growth and Employment <i>Margin</i>	—	76.6	—	343.0	—	0.64	—	343.0	—	-200	—
	46,889	46,878	40,623	46,878	40,125	46,878	42,447	46,878	40,125	46,878	40,552
	—	11.1	—	11.1	—	11.0	—	11.1	—	11.0	—
2. Preservation and Management of Natural Resources	58,800	56,276	54,770	55,723	54,217	56,387	54,888	55,102	53,236	55,041	53,177
<i>Margin</i>	—	2,524.2	—	3,077.3	—	2,413	—	3,697.67	—	3,759	—
3. Citizenship, Freedom, Security and Justice	1,362	1,289	1,190	1,271	1,128	1,343	1,241	1,302	1,159	1,343	1,241
3a. Freedom, Security and Justice <i>Margin</i>	747	691	496	687	478	728	533	718	509	728	533
3b. Citizenship <i>Margin</i>	615	598	694	584	650	615	708	584	650	615	708
	—	17.7	—	31.1	—	0.2	—	31.1	—	0.2	—
4. European Union as a Global Partner²	7,002	6,911	7,917	7,129	7,553	7,241	8,133	7,216	7,738	7,311	8,113
<i>Margin</i>	—	329.8	—	112.2	—	0.015	—	25.2	—	-70	—
5. Administration	7,380	7,336	7,336	7,190	7,190	7,286	7,286	7,207	7,207	7,284	7,284
<i>Margin</i>	—	121.2	—	266.8	—	171.1	—	250.1	—	173.1	—
6. Compensation	207	207	207	207	207	207	207	207	207	207	207
<i>Margin</i>	—	0.364	—	0.364	—	0.364	—	0.364	—	0.364	—
TOTAL (3)	131,487	129,167	121,581	128,401	119,410	129,688	124,196	127,916	118,662	129,150	120,347
<i>Margin</i>	—	3,137	—	3,902	—	2,615	—	4,388	—	3,693	—
Appropriations for payment as % of GNI			0.97%		0.95%		0.99%		0.94%		0.96%

Notes

(1) CA = commitment appropriations

(2) PA = payment appropriations

(3) Due to rounding, the sum of the lines may not equal the total.

¹ The margin for Heading 1 (sub-heading 1a) does not take into account the appropriations related to the European Globalisation Adjustment Fund (€500m).

² The margin for Heading 4 does not take into account €239.2m from the Emergency Aid Reserve.

Table 2: Summary of 2008 PDB, Draft EC Budget, EP First Reading, Council Second Reading and Adopted Budget – GBP Million

Heading	Financial Framework Ceiling	2008 PDB		Council First Reading		EP's First Reading EPIR		Council Second Reading		Adopted Budget	
		CA(1)	PA(2)	CA	PA	CA	PA	CA	PA	CA	PA
1. Sustainable Growth	38,240.1	38,517.8	33,808.5	38,338.5	33,103.5	38,569.0	35,344.6	38,338.5	33,103.5	39,067.7	33,918.4
1a. Competitiveness for Growth & Employment Margin ¹	6,636.9	6,922.0	6,429.3	6,742.7	6,059.3	6,973.2	6,735.3	6,742.7	6,059.3	7,471.9	6,587.0
1b. Cohesion for Growth and Employment Margin	31,603.2	51.6	—	231.2	—	0.43	—	231.2	—	-134.8	—
	—	31,595.8	27,380.0	31,595.8	27,044.3	31,595.8	28,609.3	31,595.8	27,044.3	31,595.8	27,332.1
	—	7.5	—	7.5	—	7.4	—	7.5	—	7.414	—
2. Preservation and Management of Natural Resources	39,631.2	37,930.0	36,915.0	37,557.3	36,542.3	38,004.8	36,994.5	37,138.7	35,881.1	37,097.6	35,841.3
Margin	—	1,701.3	—	2,074.1	—	1,626.4	—	2,492.2	—	2,533.6	—
3. Citizenship, Freedom, Security and Justice	918.0	868.7	802.1	856.7	760.3	905.2	836.4	877.5	781.2	905.2	836.4
3a. Freedom, Security and Justice Margin	503.5	465.7	334.3	463.0	322.2	490.7	359.2	483.9	343.1	490.7	359.2
3b. Citizenship Margin	414.5	37.7	—	40.6	—	12.8	—	19.7	—	12.8	—
	—	403.1	467.8	393.6	438.1	414.51	477.2	393.6	438.1	414.5	477.2
	—	11.9	—	21.0	—	0.13	—	21.0	—	0.13	—
4. European Union as a Global Partner²	4,719.3	4,658.0	5,336.1	4,804.9	5,090.7	4,880.4	5,481.6	4,863.6	5,215.4	4,927.6	5,468.2
Margin	—	222.3	—	75.6	—	0.01	—	16.98	—	-47.18	—
5. Administration	4,974.1	4,944.5	4,944.5	4,846.1	4,846.1	4,910.8	4,910.8	4,857.5	4,857.5	4,909.4	4,909.4
Margin	—	81.7	—	179.8	—	115.3	—	168.6	—	116.6	—
6. Compensation	139.5	139.5	139.5	139.5	139.5	139.5	139.5	139.5	139.5	139.5	139.5
Margin	—	0.245	—	0.245	—	0.245	—	0.245	—	0.245	—
TOTAL (3)	88,622.2	87,058.6	81,945.6	86,542.3	80,482.3	87,409.7	83,708.1	86,215.4	79,978.2	87,047.1	81,113.9
Margin	—	2,114.3	—	2,629.9	—	1,762.5	—	2,957.5	—	2,489.1	—
Appropriations for payment as % of GNI			0.97%		0.95%		0.99%		0.94%		0.96%

Notes

(1) CA = commitment appropriations

(2) PA = payment appropriations

(3) Due to rounding, the sum of the lines may not equal the total.

Sterling figures converted at the exchange rate on 29 June 2007: €1=£0.674

³ The margin for Heading 1 (sub-heading 1a) does not take into account the appropriations related to the European Globalisation Adjustment Fund (£337m).

⁴ The margin for Heading 4 does not take into account £161.2m from the Emergency Aid Reserve.

11 Immigration policy

(29318) 16239/07 COM(07) 780	Commission Communication: <i>Towards a common immigration policy</i>
+ ADD 1	Commission Staff Working Paper: Interim Progress Report on the Global Approach to Migration

<i>Legal base</i>	—
<i>Document originated</i>	5 December 2007
<i>Deposited in Parliament</i>	10 January 2008
<i>Department</i>	Home Office
<i>Basis of consideration</i>	EM of 5 February 2008
<i>Previous Committee Report</i>	None
<i>To be discussed in Council</i>	No date set
<i>Committee's assessment</i>	Politically important
<i>Committee's decision</i>	Cleared; tag to debate in European Committee on Economic Migration to the EU

The Commission's Communication

11.1 The Communication:

- summarises the action the Community has already taken on immigration;
- says where the Commission believes insufficient progress has been made;
- calls for a renewed commitment by Member States to develop a common immigration policy; and
- suggests the main elements of such a policy.

11.2 The Communication begins with a discussion of the opportunities and challenges presented to the EU by immigration. It refers to the increase in the number of legal immigrants from third countries, who now make up 3.8% (18.5 million) of the EU's population. It notes that net immigration has been between 1.5 million and 2 million a year since 2002, with most of the immigrants settling in Greece, Italy, Spain and the UK. It also notes that the EU's working population (aged 15–64) is forecast to decrease by 59 million by 2050, and that by then there will be only two people of working age for each person of 65 or more compared with four to one now.

11.3 In summarising the action the EU has taken so far on legal immigration, the Communication refers to:

- the Tampere (1999) and Hague (2004) Programmes for action on justice and home affairs;

- the adoption of the Council Directives on: the right of legal immigrants to family reunion; the status of third-country nationals who have been resident in a Member State for more than five years; and admission for the purposes of research, education and training;
- the creation of a European Integration Fund to provide financial support to Member States for the integration of legal immigrants; and
- the establishment of the European agency for the coordination of the management of the EU's external borders (FRONTEX).

The Communication also refers to the current drafts of Directives on the admission of highly qualified nationals of third countries and on a common set of rights for workers from third countries.

11.4 The Commission comments that:

“The approach taken to legal immigration in the spirit of the Tampere mandate was ambitious, but the policy is still largely incomplete. Attempts at harmonisation have been reduced to the bare minimum.”⁴³

11.5 On illegal immigration, the Commission refers to the current proposals for EC legislation on the return of illegal immigrants and on sanctions against employers of illegal immigrants. The Communication also refers to the EU's cooperation with countries of origin and transit to prevent and detect trafficking in human beings, strengthen the surveillance of borders and return illegal immigrants. It notes, however, that measures to counter illegal immigration “lose much of their relevance when Member States mount large-scale legalisation operations”.⁴⁴ Since the early 1980s France, Germany, Greece, Italy, the Netherlands, Portugal and Spain have “regularised” 3.7 million illegal immigrants (that is, given them the legal right to residence). The Commission calls for a “genuine debate” on a common approach to regularisation.

11.6 The Communication discusses the European Council's Global Approach to Migration and its application first to Africa and now to countries to the east and south-east of the EU. The aim of this initiative is, for example, to improve cooperation with third countries to counter illegal migration and manage legal migration, reduce poverty and build on the fact that emigration can be good for development and vice versa. (An interim progress report on the Global Approach to Migration is attached to the Communication as ADD 1.)

11.7 The Commission notes the wide variation in Member States' immigration policies and says that this has resulted in inconsistencies. Action taken in one Member State can rapidly affect other Member States. The Commission argues that:

“a step change is necessary: the foundations which have been laid should be used to develop a new commitment and build a common European policy on immigration,

43 Commission Communication, page 3, final paragraph.

44 *Ibid*, page 5, penultimate paragraph.

enhancing economic opportunities and integration measures, based on solidarity and burden sharing”⁴⁵.

This new commitment would, among other things, include the introduction of EC legislation on newly arriving illegal immigrants and on people who are already illegally resident.

11.8 The Commission says that it will make proposals to develop and implement the new commitment in time for them to be considered by the European Council in December.

The Government’s view

11.9 The Minister of State at the Home Office (Mr Liam Byrne) tells us that the Government actively supports the work of FRONTEX, while recognising the responsibility of Member States for the control of their own borders. The Government is particularly keen for FRONTEX to promote operational cooperation with third countries of origin and transit.

11.10 The Minister also says that the Government believes that new detection technology and the use of Advanced Passenger Information and Passenger Name Records can make a valuable contribution to border control and that more widespread use of it would increase the collective security of the EU.

11.11 Commenting on illegal immigration, the Minister tells us that the Government has opted into the mandates for the EU’s readmission agreements with third countries. The Government is also taking a leading part in the implementation of the Global Approach to Migration, having initiated it during the UK’s Presidency in 2005. However, the Government decided not to opt into the draft Directive on the return of illegally staying third country nationals because, in its view, the measure does not strike the right balance between safeguards for illegal immigrants and assistance to Member States to make returns.

Conclusion

11.12 The Communication sets the scene for the specific proposals the Commission will put to the European Council for approval in December. We call upon the Government to ensure that we have a proper opportunity to scrutinise those proposals well before they are considered by the European Council.

11.13 The Communication also provides useful background information for the debate in the European Committee on the proposed Directives on an EU Blue Card and a common set of rights for third country nationals.⁴⁶ So we tag the document to that debate. But we see no need to keep the Communication under scrutiny and we have decided, therefore, to clear it.

⁴⁵ *Ibid*, page 7, second paragraph of section 3.

⁴⁶ (29056) 14490/07 and (29057) 14491/07: see HC 16–viii (2007–08), chapter 4 (16 January 2008).

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

Department for Business, Enterprise and Regulatory Reform

(29378)
5630/08
COM(08) 24

Draft Council Decision establishing the Community position within the General Council of the World Trade Organization on the accession of the Republic of Ukraine to the World Trade Organization.

(29408)
5939/08
COM(07) 870

Draft Directive on textile names.

(29416)
6045/08
COM(08) 26

Draft Directive concerning mergers of public limited liability companies.

(29420)
16792/07
COM(07) 835

Draft Council Regulation repealing the anti-dumping duty on imports of ferro molybdenum originating in the People's Republic of China and terminating the proceeding in respect of such imports, following review pursuant to Article 11(3) of Council Regulation (EC) No 384/96.

Department for Culture, Media and Sport

(29373)
5480/08
COM(07) 873

Draft Directive on the return of cultural objects unlawfully removed from the territory of a Member State.

Department for Environment, Food and Rural Affairs

(29407)
5918/08
COM(08) 27

Draft Council Regulation amending Regulation (EC) No.1234/2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation).

Food Standards Agency

(29375)
5574/08
COM(08) 3

Draft Directive on foodstuffs intended for particular nutritional uses.

Foreign and Commonwealth Office

- (29428) Council Common Position extending Common Position 2004/179/CFSP
— on restrictive measures against the leadership of the Transnistrian
— region of the Republic of Moldova.

Department of Health

- (29360) Commission Communication concerning the report on current
5242/08 practice with regard to provision of information to patients on
+ ADD 1 medicinal products in accordance with Article 88a of Directive
COM(07) 862 2001/83/EC, as amended by Directive 2004/27/EC on the Community
code relating to medicinal products for human use.

Home Office

- (29369) Draft Council Decision on the Community position to be adopted in
5094/08 the Cooperation Committee established by the Partnership and
COM(07) 855 Cooperation Agreement between the European Communities and
their Member States, and Georgia, in relation to the establishment of
a Subcommittee on Justice, Freedom and Security.

Department for Innovation, Universities and Skills

- (29414) Draft Directive on the legal protection of computer programs.
6043/08
COM(08) 23

HM Treasury

- (29382) Draft Council Decision authorising Italy to apply, in determined
5635/08 geographical areas, reduced rates of taxation on gas oil and LPG used
COM(08) 7 for heating purposes in accordance with Article 19 of Directive
2003/96/EC.
- (29464) Fourth Quarterly Report of transfers of appropriations within the
— general budget for the financial year 2007. There is no document
— with this Report.

Department for Work and Pensions

- (29383) Commission Report on equality between women and men — 2008.
5710/08
COM(08) 10

Formal Minutes

Wednesday 20 February 2008

Members present:

Michael Connarty, in the Chair

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

2. The Committee met in public for the scrutiny of documents

Draft Report, proposed by the Chairman, brought up and read.

Ordered, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1.1 to 2.31 read and agreed to.

Paragraph 3, Headnote read. Amendment proposed in line 17, to leave out the word “Cleared”, and to insert the words “Not Cleared.”

Question put, That the Amendment be made.

The Committee divided.

Ayes, 7	Noes, 1
Mr Adrian Bailey	Mr David S Borrow
Jim Dobbin	
Mr Greg Hands	
Kelvin Hopkins	
Bob Laxton	
Mr Anthony Steen	
Richard Younger-Ross	

Headnote agreed to.

Paragraphs 3.1 to 12 read and agreed to.

Resolved, That the Report, as amended, be the Fourteenth Report of the Committee to the House.

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

[Adjourned till Wednesday 27 February at 2.30 p.m.]

Standing order and membership

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

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

The expression “European Union document” covers —

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

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

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

Current membership

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