House of Commons

European Scrutiny Committee

Twenty-first Report of Session 2007–08

Documents considered by the Committee on 23 April 2008

HC 16-xix

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Report, together with formal minutes

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Notes

Numbering of documents

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

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

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

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

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

Abbreviations used in the headnotes and footnotes

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

Euros

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

Further information

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

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

Staff

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

Contacts

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

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1 Children and the Internet

(29512) 7241/08 + ADDS 1–2 COM(08) 106	Draft Decision establishing a multiannual Community programme on protecting children using the internet and other communication technologies

Legal base	—
Document originated	27 February 2008
Deposited in Parliament	4 March 2008
Department	Business, Enterprise and Regulatory Reform
Basis of consideration	EM of 3 April 2008
Previous Committee Report	None; but see (27999–28000) 14933/06 and 14937/06: HC 41–vi (2006–07), chapter 7 (17 January 2007)
To be discussed in Council	To be determined
Committee's assessment	Politically important
Committee's decision	Not cleared; further information requested

Background

1.1 The Community has been involved since 1996 in promoting safer use of the Internet and encouraging, at European level, an environment favourable to the development of the Internet.

1.2 The Commission's 2005–08 "Safer Internet Plus" programme:

— built on the 1999–2002 "Safer Internet" programme by promoting self-help and self-regulatory mechanisms for combating illegal and harmful material on the Internet;

— broadened the activity thus far to cover more types of online material (e.g. race and violence) and new technological challenges (broadband, 3G mobile phone);

— increased cooperation between like-minded countries wishing to control spam,[1] and between them and countries where spam enters global networks; and

— encouraged new Member States to adopt the same approach to achieving online safety.

1.3 A €45 million budget provided for:

— establishing hotlines for reporting illegal or harmful online material;

— assessing the performance of filtering software;

— developing website rating systems;

— combating spam;

1 "Spamming" is the abuse of electronic messaging systems to send, indiscriminately, unsolicited bulk messages.

— encouraging self-regulatory cooperation among industry and other stakeholders; and

— promoting awareness among children, parents and educators.

1.4 In January 2007 we considered two related Commission Communications. The first Communication (14933/06) reports factually on the implementation in 2005 of the "Safer Internet Plus" programme, including the establishment of hotlines, a Safer Internet Day and the formation of "Awareness Nodes" (bodies that organise the awareness activities within a Member State) targeted at children.

1.5 "Safer Internet Plus" builds on the 1999–2002 "Safer Internet" programme, which was evaluated as effective by independent assessors and extended in mid-2003 to end-2004 via the Safer Internet Action Plan. The second Communication (14937/06) concerns the final evaluation of this Safer Internet Action Plan. It noted the success of the programme, in particular in terms of the hotlines and awareness nodes established, but concluded that more could be done, and made 7 recommendations, viz:

— increase the visibility and awareness of the hotlines;

— improve coordination between hotlines and national authorities;

— awareness raising should be targeted more intelligently;

— programmes should involve children in identifying problems and designing solutions;

— end-user awareness of options for filtering harmful content should be increased;

— industry self-regulatory solutions (e.g. on such issues as content labelling and age verification) should be encouraged at European level; and

— future technological developments, and in particular converged services, should be analysed in terms of their implications for the safety of children.

1.6 The then Minister of State for Industry and the Regions (Margaret Hodge) at the then Department for Trade and Industry welcomed the continuing work of the Commission in overseeing the Safer Internet programmes. She saw the establishment of hotlines and awareness nodes across the EU as benefiting all concerned, noting that the growing number of reports of illegal content that the hotlines were receiving (over 534,000 in 2005) suggested a continuing need. She was concerned, however, that awareness of such nodes and hotlines was inadequate and that there had been insufficient involvement of children in the programmes; too much attention had, she felt, probably been paid in Member States to the creation of mechanisms for reporting rather than to education and awareness of the actual problem; she would endeavour to make sure that the continuing programme addressed these awareness and educational issues.

1.7 In clearing these Communications, we noted that the "Safer Internet Plus" programme had just begun, with €24.95 million allocated to the period 2007–2008. Although the Commission said nothing about it, we presumed that the programme would be subject to a final evaluation. We agreed with the Minister that the challenge now was to ensure that the programme addresses the awareness and educational issues identified in the two Communications. However, we were reluctant to wait until, presumably, sometime in 2009

for a further report, and asked the Minister to write again in a year's time with her assessment of the extent to which the sort of rebalancing that she, and we, would wish to see, had been achieved.[2]

The Commission Communication

1.8 On 27 February 2008, the Commission adopted a proposal for a new 2009–2013 "Safer Internet" programme. It would build upon the "Safer Internet plus" programme, with an increased budget of €55 million; have the same overall aim of promoting safer use of the internet and other communications technologies, especially by children, and combating illegal content and harmful conduct online; fund various programmes, including hotlines and education campaigns; and foster cooperation between a wide range of organisations from business to child welfare NGO's.

1.9 The Commission Staff Working Documents contain an impact assessment for the proposed Decision and a summary thereof.

1.10 The new proposal looks at the successes of the programme thus far, which include: a European Network of Hotlines; a European awareness raising network and safer internet days; information for parents of effectiveness of filtering software; and support for self regulatory initiatives in the area of online content and mobile phones.

1.11 The new programme would not extend its scope to cover new subjects such as health issues, network security and data protection as it suggests that these are already covered by other EU policy and funding initiatives.

1.12 The proposal describes the legislative context of the programme by looking at the difference between what is illegal on the one hand and harmful on the other, as they both require different strategies and tools to tackle them.

1.13 The proposal examines some of the trends and emerging technological changes, particularly the growing number of platforms that can now access the internet, the challenges in understanding these changes and the need to develop counter strategies as new risks emerge.

1.14 The proposal suggests that the amount of illegal material circulating online is increasing and concludes that a new programme is necessary to continue to tackle both harmful and illegal content.

1.15 The proposal then sets about looking at the four action lines that make up the programme including their major objectives and aims:

Reducing illegal content and tackling harmful conduct online

The activities in this action point would continue to be aimed at reducing the amount of illegal content circulated online and dealing adequately with harmful conduct online, with particular focus on online distribution of child sexual abuse

2 See headnote: (27999–28000) 14933/06 and 14937/06: HC 41–vi (2006–07), chapter 7 (17 January 2007).

material, grooming and bullying (e.g. the funding of contact points, or "hotlines") but its scope would be extended to include "grooming" (befriending someone in order to commit sexual abuse) and "cyberbullying".[3] It would also aim to foster technical solutions for dealing with illegal and harmful content online as well as fostering further EU and international cooperation.

Promoting a Safer online environment

This activity combines two of the actions of the previous programme — one aimed at providing parents with information on using special software for dealing with harmful content online, e.g. filtering at PC level, and the other at encouraging self-regulation. The activities aim at enhancing cooperation amongst stakeholders and encouraging the further implementation of self regulation mechanisms. They would include, for the first time, the involvement of children and young people with the aim of gaining their views and experience of using online technologies, so enabling design of better awareness campaigns, tools and policies. The Minister says that the Child Exploitation and Online Protection Centre (CEOP) is doing this with the launch of a children's panel in July 2008.[4]

Ensuring public awareness

The activities here will be aimed at increasing awareness of the public of the risks and opportunities related to the use of online technologies.

Establishing a knowledge base

A new Action that would aim at encouraging the development of knowledge as to how children and young people use online technologies and the possible harmful use of these technologies including technical, psychological and sociological issues.

1.16 The Commission would implement the proposed programme both through shared actions (e.g., pilot projects and best practice, national actions and Europe-wide investigations in the way, comparatively, adults and children use online technologies) and accompanying measures (including benchmarking exercises to produce more reliable data, technical assessments of various technologies and exchanges of information through conferences, seminars and workshops).

1.17 The documentation also sets out how the Commission would measure the success of each action point against a set of indicators and includes a breakdown of the overall proposed €55 million budget.

1.18 The Impact Assessment summary describes the background to the impact assessment and describes the state of play with regards to Commission action in promoting safer use of

3 Cyberbullying is defined as "an aggressive, intentional act carried out by a group or individual, using electronic forms of contact, repeatedly over time against a victim who cannot easily defend him or herself". For a full discussion of the issues, see http://yp.direct.gov.uk/cyberbullying.

4 The Child Exploitation and Online Protection (CEOP) Centre is part of UK police and is "dedicated to protecting children from sexual abuse wherever they may be". For further information, see http://www.ceop.gov.uk.

the internet and other communication technologies, especially by children. Successes to date include getting safer internet issues firmly on the agenda in both the Commission and Member States, the launching of the hotline and awareness nodes in most Member States, increased average awareness level of internet safety and self regulatory measures instigated by the Commission enabling a shift towards widespread awareness amongst service providers.

1.19 The Summary sees the EU and the Council of Europe as having set certain world wide standards, clarifying legal issues through various recommendations, directives concerning the protection of minors and human dignity, electronic commerce and electronic communications and child sexual abuse images; and notes that it does not examine the need for new legislative measures, but instead examines ways of complementing and not duplicating what has already been decided through the legislative instruments.

1.20 The Summary describes how the Commission consulted interested parties through an April-June 2007 online public consultation structured around three topics — Fighting illegal content; Fighting harmful content; and User-generated content and online communication — a June 2007 "safer internet forum and involving other parts of the Commission.

The Government's view

1.21 In her 3 April 2008 Explanatory Memorandum, the Parliamentary Under–Secretary of State for Business and Competitiveness at the Department for Business, Enterprise and Regulatory Reform (Baroness Vadera) says that the problems that children face on the internet appear to be multiplying, especially as children find new ways to interact on the internet, e.g. Social Networking websites: the UK's Internet Watch Foundation found that there was a 74% increase in 2006 compared with 2005 of individual Uniform Resource locator (URLS), or web addresses, containing child abuse content; and in a recent EU survey, most children who took part suggested that they had, or knew someone who had, been bullied on a mobile phone: "this however must be balanced with the positives that children can get from the internet including keeping in touch with their friends and education".

1.22 The Minister notes that almost all those who took part in the Commission assessment of the 2005–2008 Programme — including UK stakeholders — confirmed that the actions carried out as part of this programme had been effective. She says that it also stressed the need to adapt these actions to new concerns such as the emergence of new technologies and applications and that "Thus the United Kingdom is fully supportive of the objectives of the Commission in securing a renewed Safer Internet Programme." She continues as follows:

> "As research both by the Commission and the Internet Watch Foundation suggests, illegal content such as child abuse online appears to be a growing problem along with new concerns/risks such as the knowledge gap between children and parents.
>
> "The Government is also supportive of the self regulatory approach encouraged by the Commission through this programme. Tackling issues such as child abuse images and harmful content requires close working with all stakeholders rather than

further legislation. Self regulation is generally preferred by the Government to legislation because of the fast moving nature of these issues.

“We agree with extending the scope of the programme to include protecting children from grooming and the need to increase knowledge as to how children use the technology. However, we will be looking closely at the addition of ‘cyberbullying’ to reducing illegal content (Action 1). There are already mechanisms in the UK to report this kind of activity by users to service providers and, in the most extreme cases, reports should be made to the law enforcement agencies.

“We also need to be aware of the E Commerce Directive and the ensuing limitations placed on Internet Service Providers. What constitutes ‘illegal’ is straightforward but what constitutes ‘harmful’ is more difficult to define.

“The addition of the reporting of cyberbullying to what the ‘contact points’ should now handle may, however, affect the ability of the UK hotline and the Internet Watch Foundation to bid for monies from this programme. We will be consulting on this issue in due course. The Internet Watch Foundation[5] (IWF) at present gets approximately one quarter of its funding from the current safer internet programme and thus any drop in its funding would cause loss of operational ability, including possible loss of half the hotline capacity or cutting back on other functions. The monies could of course be made up by industry, but they already fund the IWF and thus may not be happy to make up this shortfall.

“The Government welcomes the high priority given to the education of both users and parents in the draft programme. Media literacy and user awareness are key weapons in the fight against this kind of content.

“We also welcome the inclusion of the voices of children and young people as key stakeholders in this programme. Their knowledge should increase the effectiveness of the programme to fight both illegal and harmful content.

“We also welcome the extension of the programme to include international cooperation. Most commercially available child abuse images are ‘hosted’ in Russia and the US, so encouraging these and other countries to clamp down on this trade, could prevent child abuse in these countries and also prevent paedophiles across the world from accessing this content.”

1.23 Regarding consultation in the UK, the Minister says that the Department and its predecessor has been consulting interested parties on the safer internet programme since 2003, “sending regular reports of the EU meetings to them”, and that for the proposed new programme, “BERR will be carrying out a full Whitehall and other key stakeholders consultation in due course”.

5 The IWF is a UK Hotline for reporting illegal content specifically: child sexual abuse content hosted worldwide and criminally obscene and incitement to racial hatred content hosted in the UK. See http://www.iwf.org.uk for full information about its activities.

1.24 Looking ahead, she says that the proposal will be discussed in both the European Parliament and the Council, with agreement expected either in December 2008 or early in 2009 and, if the proposal is passed, adoption in February 2009.

Conclusions

1.25 **The Commission's proposals raise no legal issues, but warrant a Report to the House because of the widespread interest in, and intrinsic importance of, the subject matter.**

1.26 **However, we share the Minister's concern over the possible negative impact upon the Internet Watch Foundation of the proposals for dealing with cyberbullying. We also note that the Minister will be carrying out a full consultation with "Whitehall and other key stakeholders". We should like to hear from the Minister about the outcome.**

1.27 **We should also like to know why we have still not received the report that we requested 15 months ago on action to address the inadequate awareness of hotlines and the insufficient involvement of children in the programme "Safer Internet Plus" to which her predecessor had drawn attention. That children are to be involved for the first time in the next programme suggests that either no action was taken or that, for whatever reason, it has been unsuccessful.**

1.28 **Until then, we shall retain the documents under scrutiny.**

2 Reinforcing the Union's Disaster Response Capacity

(29549) 7562/08 COM(08) 130	Commission Communication: *Reinforcing the Union's Disaster Response Capacity*

Legal base	—
Document originated	5 March 2008
Deposited in Parliament	14 March 2008
Department	Cabinet Office
Basis of consideration	EM of 8 April 2008
Previous Committee Report	None
To be discussed in Council	To be determined
Committee's assessment	Politically important
Committee's decision	Not cleared; further information requested

Background

2.1 The Commission describes the purpose of this Communication as "to make proposals to reinforce the EU's disaster response capacity, building on what has already been achieved [as] a first step on the road to a comprehensive and integrated EU response and are aimed at reinforcing and creating synergies between existing instruments, and at strengthening coordination between them". The Communication uses the notion of "disaster" in a broad sense to cover not only natural or man-made disasters but also "conflict-related complex emergencies, taking place within and/or outside the EU".

The Commission Communication

2.2 The Commission first reviews "the need for a stronger EU capability", noting challenges not only such as last year's forest fires[6] but also the 2004 Indian Ocean "tsunami" and the 2006 Lebanon conflict, all of which touched EU citizens at home and abroad, as well as EU neighbours and partners. It sees them and international organisations such as the UN as having high expectations of the role the EU can play in disaster relief. It recalls the interest of the December 2007 European Council in the Commission making best use of the Community Civil Protection Mechanism,[7] and its adoption of the European Consensus on Humanitarian Aid.[8] All in all, "the complexity and scope of these multidimensional challenges require a comprehensive approach by the EU to the continuum of disaster risk assessment, forecast, prevention, preparedness and mitigation (pre- and post-disaster), bringing together the different policies, instruments and services available to the Community and Member States working as a team [which] helps to balance national responsibility and European solidarity".[9]

2.3 The Commission then reviews the disaster response instruments currently at its disposal and its endeavours to improve coordination amongst them, noting its commitment to "improving the effectiveness of its action in cooperation with Member States, international, national and local stakeholders, in particular through synergies and better coordination of training, needs assessment, planning and operations". It sees a particular need for better "horizontal" cooperation between the Commission, Presidency, Member States and the Secretary General/High Representative for crises involving both Community and Common Foreign and Security Policy instruments; and better "vertical" cooperation between "the EU level and Member States", particularly as "the differences in the respective mandates of the various Member States and the humanitarian services/agencies have an impact on the Commission's response".

2.4 The Commission then puts forward a number of proposals:

6 In response to a request from the Council and Parliament, a specific annex on forest fires is attached to the Communication "to illustrate how further prevention, preparedness, response and recovery measures could be combined to deal with a disaster at the magnitude of the one that struck Europe last summer".

7 The main role of the Community Mechanism for Civil Protection is to facilitate cooperation in civil protection assistance interventions in the event of major emergencies which may require urgent response actions. For full information, see http://ec.europa.eu/environment/civil/prote/mechanism.htm.

8 For our consideration of the European Consensus on Humanitarian Aid, see (28719) 10965/07: HC41–xxxi (2006–07), chapter 2 (18 July 2007) and HC 16–ii (2007–08), chapter 12 (14 November 2007). For the full text of the Consensus, see http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2008:025:0001:0012:EN:PDF

9 COM(08) 130, page 4.

Reinforcing the Community Civil Protection Mechanism

— *Building up the Monitoring and Information Centre*[10] so it can play the role of operational centre for European civil protection intervention, with "a qualitative shift from information sharing/reacting to emergencies towards proactive anticipation/real time monitoring of emergencies and operational engagement/coordination".

— *Improving the European civil protection response capacity*. The Commission says that, following the disasters that struck Member States during the summer of 2007, the European Parliament has called for a European civil protection force and the Council has asked the Commission to present proposals on the response to disasters such as floods and forest fires. "Gaps in response resources should be identified and options for filling them assessed, including developing reserve resources available for European civil protection operations. These could be built on two main components — standby modules and complementary European resources, while avoiding duplication with existing response capacities. Funds made available as a pilot project and a preparatory action by the European Parliament will be used to test such arrangements."

Reinforcing European Humanitarian Aid

— mapping logistical capacity and filling potential gaps;

— strengthening field level capability;

— engaging in dialogue with multiple actors in disaster response in third countries;

— strengthening global response capacity; and

— developing local humanitarian response capabilities.

Capacity building across Community policies and instruments

— creating a *European disaster response training network* linking existing centres of expertise in Member States;

— improving preparedness by forthcoming *initiatives on disaster prevention, enhanced early warning and alert systems*, and by working to *strengthen communication systems for public protection and disaster relief*.

Disaster preparedness in third countries

— The Commission will bring forward an *EU Strategy for Disaster Risk Reduction in Developing Countries* as a framework for capacity building in countries at high risk, together with closer relations with EU candidate and potential candidate countries and those countries covered by the European Neighbourhood policy.

10 The Monitoring and Information Centre (MIC), operated by the European Commission in Brussels, is the operational heart of the Community Mechanism for Civil Protection. It is available on a 24/7 basis and is staffed by duty officers working on a shift basis. It gives countries access to the community civil protection platform. Any country affected by a major disaster — inside or outside the EU — can launch a request for assistance through the MIC.

The Government's view

2.5 In a helpful Explanatory Memorandum of 8 April, the Parliamentary Under-Secretary at the Cabinet Office (Mr Tom Watson) notes that, though the Communication is not draft legislation referring to a specific legal base and contains no legislative proposals, it envisages that further work may lead the Commission to propose altering current EU legislation. He further notes that: any such Commission proposals for action under existing instruments would be decided by the comitology procedure[11] by qualified majority voting; if the Commission brings forward proposals to alter existing legislation, then voting would require unanimity under the present legal bases; and that entry into force of the Lisbon Treaty will place new legislative activity under the civil protection clause, which would require qualified majority voting in the Council and co-decision with the European Parliament.

2.6 On the question of *subsidiarity*, the Minister notes that "in the absence of specific detailed proposals, consistency of those contained in the Communication with the principle of subsidiarity has yet to be examined. This issue is most likely to arise in connection with the proposals for stand-by civil protection modules and for complementary reserve resources supplementing the assets of Member States."

2.7 The Minister comments that the Government's "broad approach to civil protection is that this is primarily the responsibility of Member States", and that the Commission "can play a useful supporting role by facilitating mutual assistance and sharing good practice".

2.8 He then comments on the "broad policy proposals" as follows.

> **"To build up the Monitoring and Information Centre so that it can become an operational centre for European civil protection intervention.**
>
> "The MIC has a valuable role in coordinating provision of emergency assistance among Member States and outside the EU. HMG would support efforts to enhance this role and to ensure that the MIC is as effective as it can be within existing competences. However, HMG would view with caution a proposal to strengthen the MIC to the extent that such a move would draw limited expertise away from Member States where it is most likely to be needed in an emergency, or if this led to duplication with other EU structures such as the Council's SitCen.[12] At present, the MIC does not have the skills or capacity to become itself a fully operational centre to manage disaster response activities whether within or outside the EU. Where the critical issue is how best to coordinate the varied actors on the ground in a disaster, HMG's view is that this can be best achieved by an ad hoc coordinating function comprised of personnel from the Presidency, Member States and the Commission.

11 In accordance with Article 202 TEC, it is the task of the Commission to implement legislation at Community level. In practice, each legislative instrument specifies the scope of the implementing powers conferred on the Commission by the Council. In this context, the Treaty provides for the Commission to be assisted by a committee, in line with the procedure known as "comitology". The committees are forums for discussion, consist of representatives from Member States and are chaired by the Commission. See http://europa.eu/scadplus/glossary/comitology_en.htm for further information.

12 The EU Joint Situation Centre (SITCEN) monitors and assesses international events 24 hours a day, focusing on sensitive areas, terrorism and the proliferation of weapons of mass destruction. SITCEN provides support and assistance to the EU Secretary-General/High Representative, the EU Special Representatives and other senior officials, and to EU military or civilian crisis management operations.

The Council's SitCen fulfils a political coordinating function at EU level. HMG will work closely with other Member States and the Commission to sustain efforts to improve coordination in the field. HMG would view with caution any move to enable Commission command and control of Member State civil protection resources.

"To improve European civil protection response capacity by identifying gaps, assessing options for filling them including developing reserve resources available for operations based on (a) stand-by modules; and (b) complementary European reserve resources.

"HMG welcomes the Commission's proposal to analyse gaps and needs before bringing forward specific proposals, but views with caution the proposal to develop stand-by modules and EU-level complementary reserve resources. The Communication makes it clear that stand-by modules would be 'voluntary' but the legal basis for this proposal, and its relationship to the existing legislative provisions on modules, are unclear. HMG views with caution the proposal for complementary reserve resources at EU-level. The Commission has neither the expert capability, nor the legal competence, nor the finance to hold such disaster response resources at present. Disaster response assets are in general optimally sited closest to where the risks lie. The Communication's analogy with maritime response vessels held by the European Maritime Safety Agency implies that there could be a similar EU agency for addressing land-based disaster response. Disasters on land and affecting people are very different from disasters at sea and away from coastlines. HMG would not support extending Community competence in this way to address disasters on land.

"To reinforce European humanitarian aid by (a) mapping logistical capacity and filling potential gaps; (b) strengthening field level capability by staffing 6 ECHO regional offices with disaster relief experts; (c) engaging in dialogue with multiple actors in disaster response in third countries; (d) strengthening global response capacity by continuing to support the main humanitarian relief agencies through pre-positioned resources; and (e) developing local humanitarian response capabilities.

"HMG supports the principles of humanitarian aid and International Humanitarian Law expressed by these proposals, and would therefore work with other Member States and the Commission to develop practical ways to formulate and implement them.

"To build capacity across Community policies and instruments by (a) creating a European disaster response training network linking existing centres of expertise in Member States; (b) improving preparedness by forthcoming initiatives on disaster prevention, enhanced early warning and alert systems, and by working to strengthen communication systems for public protection and disaster relief.

"HMG welcomes the idea of a virtual training network linking the expert centres among Member States, among which could be counted the UK's Emergency Planning College. HMG also supports the need for further work on disaster

prevention, on improved coordination of early warning systems, and on alert systems including the innovative use of information technology.

"To bring forward an EU strategy for disaster risk reduction in developing countries as a framework for capacity building in countries at high risk, together with closer relations with EU candidate and potential candidate countries and those countries covered by the European Neighbourhood policy.

"HMG supports the general aim to build disaster risk reduction capacity in developing countries and will examine carefully the forthcoming detailed proposals in particular to assess how they would complement existing UN activity in this area. HMG supports EU enlargement and the European Neighbourhood Policy Instrument, and therefore the potential value of cooperation in civil protection with the countries concerned."

2.9 The Minister says that the proposals will have no impact on the business sector in the UK:

"Most of the UK's civil protection capabilities are locally based and integrated with local and regional emergency preparedness arrangements within the overall national framework for disaster response. HMG does not currently envisage any circumstances in which a Commission-led joint operational team or Operations Centre could seek to manage and coordinate the response to a disaster within the UK, or where such assets would be placed under the operational command of the MIC."

2.10 With regard to the *Financial Implications*, the Minister notes that the Communication refers to the European Parliament's call for adequate annual budgetary provision for humanitarian aid; to stand-by and complementary reserve resources currently being tested by a pilot project with Parliament's 2008 budget funding and which the Commission may seek to sustain so as to fund equipment supplementing national resources for fighting wild fires; and capacity building measures centrally and in developing countries. He further notes that the Commission also urges Member States in Council to resume negotiating revision of the Solidarity Fund to enhance its effectiveness; and that the Communication indicates that the Commission will consider how existing financial instruments might be conditionally linked to preventative measures, and suggests considering greater Community finance of forest restoration. With the Communication making no reference to specific budgetary estimates for these proposals, the Minister comments as follows:

"HMG considers that some of these proposals could potentially have financial implications for the EU budget. The Government will therefore want carefully to examine any such proposals to ensure they reflect the principle of subsidiarity and would represent proper and effective use of EU budgetary resources."

2.11 He then refers to a non-paper of 3rd December 2007,[13] of which the UK is a co-signatory, and which he says "touched on the issue of the use of Community funding in this context". The Minister quotes the relevant section, as follows:

> "3. Making use of Community Funding with a view to promote prevention and *preparedness*
>
> *Community funds are disbursed for defined purposes and according to precise criteria. Recognising the importance of effective domestic contingency planning and respecting that such activity remains the primary responsibility of individual Member States, consideration should be given to how the EU can better encourage Member States, including through existing Community funds, such as the Civil Protection Financial Instrument, to promote adequate land management mechanisms and the development of necessary emergency and crisis management devices. In this context, the set up of guidelines on minimal standards could be considered. The Commission should be requested to make proposals to this end.*"

2.12 Finally, the Minister says that the *Timetable* for specific proposals to be brought forward in 2008, and in one case by mid-2009, are:

"For inter-institutional cooperation:

- Define disaster relief scenarios.
- Study global logistical capacity, EU-level contingency planning protocols and standard operating procedures.
- Identify resource gaps and link these to humanitarian logistical capacity mapping.
- Deploy joint planning and operational teams in disasters.
- Develop exchange of information and reporting, and situation awareness tools.
- Invest in improved ICT.

"For reinforcing humanitarian aid capacity:

- Map logistical capacity to identify and fill potential gaps.
- Provide comprehensive capacity building programme.
- Implement Humanitarian Consensus call for better aid coordination.
- Develop stronger local capabilities in disaster-prone countries.

"For reinforcing European civil protection:

- Develop the MIC into an operations centre.

13 "EU Disaster response: Note by the German, Netherlands, Austrian, Finnish, Swedish and United Kingdom delegations on Natural Disasters: Strengthening Prevention and Preparedness in the EU."

- Identify resource gaps and present proposals based on (a) voluntary stand-by modules for deployment at any time; and (b) complementary reserve capacities supplementing those of Member States.

"For strengthening capacity across Community policies and instruments:

- Make proposals by mid-2009 for a European disaster response training network.
- Finalise proposals for integrated disaster prevention approach and strategy for disaster risk reduction in developing countries.
- Assist Member States to develop common early warning and alert systems.
- Increase information provision including through GMES.[14]
- Consider reserving bandwidth for emergency communications."

2.13 Finally, the Minister says that it is "unclear whether Council Working Party discussion of the Communication will deliver Council Conclusions under the current Slovenian Presidency".

Conclusions

2.14 **We are grateful to the Minister for his full and helpful Explanatory Memorandum, in which he makes his concerns very clear. We endorse them. As he rightly notes, civil protection is primarily the responsibility of Member States, and the Commission's role is supportive. Instead, the Commission sees itself as taking the sort of leading role that, as the Minister illustrates, would be inappropriate, with clear suggestions of duplication (the Monitoring and Information Centre), and despite having "neither the expert capability, nor the legal competence, nor the finance" (to hold disaster response resources). As the Minister suggests, rather than producing uncosted proposals of dubious legitimacy, the Commission would be more appropriately engaged in using existing Community funds to encourage Member States "to promote adequate land management mechanisms and the development of necessary emergency and crisis management devices".**

2.15 **It is perhaps not coincidental that the Commission also prays in aid similar uncosted proposals of dubious legitimacy and necessity, i.e., its Action Plan on consular protection, about which we have expressed similar concerns, and which we have recommended for debate in the European Committee B.[15] We do not think that a similar debate would be appropriate at this stage on these proposals. However, we would not want the Minister to agree any Conclusions on these proposals without first submitting them for scrutiny; and, bearing in mind the uncertainty over the future**

14 The Global Monitoring for Environment and Security (GMES) is a joint initiative of the European Commission and the European Space Agency, which aims to deliver information and services to improve the development and implementation of environment and civil security policy in Europe. Further information is available at http://www.gmes.info/.

15 (29353) 5947/08: see HC16–xiv (2007–08), chapter 2 (20 February 2008), HC 16xvii (2007–08), chapter 1 (26 March 2008).

timetable, would in any event be grateful for a situation report towards the end of the current Presidency.

2.16 **In the meantime, we shall retain the document under scrutiny.**

3 Restrictive measures against Uzbekistan

(29615) — —	Common Position reviewing certain restrictive measures against Uzbekistan

Legal base	Article 15 EU; unanimity:
Department	Foreign and Commonwealth Office
Basis of consideration	EM and Minister's letter of 17 April 2008
Previous Committee Report	None; but see (29024): HC 16–i (2007–08), chapter 19 (7 November 2007), HC 16–iv (2007–08), chapter 29 (28 November 2007); also see (28644) HC 41–xxiii (2006–07), chapter 18 (6 June 2007); (28053) HC 41–ii (2006–07), chapter 14 (29 November 2006) and (26927) and (26928): HC 34–vii (2005–06), chapter 18 (26 October 2005)
To be discussed in Council	29 April General Affairs and External Relations Council
Committee's assessment	Politically important
Committee's decision	Not cleared; further information requested

Background

3.1 On 12–13 May 2005 events took place in Andizhan in Uzbekistan that led to the large-scale loss of life at the hands of the Uzbek authorities.[16] The 23 May 2005 GAERC condemned the reported excessive, disproportionate and indiscriminate use of force by the Uzbek security forces and expressed their deep regret at the failure of the Uzbek authorities to respond adequately to the UN's call for an independent international inquiry.

3.2 In the light of the continuing failure by the Uzbek authorities to respond to repeated further such requests, the GAERC decided to introduce a 12 months arms embargo and a visa ban aimed at a number of listed individuals directly responsible for the indiscriminate and disproportionate use of force in Andizhan, and to suspend discussions under the Partnership and Cooperation Agreement (PCA); and to review these measures in the light of any significant changes to the current situation, in particular with regard to:

16 Full details in our previous Report: see headnote.

— the conduct and outcome of the ongoing trials of those accused of precipitating and participating in the disturbances in Andizhan;

— the situation regarding the detention and harassment of those who had questioned the Uzbek authorities' version of events;

— Uzbek cooperation with any independent, international Rapporteur appointed to investigate the disturbances in Andizhan;

— the outcome of any independent, international inquiry; and

— any action that demonstrated the willingness of the Uzbek authorities to adhere to the principles of respect for human rights, rule of law and fundamental freedoms.

3.3 In view of the widespread concern at these events, the Committee reported its clearance of the Council Decision to the House on 26 October 2005.[17]

3.4 In November 2006, when the Common Position was due for renewal, signs of differences of view began to emerge. The subsequent history is set out in our previous Reports, from which it is plain that those differences of approach were maintained during the German Presidency. As we have noted in those previous Reports, the Minister had been scrupulous in keeping the Committee informed, and had stood firm — his position being that the EU should maintain pressure on the Uzbek regime to enter into a meaningful and genuine dialogue with the relevant parties, in order to fully respect human rights, and that renewal of these measures would demonstrate the EU's commitment to keeping up such pressure. But other views were maintained beyond the German Presidency, which were set out in our last but one Report.[18]

3.5 In November 2007, Common Position 2007/734/CFSP renewed the arms embargo and the travel ban on 8 individuals for 12 months. At that time, the Minister for Europe at the Foreign and Commonwealth Office (Mr Jim Murphy) explained that he had again argued for the renewal of sanctions, whilst broadening engagement (energy, environment, economic reform, education etc.) with Uzbekistan, within the key areas of cooperation set out in the EU-Central Asia strategy. His aim was to build confidence through constructive EU-Uzbek dialogue on the broader canvass with a view to encouraging a more positive discussion of governance and human rights issues. EU Member States recognised that there had been no concrete improvement in the human rights situation in Uzbekistan since May 2007. Some, like him, believed that the Uzbeks had not done enough to justify relaxing the sanctions. But others stressed the agreement of the Uzbek government to continue human rights discussions and new legislation which would bring abolition of the death penalty and a limited form of habeas corpus into force in Uzbekistan from January 2008. Consensus, he said, had coalesced around the view that the EU should "move from negative conditionality to positive conditionality on the grounds that this would be more effective in encouraging the Uzbeks to take action on human rights". The Common Position reflected the agreement reached at the 15 May 2007 GAERC, which renewed the visa ban and arms embargo for 12 months; but the visa ban would be suspended for six

17 See headnote.

18 *Ibid*.

months and automatically re-imposed in May 2008 if the Council concluded there had not been enough progress on human rights. He said that this meant that, in practice, the Council would need to make a unanimous decision in May 2008 to lift the visa ban:

> "Otherwise it will remain in force until November 2008. The GAERC decision retained, therefore, a strong element of conditionality, giving the EU purchase over Uzbekistan's performance, while setting this firmly in the context of the EU Central Asia Strategy."

3.6 The alternative to this outcome would, he said, have been:

> "public disagreement among EU member states on policy towards Uzbekistan, resulting in the lapse of both visa ban and arms embargo in November 2007. This would have meant not only the collapse of EU policy on Uzbekistan, but also a serious loss of credibility, which we vigorously sought to avoid."

3.7 In reporting this to the House, we noted that we continued to endorse the Government's position; however, it was apparent that it was not fully shared by other partners: hence this compromise. We understood the Minister's dilemma: however, we thought that there was already a danger of, as he put it, "a serious loss of credibility" in EU policy on Uzbekistan. As revealed previously, such human rights discussions as there had been had not indicated, let alone led to, any real progress, so it was hard to see why a willingness on the part of the Uzbek authorities to continue them should be rewarded in any way. The same applied to legislation to abolish the death penalty and the prospect of "a limited form of habeas corpus". As the Minister said, there had still been no concrete improvement in the human rights situation. Nor had there been any sign of movement on what was previously described as "the EU's key concern — accountability for the killings of civilians on the afternoon of 13 May 2005".

3.8 Conversely, it now seemed that the EU yardstick would be "progress towards meeting a broad range of human rights concerns and international obligations", which appeared to be a long way from where the Council began two years ago. We raised the question of what was meant by "broad range of human rights" and which "international obligations" were in issue and what benchmarks would be applied against which to measure progress.

3.9 We also questioned why this sat "firmly in the context of the EU Central Asia Strategy".

3.10 The Minister had said that the visa ban would be automatically re-imposed in May 2008 if the Council concluded there had not been enough progress on human rights and that, "in practice, the Council would need to make a unanimous decision in May 2008 to lift the visa ban". We questioned what would happen if some thought progress was inadequate but others found it sufficient to warrant a further suspension.

3.11 We cleared the draft Common Position, but asked the Minister to clarify the position on where progress would need to be made and how it would be measured, so that the House might have a clearer indication than it did at present of the background against which next May's discussions would take place.[19]

19 See headnote: HC 16–i (2007–08), chapter 19 (7 November 2007)

3.12 In his response of 17 November 2007, the Minister agreed that there had been no real improvement on human rights in Uzbekistan, nor progress on Andizhan, and that it was therefore hard to see why Uzbekistan should be rewarded. This was, he said, "precisely the argument the UK deployed with EU partners". However, given that the EU works by consensus on such issues, in order to ensure the EU sanctions framework remained in place, he had agreed a compromise solution: "for the EU to work with the Uzbeks in a broad range of areas, in keeping with the EU Strategy on Central Asia. This strategy aims to build confidence and trust, in order to facilitate progress in the more sensitive areas of human rights, the judiciary and rule of law."

3.13 The Minister also noted that if, at the review, there were different opinions on the progress that Uzbekistan had made on human rights and if Member States failed to reach consensus, the visa ban would be re-applied automatically until November 2008; and that it would require a unanimous decision to lift the ban at the sixth-month review stage.

3.14 With regard to our request for information on what "broad range of human rights concerns" and which "international obligations" were at issue, and, within those parameters, which benchmarks would be applied against which to measure progress, the Minister referred us to the 10 October General Affairs and External Relations Council Conclusions, which state that the Council:

> "urges Uzbekistan to implement fully its international obligations relating to human rights and fundamental freedoms as well as rule of law and, in particular, to allow full unimpeded access by relevant international bodies to prisoners; to engage effectively with the UN Special Rapporteurs to Uzbekistan; to let all NGOS, including Human Rights Watch operate without constraints in Uzbekistan; to release human rights defenders from detention and cease their harassment; to engage positively on human rights issues in the context of the forthcoming EU-Uzbekistan Cooperation Committee. The reform of judiciary, law enforcement and police law should be pursued. Progress towards these goals will be evaluated on the basis of a report by the Head of Missions, which will include an assessment of the upcoming presidential elections."

3.15 These, the Minister said, were the objectives against which the EU would review progress made by the Uzbek authorities in six months time.

3.16 As to how this approach fitted into the EU Central Asia Strategy, the Minister said that:

> "The Strategy sets out the EU's approach to promoting democracy, human rights and good governance as well as sustainable development, counter-terrorism, counter-narcotics and energy security in Central Asia by working within existing instruments to enhance co-operation. This will be both through individual country strategies and on a regional basis. The Strategy commits the EU to continuing regular, result-orientated human rights dialogues to promote respect for human rights and fundamental freedoms, and to improve the rule of law through support for independent judiciaries, transparency and the fight against corruption. The sanctions measures are therefore very much in line with this strategy."

3.17 We thanked the Minister for these further clarifications, which showed the Uzbek authorities clearly where there would need to be significant, measurable progress between now and May 2008 if the suspension of the visa ban was to be prolonged; and noted that, without it, it would be hard for those who were so inclined to continue to argue for further such "rewards" to the Uzbek authorities, or pressure others to join in such a consensus, for fear of the whole policy collapsing.

The draft Common Position

3.18 In his 17 April 2008 Explanatory Memorandum, the Minister for Europe explains that this draft Common Position will renew the suspension of the travel ban for a further six months. He continues as follows:

> "Since the suspension of the travel ban in November 2007 there has been more progress on the human rights situation than in any other six month period since the sanctions were imposed. Arguably, this can be attributed to the suspension of the visa ban. The relatively positive trend has included:
>
> - the release of four human rights defenders, including Saidjahon Zainabiddinov;
> - the resumption of prison visits by the International Committee of the Red Cross (ICRC);
> - the appointment of a new Director for Human Rights Watch in Tashkent (although he has yet to be accredited);
> - the entering into force of the abolition of the death penalty; and
> - the introduction of a limited form of habeas corpus."

3.19 The Minister says that, during the 9–10 April EU Troika-Central Asia Foreign Ministers' meetings in Ashgabat, the EU "urged Uzbekistan to continue the positive trend and make further progress on human rights issues", and that Uzbekistan has agreed to hold the next round of the EU-Uzbekistan Human Rights Dialogue under the Slovenian Presidency. He concludes as follows:

> "Automatic re-imposition of the visa ban could put at risk further progress and constructive engagement by Uzbekistan, including on the Human Rights Dialogue. As such, the Government believes that in order to encourage continued constructive engagement, and in recognition of some progress over the last six months, the EU can justify the continued suspension of the visa ban."

The Minister's letter

3.20 In his letter of 17 April accompanying his Explanatory Memorandum, the Minister says that the draft Council Common has been prepared ahead of the 29 April General Affairs and External Relations Council, and continues as follows:

> "The Government believes that continued suspension of the visa ban, backed up by a strong Council statement on the areas in which the EU would like to see further

positive progress, is the best approach to ensure continued Uzbek co-operation on human rights issues. This approach recognises the positive progress made in the six months the visa ban has been suspended. As mentioned in my Explanatory Memorandum, this progress could arguably be attributed to the suspension of the visa ban — there has been more progress in this six month period than in any other similar period since the sanctions were first imposed."

3.21 He then goes on to say that, during discussions with fellow Member States, he argued in favour of the continued suspension of the visa ban, subject to the Presidency using the 9–10 April meeting in Ashgabat "to encourage further progress". However, at the time of writing, he says that "there is currently no consensus on the visa ban", and that "several Members States have said that they do not consider there has been enough progress from Uzbekistan and that the visa ban should be automatically re-applied". He notes that it is therefore possible that agreement may not be reached before the 29 April Council meeting: "Were this to occur, the visa ban as set out in Common Position 2007/734/CFSP would be re-imposed. A new Common Position would not be necessary in this case." Finally, he undertakes to write again with further information following the 29 April General Affairs and External Relations Council meeting.

Conclusion

3.22 **Even though there may have been "more progress in this six month period than in any other similar period since the sanctions were first imposed", it is difficult to see this as significant in relation to the benchmarks set out in the October 2007 General Affairs and External Relations Council Conclusions. It would not appear to constitute "full unimpeded access by relevant international bodies to prisoners"; nor to amount to allowing all NGOs, not just Human Rights Watch, to operate without constraints in Uzbekistan; nor to constitute the release of human rights defenders from detention and the cessation of their harassment, or the authorities' effective engagement with the UN Special Rapporteurs to Uzbekistan. Nor does the abolition of the death penalty and the introduction of a limited form of habeas corpus seem to us to contribute significantly towards "reform of judiciary, law enforcement and police law".**

3.23 **The Minister also makes no mention of the assessment of the forthcoming presidential elections, which he said would be part of the report by EU Heads of Missions that would form the basis of the EU's position. Indeed, he makes no mention of the findings or conclusions of that report at all.**

3.24 **All in all, it is more likely in our view that, if the visa ban were re-imposed, the Uzbek authorities would not be able to sit on their hands and play off one group of Member States against the other when the Common Position is next set for review, in November, but would instead have six months in which to show their commitment to the sort of significant improvements in respect for human rights, the rule of law and fundamental freedoms, and effective engagement with the UN Special Rapporteurs to Uzbekistan, that the EU has been seeking from the outset. Depending on their response, the EU would then have a much clearer indication of whether or not matters were moving in the right direction when the Common Position comes up for review.**

3.25 **We shall therefore retain the draft Common Position under scrutiny, and await the Minister's further report, which we should like also to include information about the assessment of the presidential elections and the report by EU Heads of Missions.**

4 Counterfeiting the euro

(28956) 13468/07 COM(07) 525	Draft Regulation amending regulation (EC) No. 1338/2001 laying down measures necessary for the protection of the euro against counterfeiting

Legal base	Article 123(4); —; QMV (of eurozone members)
Document originated	17 September 2007
Deposited in Parliament	5 October 2007
Department	HM Treasury
Basis of consideration	EM and Minister's letter of 1 April 2008
Previous Committee Report	None
To be discussed in Council	Not known
Committee's assessment	Legally and politically important
Committee's decision	Not cleared; further information awaited

Background

4.1 Council Regulation (EC) No. 1338/2001 sets out for eurozone Member States the measures necessary for the protection of the euro against counterfeiting. Council Regulation (EC) No. 1339/2001 extends the effects of that Regulation to those Member States that have not adopted the euro.

The document

4.2 The draft Regulation seeks to make three changes to the measures in Council Regulation (EC) No. 1338/2001. First, the present Regulation requires credit institutions and any other related institutions to withdraw from circulation all euro notes and coins received by them which they know or believe to be counterfeit, and to hand them over to the competent national authorities. In 2001 there were no agreed uniform and effective methods for large-scale detection of counterfeits. Consequently, an obligation for these institutions to check for counterfeits was not included. Methods are now available for the institutions to detect counterfeits by processing notes and coins before they are put back into circulation. Accordingly, the proposed Regulation would now impose an obligation on credit and related institutions to authenticate euro notes and coins before they are put back into circulation.

4.3 Secondly, the procedures in the present Regulation do not permit the transmission of counterfeit notes and coins between competent national authorities, which is necessary for

adjustment of equipment used in detecting counterfeits. The proposed Regulation would authorise such transmissions. Thirdly, the present Regulation requires the European Technical and Scientific Centres (ETSC), which was established in 2001 on a temporary basis to analyse and categorise every new type of counterfeit coin, to communicate data to the Commission, as well as to the European Central Bank and to national authorities. However, the ETSC is now permanently established within the Commission and the proposed Regulation would remove the redundant obligation to communicate data to the Commission.

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

The Government's view

4.5 In her Explanatory Memorandum the Financial Secretary to the Treasury (Jane Kennedy) draws our attention to four concerns. First, she discusses the provision in the draft Regulation applying the changes proposed to non-eurozone Member States, including the UK. She says the Government is exploring with the Commission and other Member States whether a European Central Bank proposal that the measure be split into two parts, one for eurozone members and one for non-eurozone members "might be more appropriate from a legal and policy perspective". The Minister comments:

- in raising this and other concerns the Government does not question the need to maintain the integrity of national and international monetary systems by ensuring that financial institutions have in place appropriate systems to detect and remove from circulation counterfeit notes and coins of all kinds;
- but a decision to impose specific requirements on firms needs to be informed by consultation with all of the jurisdictions that may be affected and by an appropriate assessment of the risks and costs involved; and
- any requirements should be proportionate as well as effective and should be compatible, as far as possible, with the wider approach to the risk-based supervision of firms in the sectors concerned.

4.6 The Minister continues by describing the other issues of concern:

- the verification of notes and coins is to be carried out by credit and related institutions "in line with procedures to be defined by the European Central Bank and the Commission". Until those procedures have been consulted upon and defined there is uncertainty as to how the proposal would affect the industry and a clear view on the impact of the Regulation would be difficult without that certainty;
- if all the institutions concerned have to introduce new procedures and equipment this would be burdensome on firms which either handle no, or small amounts of, euros or already have appropriate measures in place to look for counterfeits. Moreover there is every commercial incentive for firms to minimise their vulnerability to crime, the Financial Services Authority requires regulated firms to have systems and controls in place that counter the risks of crime, and the effect of the draft Regulation, European Central Bank and Commission procedures might

operate against the risk based approach that is followed throughout the financial services industry in the UK; and

- firms might be required to acquire and maintain new equipment, train staff in the operation and maintenance of that equipment and put in place procedures to carry out tests or checks that may be prescribed in detail. The draft Regulation therefore has the potential to impose costs on UK financial firms who do not predominantly deal in the euro, as it is not the domestic currency. It could also lead to some institutions who do not have a great deal of involvement in the euro declining to handle it in the future, which could inconvenience UK, Community and other travellers.

4.7 The Minister tells us that it is difficult to quantify the costs with any precision which might be imposed on firms by the proposal, given the lack of detail about the implementation of the measure. But she points out that there are approximately 13,000 bank branches in the UK and 20,000 bureaux de change and similar premises, although not all of those firms necessarily deal in euros. She adds that if there were to be a supervisory arrangement to ensure compliance with the new Regulation it is not clear what additional costs might be placed on those charged with discharging any supervisory responsibility nor who they might be.

4.8 The Minister says that in forthcoming discussions with the Commission and in working groups the Government will continue to explore:

- how wide this draft Regulation intends to reach;
- what the European Central Bank and the Commission might propose in terms of procedures; and
- the cost implications and the extent to which the costs imposed on UK firms will be appropriate and proportionate.

4.9 In her letter the Minister apologises for the long delay in submitting her Explanatory Memorandum. Noting that this reflects the views of the Financial Services Authority, the Bank of England and a number of other Government Departments, she says that "it took some time to fully assess the implications of the proposals and to reach an agreed position". In a final paragraph to the Explanatory Memorandum itself the Minister elaborates on a variety of issues and of bodies involved in its preparation.

Conclusion

4.10 **We note the very real concerns about the substance of this proposal which could affect UK firms inappropriately and disproportionately. But we are even more concerned at the possibility that this measure would be imposed on Member States not in the eurozone, including the UK, by a Regulation on which they have no vote. So we presume that the Government will insist that only Regulation (EC) No. 1338/2001 be amended using Article 123(4) EC and that Regulation (EC) No. 1339/2001 be amended by use of Article 308 EC. These were the legal bases used respectively for Regulations (EC) No. 1338/2001 and 1339/2001. Apart from the obvious advantage that the non-eurozone Member States would have a vote in relation to amending Regulation (EC)**

No. 1339/2001, given the unanimity requirement for Article 308 legislation the Government would be much better placed to ensure any new requirements of UK credit and related institutions were appropriate and proportionate.

4.11 **Before considering this document further we wish to hear about the success of the Government's efforts to obtain both a more acceptable basis for the proposed legislation and measures which are clearly appropriate and proportionate to the situation of the UK's financial services. Meanwhile the document remains under scrutiny.**

4.12 **Turning to the late arrival of the Explanatory Memorandum we note the Minister's apology and explanation. The Cabinet Office's scrutiny guidance for Government departments requires an Explanatory Memorandum normally to be submitted within ten working days of deposit in Parliament of the relevant document. We readily accept that this timetable cannot always be adhered to but a delay of five and a half months is inordinate. It would have been better for the Minister to send us early on a partial Explanatory Memorandum with the promise of a supplementary one at a later stage. In her letter, which deals with a number of lapses in observance of Parliament's scrutiny requirements,[20] the Minister says that, following a review of internal processes, her department has implemented a new system of guidance in order to avoid future problems. We trust that the new system will allow for the possibility of partial memoranda as appropriate.**

20 See also chapters 10 and 11 in this report.

5 Non-custodial pre-trial supervision measures

(a) (27783) 12367/06 + ADDs 1–2 COM(06) 468	Draft Council Framework Decision on the European supervision order in pre-trial procedures between the Member States of the European Union
(b) (29567) 15821/07 —	Revised Draft Council Framework Decision on the European supervision order in pre-trial procedures between the Member States of the European Union

Legal base	Articles 31(1)(a) and (c), 34(2)(b)EU; consultation; unanimity
Department	Ministry of Justice
Basis of consideration	(b) EM of 17 March 2008
Previous Committee Report	(a) HC 41–x (2006–07), chapter 7 (21 February 2007), HC 34–xxxvii (2005–06), chapter 23 (11 October 2006) and see (25937) 12243/04: HC 42–xxxvi (2003–04), chapter 10 (10 November 2004) (b) None
To be discussed in Council	No date set
Committee's assessment	Legally and politically important
Committee's decision	(a) Cleared (b) Not cleared; further information requested

Background

5.1 We considered an earlier version of this draft Framework Decision (document (a)) on 11 October 2006 and 21 February 2007. The proposal envisaged a non-custodial pre-trial supervision order (such as an order for bail) being recognised and enforced in another EU Member State pending the return of the defendant to the EU Member State of trial. The objective of the proposal would be to help reduce the number of non-resident persons held in custody pending trial.

5.2 The order (a "European supervision order") would be made by a judicial authority in the Member State of trial and would be entitled to recognition and enforcement in another Member State, allowing the non-resident person charged with an offence to benefit from a supervision regime in another Member State (normally the Member State of residence). The Member State of normal residence would be responsible for the supervision of the person awaiting trial and would be obliged to report to the Member State of trial on any breaches of the conditions attached to the order, so that the latter can decide on the arrest and transfer of the suspect if this were thought necessary.

5.3 We considered that this proposal could be of benefit to UK nationals detained in other Member States while awaiting trial by allowing them to return to the UK under supervision instead of being remanded in custody, and therefore welcomed the proposal in principle. We also welcomed the fact that the detailed conditions of the supervision order would be subject to agreement with the State in which the supervision was to be carried out.

5.4 We noted that the Government was seeking to clarify whether a decision finding a breach of the supervision order and reporting it to the issuing State could be made by authorities which were not judicial in character (in the UK it is possible for the police and prosecution to take such action). In our view, it was not appropriate for a non-judicial authority to make such a finding if this were to be given any automatic effect in the issuing State, but we considered there would be less objection to the finding being treated merely as evidence in the issuing State, to be taken into account along with other circumstances, before any order was made requiring arrest and transfer.

5.5 We also drew attention to the narrowness of the grounds on which an executing State could refuse to arrest and transfer a person subject to a supervision order but noted the Minister's comments on the need for a balance between the interests of the issuing State in being certain that the defendant will attend the trial and those of the State responsible for supervising the defendant under a supervision order. We also noted that, in any event, the proposal would require the issuing State to give the defendant a hearing before deciding to revoke a supervision order.

The revised Framework Decision

5.6 The revised draft Framework Decision (document (b)) is a redraft proposed by the Presidency following an "orientation" debate on the matter at the Justice and Home Affairs Council on 18 September 2007. A number of changes have been made to the proposal, compared with the original Commission proposal. These may be summarised as follows.

5.7 The proposal no longer refers to a single "European supervision order" but to "supervision measures". The types of "supervision measure" covered by the Framework Decision are defined in Article 5 and include an obligation to comply with any summons for a preliminary hearing or trial, to give notice of any change of address, not to enter certain localities or places in the issuing or executing State or to leave a specified address or place of work, to comply with limitations on leaving the national territory of the executing State, not to engage in specified activities, to report at specified times and to avoid contact with specific persons or objects. (The previous version of the proposal envisaged a wider range of measures — such as undergoing specified medical treatment which could be imposed by the issuing authority, subject to the agreement of the executing authority). The new version also allows the executing State to notify the Council of any further supervision measures which it is prepared to supervise.

5.8 National supervision orders are to be transmitted to the executing State under cover of a certificate (Article 8) and Article 9 provides for a decision within 10 days to take all necessary measures to monitor the supervision measures, unless one of the permitted grounds for not recognising and enforcing the measure is invoked. These grounds have been expanded by the insertion of a new provision (Article 11) which partly re-introduces a requirement of dual criminality. Accordingly, Member States may refuse to execute a

supervision order from another Member State which has been imposed for conduct in the issuing State which does not constitute an offence in the executing State, unless the offence is on a list of 32 types of conduct (the list being the same as that used in Article 2(2) of the European Arrest Warrant). The list therefore includes such (undefined) concepts as "computer-related crime", "racism and xenophobia", "swindling", "racketeering and extortion" and "sabotage".

5.9 Article 12 permits the executing State to refuse to recognise the supervision order on a number of substantive grounds, including cases where a prosecution would be statute-barred under the law of the executing State, where the person is below the age of criminal responsibility, where there is an immunity making it impossible to monitor the supervision measures, or where the executing State would refuse to extradite the person under a European Arrest Warrant in the event of a breach of the supervision measures.

5.10 Article 13 provides that the monitoring of the supervision measure is to be governed by the law of the executing State. However, under Article 14 it is for the issuing State to take all subsequent decisions relating to the supervision order, including its modification or revocation, or the imposition of imprisonment pending trial following a breach of the supervision measures "or an engagement in criminal activity". (It is not clear if this latter provision is meant to cover the case where a person subject to a supervision order commits an offence within the territory of the executing State).

5.11 A new Article 17 provides for the procedures under the European Arrest Warrant to be applied where pre-trial detention is ordered by the issuing State. Article 21 provides for the costs arising from application of the measure to be borne by the executing State, except for costs arising "exclusively within the territory of the issuing State".

The Government's view

5.12 In her Explanatory Memorandum of 17 March 2008, submitted on behalf of the Ministry of Justice, the Attorney General (Baroness Scotland of Asthal) explains that the Government broadly welcomes the objectives of the original proposal and agrees that "it is a good idea for Member States to underwrite each other's bail arrangements". The Attorney General also notes that there are at present no international instruments that permit the transfer of non-custodial pre-trial supervision measures from one Member State to another.

5.13 The Attorney General further explains that at the orientation debate on this matter at the Justice and Home Affairs Council on 18 September 2007, the UK supported the Presidency's approach on the re-draft of the proposal and reaffirmed the need for the instrument to strike a right balance between "excessive bureaucracy" and the need for Supervision Order decisions to be properly enforced. The UK also underlined the need for the instrument to reflect the differences between the criminal justice systems of the Member States and not to interfere with domestic criminal law.

5.14 The Attorney General describes the main changes which have been made in the new version, but also states that the revised draft does not appear to address the main issues for the UK. The Attorney General describes four such issues. First, the Government considers that the executing State should have an active role "early on" in the decision-making

process and points to the absence of any provision in the draft Framework Decision for any effective consultation between the issuing and executing States. The Attorney General adds that the provision of "pre-agreed measures"[21] which may be imposed without reference to the executing State confirms the absence of a requirement for consultation. Secondly, the Attorney General notes that careful consideration will need to be given to any proposal to amend the EAW as a means for securing the return of persons subject to supervision. Thirdly, the Attorney General comments that the process needs to be "straightforward, unbureaucratic and cost-effective" and that finding a solution which achieves this balance is the major challenge, in the Government's view. Finally, the Attorney General states that there should be no impact on domestic bail laws and processes.

Conclusion

5.15 **Like the Attorney General, we welcome this proposal inasmuch as it could be of benefit to UK nationals in other Member States. Although we agree that it is a good idea for Member States to "underwrite" each other's bail arrangements, a number of differing views were expressed on the potential sensitivity of the issue, particularly in relation to the risk of foreign EU nationals being released on bail in this country and then absconding or committing crimes. We refer the Minister to the transcript of our proceedings.**

5.16 **In a number of respects, the revised draft appears to be an improvement, notably in relation to the new definition of supervision measures in Article 5.**

5.17 **We agree generally with the Attorney General's comments, but would invite her further comments on how far consultation between executing and issuing States could extend without becoming an interference with the judicial function in the issuing State.**

5.18 **We have some difficulty following the logic of Article 14, which could be read as reserving to the issuing State the question of holding the defendant in custody, should he engage in criminal activity in the executing State. We would be grateful for a fuller explanation of the effect of this provision.**

5.19 **We clear document (a) on the grounds it has been superseded, but we shall hold document (b) under scrutiny pending the Attorney General's reply and further information on the progress of negotiating this proposal.**

21 This appears to be a reference to the provisions of Article 5.

6 Statistics

(a) (29013) 14094/07 COM(07) 625	Draft Regulation on European Statistics
(b) (29374) 15732/1/07 —	European Central Bank Opinion concerning a proposal for a Regulation on European Statistics

Legal base	Article 285 EC; co-decision; QMV
Deposited in Parliament	(b) 24 January 2008
Department	Office for National Statistics
Basis of consideration	(b) EM of 8 February 2008
Previous Committee Report	(a) HC 16–ix (2007–08), chapter 6 (23 January 2008) (b) None
To be discussed in Council	Not known
Committee's assessment	Politically important
Committee's decision	(a) and (b) Not cleared; further information awaited

Background

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

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

- Council Decision (EEC, Euratom) No. 89/382 of 1989 establishing a Commission chaired Committee on the Statistical Programmes of the European Communities, composed of representatives of the national statistical institutes;

- Council Regulation (EEC, Euratom) No. 1588/90 of 1990 on transmission of data subject to statistical confidentiality to Eurostat;

- Council Regulation (EC) No. 322/97 of 1997 on Community Statistics; and

- Decision No. 2367/2002/EC of 2002 on the Community statistical programme 2003 to 2007.

This framework is supplemented by sectoral legislation in specific statistical domains. The draft Regulation, document (a), is to revise and simplify the present basic legal framework for the production and dissemination of statistics at Community level, and includes the fundamental principles underlying statistical work.

6.3 When we considered the draft Regulation in January 2008 we noted Government reservations about the proposal on which it wanted Commission explanations:

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

We said that before considering the draft Regulation further we like to hear about progress in securing resolution of the matters drawn to our attention and to have more information about the proposal that Eurostat should be able to collect data directly in Member States and the safeguards on the use of this power. Meanwhile the document remained under scrutiny.[22]

The new document

6.4 Document (b) is the European Central Bank's Opinion on the Commission's proposal in document (a). The Bank welcomes the draft Regulation as it recognises both that production of good and relevant European Statistics requires cooperation between the European Statistical System and the European [statistical] System of Central Banks and the complementarity of the two systems. The Bank says that exchanges of data between the two systems should be acceptable as long as use is explicitly limited to statistical purposes, but that it should be automatically possible rather than, as the draft Regulation presently proposes, only if there is explicit provision in subsequent sectoral legislation and should not be subject to explicit authorisation by the national authority providing the original data. The Bank suggests redrafting to meet these points.

The Government's view

6.5 The Exchequer Secretary to the Treasury (Angela Eagle) comments that exchange of data as proposed is only acceptable with an explicit and legally binding condition that the Bank uses data solely for statistical purposes and that it would be fully anonymised UK data that would be transmitted by Eurostat to the Bank under the latter's proposal.

22 See headnote.

Conclusion

6.6 **We presume the Minister will inform us of how this aspect of the draft Regulation develops when a progress report on the matters we have mentioned previously is available. Meanwhile the documents remain under scrutiny.**

6.7 **Turning to a scrutiny issue we note that the Explanatory Memorandum on document (b), does not, as required by Cabinet Office guidance to Government departments and despite several reminders from our staff, contain a section about the views, if appropriate, of the Devolved Administrations. We should like from the Minister, as soon as possible, a rectification of, and explanation for, this omission.**

7 The Structural and Cohesion Funds: major investment projects: Special Report by the European Court of Auditors

(29548) 7487/08 —	Court of Auditors: Special Report No. 1/2008 concerning the procedures for the preliminary examination and evaluation of major investment projects for the 1994–1999 and 2000–2006 programming periods

Legal base	—
Deposited in Parliament	14 March 2008
Department	Business, Enterprise and Regulatory Reform
Basis of consideration	EM of 15 April 2008
Previous Committee Report	None
To be discussed in Council	No date set
Committee's assessment	Politically important
Committee's decision	Cleared

Background

7.1 The European Regional Development Fund (ERDF) was set up in 1975. Article 160 of the EC Treaty says that the Fund:

> "is intended to help redress the main regional imbalances in the Community through participation in the development and structural adjustment of regions whose development is lagging behind and in the conversion of declining industrial regions".

Financial assistance is available from the ERDF towards the costs of projects to create employment and stimulate social and economic development. For example, projects to improve the local infrastructure (roads, bridges, water supply, waste disposal and so on), to

provide training or to give advice to SMEs can be funded jointly from the ERDF and grants from a Member State, regional authority or local authority.

7.2 Article 161 of the EC Treaty provides for the creation of a Cohesion Fund to make:

> "a financial contribution to projects in the fields of environment and trans-European networks in the area of transport infrastructure".

Assistance from the Cohesion Fund is available only to Member States with a per capita GNP of less than 90% of the Community average. At present, Greece, Portugal, Spain and all the new Member States are eligible for financial contributions from the Fund.

7.3 The European Court of Auditors (ECA) audits the accounts of all the expenditure and revenue of the Community. Article 248(4) of the EC Treaty authorises the ECA to make special reports at any time.

The Special Report

7.4 The Regulations establishing the ERDF and Cohesion Fund programmes for 1994–99 and 2000–06 required Member States to obtain the Commission's prior approval for applications for financial contributions from either Fund to major projects. For the period 2000–06, the ERDF Regulation defined major infrastructure projects as those with a total cost of more than €50 million. The Cohesion Fund Regulations did not specify the cost of major projects requiring the Commission's approval; but, for the purposes of its special audit of the Cohesion Fund programmes, the ECA examined projects with a total cost of more than €50 million.

7.5 The Commission was also required to conduct evaluations of major projects after their completion ("ex post evaluation").

7.6 In 1994–99, there were 676 ERDF major projects, with a total cost of €36 billion; the comparable figures for the Cohesion Fund were 147 major products and €12 billion. For the period 2000–06, there were 279 ERDF major projects with a combined cost of €48 billion; and there were 154 Cohesion Fund projects with a combined cost of €23 billion.

7.7 The aim of the ECA's audit was to answer two questions:

- was the Commission's examination of applications for funds for major projects adequate ("pre-approval examinations"); and
- did the *ex post* evaluations produce results that were helpful for subsequent decision-making?

7.8 The audit looked at the adequacy of the Commission's pre-approval examination of a sample of ERDF and Cohesion Fund major projects in the programmes for both the 1994–99 and 2000–06 periods. But it looked at the ex post evaluations only for the period 1994–99.

7.9 The ECA's main conclusions on the pre-approval examination procedures are as follows:

- The Commission tolerated great disparities in the quality of the financial and socio-economic analyses presented in support of the projects. As a result, some major projects were approved although the supporting data did not permit an adequate assessment.
- The criteria used to decide the proportion of the cost of the project which should be met from the ERDF or the Cohesion Fund were not sufficiently precise.
- For productive investments (those where the investment will generate a positive stream of revenue), the Commission did not examine the grant of a loan rather than a subsidy.

7.10 The ECA says:

> "… the Court entertains doubts concerning the real added value of the approval process for major projects as implemented by the Commission. The exercise is cumbersome and does not exclude projects of inferior quality or adjust the rate of intervention in a satisfactory manner. Neither does it guarantee adequate preparation for the subsequent evaluation."[23]

7.11 The ECA also found weaknesses in the ex post evaluations. It says, for example, that:

> "the *ex post* evaluation of major projects for the 1994–1999 period was hindered by substantial shortcomings in the aid applications, in particular concerning anticipated effects, indicators, and the initial situation. These deficiencies prevented an evaluation of the real effects of the interventions and the drawing of lessons from them for subsequent decision-making."[24]

7.12 The ECA welcomes the improvements to the pre-approval and ex post procedures which have been incorporated in the new Regulations for the ERDF and Cohesion Funds between 2007–13. For example, the information to be provided by Member States is now clearly defined, including a requirement for an explicit justification for a contribution to the project from public funds; and there is a clearer definition of revenue-generating projects and how they are to be treated.

7.13 The ECA recommends that:

> "to avoid financing decisions [on major projects in the 2007–13 period] being reduced to an administrative exercise with no influence on the quality of the projects adopted, the Commission should:
>
> (a) apply more efficient preliminary examination procedures based on the tools that it has itself developed;
>
> (b) ensure that the cost-benefit analysis is applied rigorously … ;
>
> (c) continue its efforts to take into account the socio-economic factors that allow the rate of Community participation … to be adjusted. Consideration

23 Special Report, page 33, paragraph 60.

24 Special Report, page 33, paragraph 61(b).

> of such factors should be based on explicit and less random rules applied in a consistent manner.”[25]

7.14 The Commission will not be responsible for making ex post evaluations of projects completed under the 2007–13 programmes. The ECA considers that it is it essential, therefore, that Member States and the recipients of financial contributions from the Funds should make such evaluations. The Commission should ensure, in its pre-approval examination of projects, that applications include the information which will be required both for ex post evaluations and the Commission’s own purposes.

7.15 As to the longer term, the ECA invites the Council, the European Parliament and the Commission “to give thought to the purpose of the special arrangements for authorising major projects”.[26]

7.16 The Commission’s response to the ECA’s findings is attached to the Special Report. Broadly, the Commission accepts the Court’s conclusions and recommendations and emphasises the improvements made during the 2000–06 period and the further improvements built into the Regulations for the 2007–13 programmes.

The Government’s view

7.17 The Minister of State for Employment Relations and Postal Affairs at the Department for Business, Enterprise and Regulatory Reform (Mr Pat McFadden) tells us that, in the Government’s view, all spending from the Structural Funds should be properly appraised, managed and evaluated. The ECA’s recommendations have been addressed for the 2007–13 period as explained in the Commission’s response to the Special Report.

Conclusion

7.18 **We believe that the Court of Auditors’ Special Report usefully identifies the weaknesses in the Commission’s arrangements for the pre-approval examination of major projects between 1994 and 2006 and for *ex post* evaluations of major projects in the 1994–99 programmes. We note the ECA’s recognition of the improvements the Commission has made to its procedures, particularly for the 2007–13 period, and we welcome this strengthening of the arrangements.**

7.19 **We draw the Special Report to the attention of the House because of the importance of the subject and the scale of the Community expenditure involved. There are, however, no questions that we need put to the Minister and we are content to clear the document from scrutiny.**

25 Special Report, page 34, paragraph 63.

26 Special Report, page 35, paragraph 65.

8 The accession process in the Western Balkans

(29556) 7702/08 + ADD1 COM(08) 127	Commission Communication: *Western Balkans: Enhancing the European perspective*

Legal base	—
Department	Foreign and Commonwealth Office
Basis of consideration	Minister's letter of 19 April 2008
Previous Committee Report	HC 16–xx (2007–08), chapter 13 (2 April 2008)
To be discussed in Council	To be determined
Committee's assessment	Politically important
Committee's decision	Cleared; relevant to the upcoming debate on the western Balkans.

Background

8.1 At the 2003 Thessaloniki Summit the EU again said it would "fully and effectively support the European perspective of the countries of the Western Balkans", strengthened the existing Stabilisation and Association Process (introduced in 1999, following the Balkan conflicts) and introduced European Partnerships. The December 2006 European Council confirmed that "the future of the Western Balkans lies in the European Union".

8.2 The Partnerships are forward-looking, with well-defined short and medium-term priorities for each country as they work to meet EU standards. The annual Progress Reports review the progress against the Copenhagen Criteria and the priorities set out in each country's European Partnership, i.e., each country's political and economic situation, democracy and rule of law, border controls, human rights, environment and social policies.

8.3 Last December, we cleared the associated draft Council Regulations updating each Partnership (since the Partnership process needs to continue, and the revised Agreements were plainly well-drawn). However, given the sobering picture in the Progress Reports — 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; hanging over everything 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 — we recommended them for debate in the European Committee B, in order to give the House an opportunity to debate the situation in the Balkans and the EU's role therein. That debate will now take place on 29 April.

8.4 These concerns were amplified by subsequent developments in Kosovo and Serbia, and the EU's response thereto. The Stabilisation and Association Agreement (SAA) is a key step on the path to EU membership. As with other such SAAs, the one proposed with

Serbia will establish a far-reaching legal relationship with the EU, entailing mutual rights and obligations, 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.

8.5 Hitherto, the lack of ICTY confirmation of "full cooperation" by the Serbian authorities in seeking the apprehension and surrender of Radovan Karadžić and Ratko Mladić has held up the signing and implementation of what is not only a major practical and legal but, above all, a symbolic next step in her integration into European structures.

8.6 As our previous Report recalls, the Committee is concerned that a desire to compensate Serbia for her opposition to the EU's recent action in Kosovo is leading to an undermining of this conditionality, with wider adverse implications both for further enlargement and the EU support that is vital to the work of the ICTY in both Serbia and Bosnia and Herzegovina. These issues too will be discussed during the debate.

The Commission Communication

8.7 The present Communication follows up on the Thessaloniki agenda and a similar Communication produced during the Austrian Presidency, in line with the Commission's November 2007 enlargement strategy paper. The Communication again encourages the Western Balkan countries to accelerate reform and meet the necessary conditions (as set out in the Stabilisation and Association process and countries' respective European/Accession Partnerships). Section II includes a further snapshot of progress by individual countries and examines "the way forward" under eight main headings:

— Moving closer towards the EU and enhancing regional cooperation;

— People-to-people contacts; familiarising people with the EU;

— Civil society development and dialogue — A new civil society today;

— Good governance;

— Parliamentary cooperation;

— Trade integration — Central European Free Trade Agreement;

— Economic and social development; and

— Community financial support and donor coordination

8.8 The Communication notes the recent declaration of independence by Kosovo and confirms that its future, like that of the rest of the Western Balkans, lies in Europe. It recognises the key role that Serbia has in the region and encourages Serbia to reaffirm its commitment to closer ties with the EU. On Bosnia, it underlines the further progress needed for it to sign an SAA with the EU. It encourages Macedonia, Albania and Montenegro to continue their recent reform progress and encourages Macedonia to seek mutually acceptable solutions to unresolved issues with neighbours. It sets out further initiatives for, e.g., promoting people-to people contacts, covering areas such as visa liberalisation and scholarships, for developing civil society and for enhancing the region's economic and social development. The Communication also provides a succinct analysis

of the situation of each country in the light of developments since the November 2007 progress reports. The Minister for Europe at the Foreign and Commonwealth Office (Mr Jim Murphy) welcomed it and agreed with the key points.

8.9 Against the background outlined above (and more fully in our previous Report), it is perhaps not surprising that this further Communication adds little to this complex equation; there is, for example, a very familiar ring in what the Commission has to say about how it will help and, on the other hand, what each of the EU aspirants needs to do in order to make progress. However, given the widespread interest in the western Balkans and the upcoming debate, we nonetheless felt that it warranted reporting to the House and "tagging" to that debate.

8.10 We also asked the Minister for Europe to write as soon as possible with an account of the "Gymnich"[27] discussion to which he referred in his accompanying Explanatory Memorandum and a full exposition of the Council Conclusions that he expected to be adopted.[28]

The Minister's letter of 19 April 2007

8.11 The Minister says that the Commission presented the Communication at the Gymnich in Brdo, Slovenia, on 28–29 March, and continues as follows:

> "EU Ministers discussed it in joint session with colleagues from the Western Balkans countries. The Presidency then issued a statement, noting the discussion and underlining support for the main themes of the Communication. The statement reaffirmed the importance of the Western Balkan countries making progress towards the EU. It made clear that this progress would be through implementation of the conditions and commitments of the Stabilisation and Association process, specifically political and economic reforms, reconciliation and protection of minority ethnic populations. It recognised the challenges that lay ahead, but welcomed the specific initiatives that the Communication set out to make EU links with the region more tangible."

8.12 As to the Conclusions that he expects to see adopted, the Minister says that "the Presidency has not made clear whether and when the Council may consider the Communication, but conclusions have not been prepared for the April meeting".

Conclusion

8.13 **We are grateful to the Minister for his timely, if somewhat brief, response.**

8.14 **The debate will provide a further opportunity for the Minister to expand on his account of the meeting and, we would hope, provide some further insights into how he expects the accession process to move forward at this particularly challenging time.**

27 The "Gymnich" is the informal meeting of Foreign Ministers, the High Representative for CFSP and the Commissioner for External Relations. Gymnichs are held every six months, hosted by the Presidency, and have taken place in every EU Presidency since 1974. The name Gymnich comes from the German castle north of Bonn, which provided the setting for the first such meeting, during the German EU Presidency in 1974.

28 See headnote.

9 Restrictive measures against the regime in Burma

(29621) — —	Council Common Position renewing current restrictive measures in respect of Burma

Legal base	Article 15 EU; unanimity
Department	Foreign and Commonwealth Office
Basis of consideration	EM of 17 April 2008
Previous Committee Report	None; but see (29368) 5401/08: HC 16–xi (2007–08), chapter 9 (6 February 2008) and (29083) —: HC 16–ii (2007–08), chapter 21 (14 November 2007)
To be discussed in Council	29 April General Affairs and External Relations Council
Committee's assessment	Politically important
Committee's decision	Cleared; but further information requested.

Background

9.1 Starting with Common Position 1996/635/CFSP, the EU has adapted and strengthened its sanctions regime against Burma over the last ten years in response to deteriorating circumstances on the ground, failure by the government of Burma to make progress on human rights and national reconciliation, and the use of forced labour. In line with EU sanctions policy the EU has worked to achieve positive change in Burma by placing pressure on those responsible for its policies, whilst minimising any adverse impact on the general population.

9.2 In 2006, the EU again revised its Common Position via CP 2006/340/CFSP, by imposing the following measures:

— a visa ban and assets freeze against named members of the military regime, the military and security forces, the military regime's economic interests and other individuals, groups, undertakings or entities associated with the military regime and their families.

— a visa ban against serving members of the military of the rank of Brigadier-General and above.

— a comprehensive embargo on arms and equipment that might be used for internal repression and ban on military personnel being attached to diplomatic representations in and from Burma.

— a ban on high-level bilateral government visits at the level of Political Director and above.

— a suspension of most non-humanitarian aid.

— prohibition on EU companies making finance available to, or extension of participation in, named Burmese state-owned companies, their joint ventures and subsidiaries.

9.3 In view of the deterioration of the situation in Burma, the EU adopted Common Position 2007/750/CFSP on 19 November 2007 (which we cleared at our meeting on 14 November 2007). This provided for new restrictive measures concerning certain imports from, exports to and investments in Burma/Myanmar, targeting its timber and extractive industries, which provide sources of revenue for the military regime. It also broadened the scope of the existing restrictions on investment by applying them also in respect of investment in enterprises owned or controlled by persons or entities associated with the military regime, and broadened the categories of persons targeted by the freezing of funds and economic resources.[29]

9.4 Then, on 6 February 2008, we cleared a revised Council Regulation which:

- extended the current restrictive measures which provide sources of revenue for the military regime of Burma/Myanmar in respect of:

— extending and updating persons subject to a travel ban;

— the freezing of their assets;

— extending and updating the list of enterprises in Burma subject to an investment ban.

- proposed additional restrictive measures:

— an export ban on the industrial sectors of logs and timber and defined metals, minerals, precious and semiprecious stones; to include diamonds, rubies, sapphires, jade and emeralds (the Regulation will now include finished products with an exemption for personal items of jewellery);

— an import ban on products from the above mentioned sectors;

— an investment ban on new trade in the above mentioned sectors;

— the provision of technical assistance or training related to relevant equipment and technology destined for enterprises in the above industries in Burma/Myanmar.

The further Common Position

9.5 The proposed Common Position renews current restrictive measures which provide sources of revenue for the military regime of Burma for a further 12 months and amends the Annexes in respect of:

— updating persons subject to a travel ban (with the inclusion of members of the judiciary) who are responsible for implementing acts of repression by the regime and;

— the freezing of their assets; and

29 See headnote.

— updating the list of enterprises in Burma subject to an investment ban by adding a further 30 names to the list.

The Government's view

9.6 In his 17 April 2008 Explanatory Memorandum, the Minister for Europe at the Foreign and Commonwealth Office (Mr Jim Murphy) recalls that the Council agreed the new restrictive measures in November to increase direct pressure on the Burmese regime following their violent suppression of peaceful protestors as well as the continued human rights abuses in Burma and detention of over 1,100 political prisoners.

9.7 He says that it is consistent with previous EU policy, given the current political and human rights situation in Burma, "to increase pressure on the military regime to enter into a meaningful and genuine dialogue with the democratic opposition". The ultimate aim, he again says, is the eventual transition to civilian rule and full respect of human rights, including the release of political prisoners and recognition of the rights of ethnic communities.

9.8 He agrees that the restrictive measures should be extended for a further 12 months:

> "… in view of the lack of improvement of the human rights situation in Burma or the lack of substantive progress towards an inclusive democratisation process, notwithstanding the announcement of the Government of Burma that a referendum on a new constitution would be held in May 2008 and that multi-party elections would be held in 2010. The Burmese military have failed to meet the demands of the international community and continue to violate human rights, including by continuing to detain and sentence democracy campaigners. The UK strongly supports the renewal of this position as it binds 27 Member States to a robust policy in support of political change in Burma."

9.9 He expects the draft Common Position to be approved at the 29 April 2008 General Affairs and External Relations Council .

Conclusions

9.10 **Although we have no concern over these proposals, we are reporting them to the House because of the widespread interest in the situation in Burma.**

9.11 **We also recall our request, in previous reports on this topic and in correspondence with the Minister, for him to explain more of the background thinking to these longstanding sanctions measures, which would appear to have had little effect on a brutal and inflexible regime. We have asked whom the Minister has consulted in the formulation of UK policy. We have asked what else the EU and the UK have been seeking to do, over and above this sanctions package, and what other ideas have been in play. Now, the Minister says, the Burmese regime "have failed to meet the demands of the international community". That international community includes China, a permanent member of the Security Council with immense influence over the regime. We are not aware of the Chinese authorities participating in these demands. We therefore ask what representations have been made to them by the Secretary**

General/High Representative, or at the most recent EU-China summit, the agenda of which included "a broad range of bilateral, regional and international issues including Burma/Myanmar". We also ask if representations have been made by recent senior Government visitors.[30]

9.12 **We now clear the document, but would be grateful if the Minister would write to us with regard to these wider aspects of the EU's and the UK's response to the regime's continuing intransigence.**

10 Financial services

(28613) 9293/07 COM(07) 226	Green Paper on retail financial services in the single market

Legal base	—
Department	HM Treasury
Basis of consideration	Minister's letter of 1 April 2008
Previous Committee Report	HC 41–xxvii (2006–07), chapter 2 (27 June 2007)
To be discussed in Council	None planned
Committee's assessment	Politically important
Committee's decision	Cleared

Background

10.1 In the earlier part of this decade the Community's Financial Services Action Plan resulted in adoption of more than 40 legislative measures designed to establish an integrated European financial services market. In December 2005 the Commission published a White Paper about financial services policy for 2005/2010. The White Paper identified further integration of Community retail markets as an area where a number of carefully targeted initiatives might be useful.[31] In January 2007 the Commission published a report on its competition inquiry into the retail banking sector.[32] In the same month the Commission also published an *Interim Report on the Business Insurance Sector* by its Competition Directorate-General.[33]

30 http://ec.europa.eu/external_relations/china/summit_1107/index.htm.

31 (27072) 15345/05 + ADD1: see HC 34–xvi (2005–06), chapter 3 (25 January 2006) and HC 34–xxi (2005–06), chapter 3 (8 March 2006) and *Stg Co Deb*, European Standing Committee, 20 March 2006, cols. 3–32.

32 (28352) 6238/07: see HC 41–xii (2006–07), chapter 1 (7 March 2007) and *Stg Co Deb*, European Standing Committee, 14 May 2007, cols. 3–22.

33 http://ec.europa.eu/comm/competition/antitrust/others/sector_inquiries/financial_services/interim_report_24012007.pdf

10.2 In this Green Paper, published in April 2007, the Commission set out, and sought views on, its latest thinking on how to further the integration of Community retail markets in financial services. The document:

- built on the 2005 White Paper and took into account the results of the sectoral inquiry into retail banking and the interim report on business insurance;
- discussed the Commission's high-level aim of furthering integration of retail markets;
- reported recent developments, noting modest cross-border activity, wide variation in prices, restricted product diversity and choice and large variations in market performance;
- described the next steps for many current initiatives, including those on payments and the Single Euro Payments Area (SEPA), insurance, particularly national "general good" rules, mortgage credit, retail banking and credit intermediaries;
- identified some further areas where there might be new initiatives —pensions and life-time savings and financial literacy — where the Commission believes more could be done to promote financial literacy and capability and seeks views on whether there is a role for the Commission in developing guidelines and promoting best practice;
- emphasised work on all these matters was at a preliminary stage and action would only be pursued if, in accordance with better regulation principles, there was a strong economic case for so doing;
- said that the Commission, in determining what action, if any, to take, would consider a full range of options, including non-legislative ones;
- asked for views on the matters in the Green Paper and posed 14 specific questions to which it sought responses; and
- said the results of the consultation would be incorporated into the Commission's single market review report to be published in the autumn of 2007.

10.3 When we considered this document we noted the Government's comments that:

- any analysis of methods by which to further integration of retail markets needed to be underpinned by a robust analysis of both specific barriers and market failures that might exist;
- retail markets were intrinsically different to wholesale markets and that many of the barriers that obstruct retail markets were not regulatory;
- a legislative approach would often be less likely to be effective in removing many of the barriers present in retail markets;
- rather, integration of retail markets through robust use of competition policy might provide a more effective way forward; and

- the Government was currently considering and further analysing the content of the Green Paper and would be responding to the Commission (which had asked for comments by 16 July 2007).

We commented that the document suggested several possible policy initiatives which might have a significant effect on retail financial services and held over further consideration until seeing the Government's response to the Commission. Meanwhile the document remained uncleared.[34]

The Minister's letter

10.4 The Financial Secretary to the Treasury (Jane Kennedy) now sends us, very belatedly, the Government's response to the Green Paper submitted in July 2007. The response, prepared by the Treasury, the Office of Fair Trading and the Financial Services Authority elaborates on the points made to us by the Government and gives detailed responses to the 14 specific questions posed in the Green Paper.[35]

10.5 The Minister apologises for the delay in sending us the Government's response. And she tells us in her covering letter, which deals with a number of lapses in observance of Parliament's scrutiny requirements,[36] that, following a review of internal processes, her department has implemented a new system of guidance in order to avoid future problems.

Conclusion

10.6 **We note the Minister's apology and her comment about her department's new scrutiny arrangements. We trust that these will lead to improved observance of Parliament's scrutiny requirements.**

10.7 **As for the Green Paper, as the Commission foreshadowed, the results of the consultation were incorporated in its review of the single market published in November 2007 and on which we reported in January 2008.**[37] **Given, therefore, that the document is now overtaken we clear it.**

34 See headnote.

35 See http://ec.europa.eu/internal_market/finservices-retail/docs/policy/gp_comments/ms_uk_hmtreasury_en.pdf.

36 See also chapters 4 and 11 in this Report.

37 (29198) 15651/07 + ADDs 1–5: see HC 16–viii (2007–08), chapter 9 (16 January 2008). See particularly ADD 4: http://ec.europa.eu/citizens_agenda/docs/sec_2007_1520_en.pdf.

11 Lisbon Strategy

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

Legal base	(a) Draft Council Recommendation in ADD 3: Articles 99(2) and 128(4) EC; —; QMV. Draft Council Recommendation in ADD 4: Article 99(2) EC; —; QMV. Draft Council Decision in ADD 4: Article 128 (2)EC; consultation; QMV (b) and (c) —
Department	(a) HM Treasury and Work and Pensions (b) and (c) HM Treasury
Basis of consideration	Minister's letter of 1 April 2008
Previous Committee Report	HC 16–ix (2007–08), chapter 18 (23 January 2008)
Discussed in Council	February and March 2008
Committee's assessment	Politically important
Committee's decision	Cleared (decision reported on 23 January 2008)

Background

11.1 In January 2008 we considered and cleared these three documents — document (a), the strategic report called for by the European Council on past and future implementation of the Lisbon Strategy, document (b), the Commission proposals for a new Community Lisbon Programme for the cycle 2008–2010 and document (c), a discussion of cohesion policy in the context of the renewed Lisbon Strategy for growth and jobs.

11.2 In clearing these documents we noted that:

- the Cabinet Office guidance to Government departments on the preparation of Explanatory Memoranda says "The description of the subject matter should be sufficient to enable all recipients to understand broadly what is proposed without reference to the EU document"; and

- the two relevant paragraphs in the Treasury's Explanatory Memorandum on the documents, one of which was little more than an elaboration of the titles of the seven documents and annexes concerned, was a wholly inadequate description of the content of the almost 400 pages of these papers.

We asked both that, for the future, the Treasury's Explanatory Memoranda properly describe the content of the documents they deal with and to be informed of the action taken to ensure this happens.[38]

The Minister's letter

11.3 The Financial Secretary to the Treasury (Jane Kennedy) tells us, in a letter that deals with a number of scrutiny problems,[39] that following our comments Treasury "officials have carried out a review of their internal processes for commissioning and drafting Explanatory Memoranda and have implemented a new system of guidance for drafting officials as well as a more detailed monitoring system with greater involvement from senior officials".

Conclusion

11.4 **We thank the Minister for this information and trust that the new procedures she describes will lead to more useful Explanatory Memoranda.**

12 Law applicable to contractual obligations

(27200) 5203/06 COM(05) 650	Draft Regulation on the law applicable to contractual obligations (Rome I)

Legal base	Articles 61(c) and 65 EC; co–decision; QMV
Department	Ministry of Justice
Basis of consideration	Minister's letter of 2 April 2008
Previous Committee Reports	HC 34–xxi (2005–06), chapter 5 (8 March 2006), HC 34–xxxvii (2005–06), chapter 2 (11 October 2006) and HC 41–xvi (2006–07), chapter 7 (28 March 2007)
To be discussed in Council	Not applicable
Committee's assessment	Legally and politically important
Committee's decision	Cleared (decision reported on 28 March 2007)

38 See headnote.

39 See also chapters 4 and 10 in this Report.

Background

12.1 In 1980 the then Member States adopted the Rome Convention on the law applicable to contractual relations. The Convention sets out a number of rules for determining which system of law is to apply to contractual obligations where there is an international element (such as the case where a contract made in one Member State falls to be performed in another). The Convention is of a universal nature, that is, the choice of law rules which it contains may lead to the application of the law of any country including that of non-Member States. The United Kingdom is a party to the Convention together with all other EU Member States.

12.2 The 1980 Rome Convention was ratified by the United Kingdom following the enactment of the Contracts (Applicable Law) Act 1990. A protocol to that Convention confers jurisdiction of the Court of Justice of the European Communities to interpret the Convention.

The document

12.3 The proposal follows from an earlier Commission Green Paper and subsequent consultation exercise in 2003 and is designed to replace the 1980 Rome Convention ("the Rome Convention") to which the Member States of the EU, including the United Kingdom, are parties.

12.4 The format of the proposed Regulation closely follows that of the Rome Convention and so do many of its substantive provisions. The proposal would nonetheless introduce a number of significant changes from the Convention. Articles 1 and 2, which define the scope of the Regulation, remain largely unchanged from the Rome Convention. However, Article 3, which deals with the parties' freedom of choice, provides that, without prejudice to the provisions in the Regulation designed to protect weaker parties, a contract shall be governed by the law chosen by the parties. The choice must be expressed or demonstrated with reasonable certainty. Article 3 appears to differ from the Rome Convention in that it seems to allow the parties to choose a system of law other than a national law to govern their contracts.

12.5 Article 4 deals with situations where the law applicable to the contract has not been chosen by the parties in accordance with Article 3. It provides default rules to cover these situations. Eight specific choice of law rules are proposed for particular categories of contracts. For example, a contract for the provision of services is to be governed by the law of the country in which the service provider has his habitual residence. For contracts not falling within one of these specific categories, there is a fallback rule that is generally based on the law of the country where the party whose performance is characteristic of the contract is habitually resident. Article 4 differs considerably from the equivalent rule in the Rome Convention. The latter provides that in the absence of a choice by the parties, a contract should be governed by the law of the country to which the contract is most closely connected. This test is supplemented by a number of presumptions about what constitutes such a "close connection", in particular by reference to the country where the party, whose performance is characteristic of a contract, is habitually resident.

12.6 Article 6 provides that consumer contracts shall generally be governed by the law of the Member State in which the consumer has his habitual residence. This provision is both broader and simpler than the rule contained in the Rome Convention, which focuses on preserving the mandatory rules of the country where a consumer is habitually resident.

12.7 Article 9 states that effect may be given to the mandatory rules of another country with which the contract has a close connection.[40]

12.8 When we originally looked at this proposal we agreed with the Government's concerns which were focussed in particular on the proposed default rules combined with the proposals for new consumer contracts and agency rules. The Government subsequently decided not to 'opt-in', and we decided to clear the proposal on this basis. We indicated that we would re-open the scrutiny process in the event that the Government might reconsider its original decision and/or in the event of a new Presidency text.

The Minister's Letter

12.9 The Minister has written to update us on developments since we last reported on and cleared this proposal. In her letter of 2 April 2008, the Parliamentary Under–Secretary of State at the Ministry of Justice (Bridget Prentice) writes as follows:

> "I wrote to you on 15 December to inform you that agreement had been reached on the Rome I Regulation at the Justice & Home Affairs Council in December 2007. I also advised that it remained my intention, before any decision was made on whether the UK should opt in to the final Regulation, that there would be a period of public consultation. I am pleased to inform you that the United Kingdom has today published the consultation paper 'Rome I — Should the UK Opt In?' The consultation is available online at www.justice.gov.uk/publications/consultations.htm.
>
> "As you will know, the United Kingdom did not opt in to the Rome I Regulation because of serious concerns about aspects of the European Commission's original proposal. However, we participated fully in the negotiating process with the intention of securing improvements to the original proposal that would then enable the UK to opt in.
>
> "I believe that such improvements have been made and that the final text of the Regulation protects the benefits of the existing Rome Convention and in some areas represents an improvement upon it. The Government is therefore recommending in the consultation paper that the UK should now seek the permission of the European Commission to opt in to the Regulation. The consultation will end on 25 June, and the Government will make a final decision after analysis of the responses. We hope, therefore, to be able to announce our final position in July.
>
> "As Rome I touches upon UK–wide issues, the devolved administrations in Northern Ireland and Scotland were involved throughout negotiations and in the

40 Articles 15 and 16 are new rules with no equivalents in the Rome Convention, which deal with issues arising from multiple liability and statutory offsetting.

drafting of the consultation paper. We are also grateful for the comments of the House of Commons and House of Lords European Scrutiny Committees throughout the negotiations on Rome I."

Conclusion

12.10 **We thank the Minister for her brief update and indication that the Government is now reconsidering its earlier decision not to opt into the proposal. We originally welcomed the Government's decision not to 'opt in' and cleared the proposal on this basis. We also indicated that we would re–examine the matter afresh should there be a change in the Government's position.**

12.11 **We ask the Minister formally to deposit the latest Council text or whichever text the Government is now considering opting into. We also ask the Minister to indicate precisely which of the Government's original concerns and objections have been addressed or removed by any amendments to the original text and to what degree. Finally, we ask the Minster to continue keeping us updated on any relevant developments and the progress and results of the Government's consultation exercise.**

13 Enforcement of civil judgments

(29542) 7403/08 COM(08) 128	Commission Green Paper on the enforcement of judgments in the European Union : the transparency of debtors' assets

Legal base	—
Document originated	6 March 2008
Deposited in Parliament	13 March 2008
Department	Ministry of Justice
Basis of consideration	EM of 27 March 2008
Previous Committee Report	None
To be discussed in Council	No date set
Committee's assessment	Legally and politically important
Committee's decision	Cleared

Background

13.1 The issue of cross-border recovery of civil debts was the subject of a Communication from the Commission in 1998. In 2000 the Council adopted a programme on mutual recognition of judgments and orders in civil and commercial matters, noting that it would be easier to enforce judgments within the European Union if it were possible to obtain accurate information on the debtor's financial position. This led to a study in 2004 on making more efficient the enforcement of judicial decisions within the European Union.

Further inquiries were made on the new Member States by the Commission and the results incorporated in the present Green Paper.

The Commission's Green Paper

13.2 In its Green Paper the Commission argues that problems in the cross-border recovery of debts may impede the proper functioning of the internal market and that non-payment or late payment jeopardises the interests of businesses and consumers, especially where creditors have no information about the debtor's whereabouts or his assets.

13.3 The Commission points out that the search for the debtor's address and for information about his financial situation is often the starting point for enforcement proceedings and explains that access to such information is obtained either by a declaration by the debtor as to his assets or by means of access to various registers. The Commission further suggests that the cross-border recovery of debts is hampered by differences between the national systems and because of insufficient knowledge by creditors of the information available in other Member States. The Green Paper accordingly raises the question of whether there is a need for measures at Community level to improve the "transparency" of debtors' assets. In this regard, the Green Paper considers a number of possible measures *viz.* the drawing up of a manual of national enforcement laws and practices, improving access to registers and increasing the information they contain, exchanging information between enforcement authorities and measures relating to the debtor's declaration of assets.

13.4 In relation to the proposed manual, the Green Paper states that there is very little information about the enforcement systems in the 27 Member States, although it notes that some information is held on the website of the European Judicial Network in civil and commercial matters. The Green Paper suggests that a manual could be drawn up containing the sources of information available in a Member State and relating to a person's assets, the contact addresses of those who may obtain access to the information, the costs of obtaining access and other relevant details.

13.5 The Green Paper notes that commercial registers constitute the main sources of information and that their content has been only partially harmonised by the First[41] and Eleventh[42] Company Law Directives, which do not in any event apply to individuals and business partnerships. The Green Paper also notes that Member States are free to establish company and commercial registers at a local or central level, so that whereas in the UK there are three central registers there are over 400 in Germany, run by the local courts. The Green Paper also notes that population registers may help to disclose the address of a non-professional debtor, although such registers may be held at a local level, possibly requiring a search of all local records across a country to establish an address. The Green Paper also considers the question of access to social security and tax registers, but notes that such

41 First Council Directive 68/151/EEC of 9 March 1968 on coordination of safeguards required by Member States of companies within the meaning of Article 58(2) EC. OJ No. L 65, 14.3.68, p.8.

42 Eleventh Council Directive 89/666/EEC of 21 December 1989 concerning disclosure requirements in respect of branches opened in a Member State by certain types of company governed by the law of another State. OJ No. L 395, 30.12. 89, p.36.

access may conflict with rules on data protection and secrecy relating to tax and social security.

13.6 The Green Paper notes that the enforcement bodies of one Member State are not able to gain direct access to non-public registers of another Member State and that there are no international instruments dealing with the exchange of information between such enforcement bodies. The Green Paper compares this with the cooperation between the tax authorities of the Member States and the direct exchange of information between authorities dealing with claims under the European Agricultural Guidance and Guarantee Fund (EAGGF), and raises the question of whether the exchange of information could be improved along the lines of that existing for tax authorities. It nevertheless notes that there are considerable differences in the information available to enforcement bodies, some of which (as in France and the United Kingdom) are not State-run and do not have access to public registers in their own State.

13.7 In relation to requirements on the debtor to disclose his assets, the Green Paper notes that in some Member States this takes the form of an examination of the debtor by the court, whilst in others he is required to provide a written statement as to his assets. In the latter case, the declaration may relate to the debtor's assets generally, or be limited to those assets sufficient to meet the creditor's claim. The Green Paper canvasses the possibility of a Community instrument requiring Member States to introduce a procedure for taking a debtor's declaration, leaving it to the Member States to determine the conditions for making such a declaration. A variant of this proposal would be a "European Assets Declaration" i.e. a declaration in a standard form obliging debtors to disclose all their assets within the "European Judicial Area".

The Government's view

13.8 In her Explanatory Memorandum of 27 March 2008 the Parliamentary Under-Secretary of State at the Ministry of Justice (Bridget Prentice) welcomes the Commission's consultation in principle, and states that the Government agrees that having procedures which make it easier to enforce judgments across borders "will bring real benefits to both Europe's citizens and businesses". The Minister adds that the Government agrees that a manual of national enforcement laws and practices which would be available on the website of the European Judicial Network "would be a very useful tool". The Minister notes that declarations of assets and exchanges of information held by national authorities are already possible or planned under domestic legislation and therefore, in principle, should be considered at EU level. However, the Minister also comments that further consideration would need to be given to the detail of any proposals, since not all Member States will hold the information envisaged, or if they do it may not be held in a register, so provision should be made to allow for the payment of fees for any required access to information.

13.9 The Minister further explains that the Government believes that in all this work there should be sufficient safeguards to protect debtors and that :

> "These should include ensuring that information should only be requested after a creditor has obtained a relevant court decision on the merits of the claim which has shown a debt is owed, that a declaration of assets should be made only on a case by case basis (rather than generally if, for example, a debtor owes more than one

creditor) and that careful consideration must be given to the types of sanction that are available if the debtor does not comply with an order. Any exchange of information should be between national authorities only and, in accordance with data protection principles and legislation, proper protection must be given to individuals' personal data."

13.10 The Minister adds that the Government will wish to ensure that any proposal brought under Article 65 EC (or its Treaty of Lisbon equivalent) applies only to cross-border matters and will not affect purely national enforcement procedures.

Conclusion

13.11 **We thank the Minister for her Explanatory Memorandum and agree with the points it makes on the scope and effect of possible proposals. We endorse, in particular, the Minister's comment that information should only be requested under the arrangements envisaged in the Green Paper if there has been a judicial decision on the merits of the claim and establishing that a debt is due. An extension of such arrangements to interlocutory decisions could work oppressively against defendants and would need considerable safeguards.**

13.12 **We have no questions to raise with the Minister and are content to clear the document.**

14 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

(29550) 7585/08 COM(08) 141	Commission Communication: *2008 Fast Track Actions to reduce administrative burdens in the European Union*.
(29573) 6594/08 COM(08) 76	Draft Council Regulation terminating the partial interim review pursuant to Article 11(3) of Regulation (EC) No.384/96 of the anti-dumping duty on imports of ammonium nitrate originating in Russia.
(29574) 6599/08 COM(08) 83	Draft Council Regulation terminating the partial interim review pursuant to Article 11(3) of Regulation (EC) No.384/96 of the anti-dumping duty on imports of ammonium nitrate originating, inter alia, in Ukraine.
(29575) 6604/08 COM(08) 84	Draft Council Regulation terminating the partial interim review pursuant to Article 11(3) of Regulation (EC) No.384/96 of the anti-dumping duty on imports of solutions of urea and ammonium nitrate originating in Russia.
(29576) 6668/08 COM(08) 86	Draft Council Regulation imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of coke of coal in pieces with a diameter of more than 80 mm (Coke 80+) originating in the People's Republic of China.
(29577) 6758/08 COM(08) 87	Draft Council Regulation repealing the anti-dumping duty on imports of urea originating in Belarus, Croatia, Libya and Ukraine, following an expiry review pursuant to Article 11(2) of Regulation (EC) No.384/96.
(29578) 6788/08 + ADD 2 COM(08) 96	Commission Report on the anti-dumping proceeding concerning imports of polyvinyl alcohol (PVA) originating in the People's Republic of China and Taiwan.
(29579) 7131/08 COM(08) 114	Draft Council Regulation amending Regulation (EC) No.1425/2006 imposing a definitive anti-dumping duty on imports of certain plastic sacks and bags originating in the People's Republic of China and Thailand.
(29610) 7469/08 COM(08) 121	Draft Council Regulation repealing the countervailing duty imposed on imports of certain electronic microcircuits known as DRAMs (Dynamic Random Access Memories) originating in the Republic of Korea and terminating the proceeding.

Department of Communities and Local Government

(29558) 7550/08 + ADD 1 COM(08) 132	Draft Council Decision on the approval on behalf of the European Community of the Protocol on Strategic Environmental Assessment to the 1991 UN/ECE Espoo Convention on Environmental Impact Assessment in a Transboundary Context.

Department for Environment, Food and Rural Affairs

(29564) 7745/08 COM(08) 129	Draft Council Regulation opening and providing for the administration of autonomous Community tariff quotas on imports of certain fishery products into the Canary Islands.
(29583) 7932/08 COM(08) 157	Draft Council Decision on the signing and conclusion by the European Community of the International Coffee Agreement 2007.

Foreign and Commonwealth Office

(29609) — —	Council Common Position concerning restrictive measures against the Democratic Republic of Congo and repealing Common Position 2005/440/CFSP.

Department for Innovation, Universities and Skills

(29592) 7755/08 COM(08) 159	Draft Decision concerning the European Year of Creativity and Innovation (2009).
(29597) 8049/08 COM(08) 133	Commission Communication: *Towards an increased contribution from standardisation to innovation in Europe*.

Ministry of Justice

(29532) 5296/08 COM(08) 116	Draft Council Decision concerning the conclusion of the Convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters.

Office of National Statistics

(29410) 5869/08 COM(08) 22	Draft Council Regulation implementing Regulation No.1177/2003 concerning Community Statistics on Income and Living Conditions (EU-SILC) as regards the 2009 list of target secondary variables on material deprivation.

Department for Transport

(29540) 7395/2/08 COM(08) 98	Draft Directive relating to insurance against civil liability in respect of the use of motor vehicles, and the enforcement of the obligation to insure against such liability (codified version).
(29593) 7887/08 COM(08) 149	Draft Council Directive adapting Directive 2006/87/EC laying down technical requirements for inland waterway vessels, by reason of the accession of the Republic of Bulgaria and Romania.

HM Treasury

(29472) 6656/08 COM(08) 73	Draft Council Regulation on the application of the Protocol on the excessive deficit procedure annexed to the Treaty establishing the European Community.
(29514) 5972/08 —	Recommendation of the European Central Bank on the external auditors of Suomen Pankki.
(29561) 7682/08 COM(08) 152	Draft Decision on the adjustment of the financial framework to take account of implementation and the technical adjustment for 2009 in line with movements in GNI.
(29562) 7683/08 COM(08) 150	Preliminary Draft Amending Budget No.2 to the general budget 2008 - Statement of expenditure by Section - Section III — Commission.

Department for Work and Pensions

(29581) 7457/08 COM(08) 111	Amended Draft Directive concerning the minimum safety and health requirements for the use of work equipment by workers at work (second individual directive within the meaning of Article 16(1) of Directive 89/391/EEC) (Codified version).

Appendix: reports on Council meetings held during a recess

When the House is sitting, Departments make written Statements after each meeting of the Council of Ministers reporting on the Council meeting and on the activities of UK Ministers in it. However, for Council meetings taking place when the House is in recess we ask Departments to write to us instead. A Reply concerning a meeting during the recess is published below.

Justice and Home Affairs Council, 18 April 2008

Letter to the Chairman from the Parliamentary Under Secretary of State, Home Office (Signed by the Duty Minister on behalf of Meg Hillier MP)

I am writing to you about the JHA Council on 18 April since it is not possible for my honourable friend the Parliamentary Under Secretary of State for the Home Office (Meg Hillier) to make her usual written statement to the House due to the timing of recess. I have undertaken to write to you as the Home Office duty minister.

The Council will be held in Luxembourg and my honourable friend the Minister for State for the Home Office (Tony McNulty), my right honourable friend the Attorney General (Baroness Scotland of Asthal) and the Scottish Lord Advocate (Elish Angiolini) will represent the UK.

The Council will start with the Mixed Committee, also attended by Norway, Iceland, Switzerland and Lichtenstein. This will start with a report on the work of the Friends of the Presidency group on the revised timetable for migration of data to the second generation of the Schengen Information System (SIS II).

The proposal for a Directive on common standards and procedures in Member States for returning illegally staying third-country nationals will be taken in both the Mixed Committee and in the main Council. The draft Directive was issued by the Commission on 10 October 2005, and aims to establish common rules and procedures across Member States concerning the return of illegally staying third country nationals. After carefully considering the proposals, the UK decided not to opt-in. The proposal includes rules concerning removal, the use of coercive measures, pre-removal detention and appeal procedures as well as re-entry to the EU of removed third country nationals. Member States take the view that excessive attention paid to migrants' rights will impede removals, and it is not likely they will modify their view, or agree to a compromise that does not address these concerns.

Turning to the main Council agenda, a number of items are set for a general approach at this Council including the Directive amending Directive 2003/109/EC to extend its scope to beneficiaries of international protection. The UK chose not to opt in to the original Directive as its provisions were not in line with our frontiers protocol and we wanted to determine the status of third country nationals via the Immigration Rules. The original Directive excluded refugees and beneficiaries of subsidiary protection from its provisions.

The Commission proposal would extend the scope to include both refugees and beneficiaries of subsidiary protection (known as Humanitarian Protection in the UK). The UK has chosen not to opt-in to the proposed extension in scope of Directive 2003/19/EC as our reservations with the original Directive still stand.

Providing all other Member States have lifted their scrutiny reservations, as we expect to be the case, the Presidency aims to achieve political agreement on the proposal for a Council Decision establishing the European Police Office (Europol). The Government is content with the text as now proposed and believes that the Council Decision provides a reasonable balance with improved flexibility to enable Europol to better support Member State law enforcement activity, balanced with improved controls including those on data handling. Europol's efficiency should also be improved through increased oversight by the Management Board and the European Parliament.

The Presidency wish to reach a general approach on the Implementing Agreement and Technical Annex to the Prüm Council Decision. The Government is content with the text. The German-Austrian Prüm data exchange experience has demonstrated clear benefits in preventing, detecting or investigation serious crime through a hit or no hit basis. This allows for data to be exchanged in fast (on average DNA hits are returned within 50 seconds up to a maximum of 24 hours), efficient and secure data exchange methods that have appropriately data protection standards.

The Framework Decision on Combating Terrorism will also be submitted for a general approach subject to the resolution of a number of outstanding issues, in particular concerning Member States' jurisdiction over offences. On this point, the UK, with a number of other Member States, is seeking the maximum possible alignment between the Council of Europe Convention and Framework Decision. We understand that, provided this point can be resolved satisfactorily, the Committee is content for the Government to participate in the general approach.

The Council is expected to adopt draft Council Conclusions on practical cooperation in the field of asylum. The UK supports the current draft conclusions but thinks that it is desirable to have direct reference to the General Directors Immigration Services Conference (GDISC) included due to the important work they are currently undertaking and delivering on practical cooperation. This network takes forward initiatives in the area of practical and operational co-operation at an international level. We foresee GDISC as playing a key role in taking forward practical cooperation in the coming years.

There will be a recommendation from the Commission to the Council to authorise the Commission to open negotiations for the conclusion of a short-stay visa waiver agreement between the European Community and Brazil. The United Kingdom does not participate in Regulation (EC) 539/2001 (EU Common Visa List), subsequently amended by Regulation 1932/2006. The visa reciprocity mechanism and the three Commission Reports on visa reciprocity do not apply to the UK, and therefore we are not bound by the terms of the proposed EU-Brazil visa waiver agreement. The United Kingdom will continue to support the principle of reciprocity and extending visa free access to specified third countries for EU Member States.

There will be a discussion on the US Visa Waiver mandate, with the Commission aiming for Member States to reach agreement on the mandate, or to explain why not. The United Kingdom does not participate in this aspect of Schengen, and consequently the UK is not directly involved in EU common visa policy. We would encourage and offer support for the agreed EU positions on clearly defined EU competences. We can agree that it is in the general interest to reach a common accord on US requirements.

The EU Action Plan for enhancing the security of explosives will presented for political agreement The UK has been an active participant in developing this Action Plan and the Government agrees the proposals. The details of the Plan cleared parliamentary scrutiny in January 2008.

Articles 2, 7, 9, 10 and 30 of the proposed Council Decision to amend Eurojust's current legal base will be discussed with a view to resolving the outstanding issues of substance on these provisions. Articles 2, 10 and 30 concern the composition of Eurojust, voting procedure in the Eurojust College and staff rules and regulations respectively, and we are content with the text of each of these provisions. Article 7 addresses the role of Eurojust in mediating conflicts of jurisdiction and the Government is currently assessing whether we are content with automatic referrals to the College. Article 9 concerns the access to databases given to National Members, and the Government is satisfied that there is a general consensus that we cannot give Eurojust National Members access above and beyond what is available to a domestic prosecutor, police officer or judge.

The Presidency also wishes to reach a general approach on the Framework Decision on the enforcement of in absentia judgements. The UK is generally content with the text and intends to support the Presidency in their objective. We are pleased to note that the European Scrutiny Committee has cleared the text from scrutiny. The Lords sub-committee has concerns on one point, which we will bear in mind in the negotiations.

Justice Ministers will discuss the proposal for a Common Frame of Reference (CFR) for European contract law with a view to agreeing a draft Council position in relation to this work. The Government is likely to be able to endorse the proposed position which sets out the Council's view on the purpose, content, scope and legal effect of a future CFR. The Council view on these aspects can be summarised as follows: that the CFR should be a tool for better lawmaking targeted at Community lawmakers; that it should contain a set of definitions, general principles and model rules; that it should cover general contract law, including consumer law; and that it should be non-binding, so that Community law makers may agree to use it on a voluntary basis. The proposal has cleared parliamentary scrutiny.

There will be an information point on the outcome of the EU-US Ministerial Troika Meeting on Justice and Home Affairs, held on 12 to 13 March in Slovenia. Discussions were positive and focused on border and immigration policy, including the visa waiver programme, data protection and information exchange and counter terrorism.

There may also be a justice working lunch, but this is not yet confirmed.

15 April 2008

Formal minutes

Wednesday 23 April 2008

Members present:

Michael Connarty, in the Chair

Mr Adrian Bailey
Mr David S Borrow
Mr James Clappison
Ms Katy Clark
Jim Dobbin
Mr Greg Hands
Keith Hill
Kelvin Hopkins
Mr Bob Laxton
Angus Robertson
Mr Anthony Steen

***

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 5.14 read and agreed to.

Paragraph 5.15 read, amended and agreed to.

Paragraphs 5.16 to 14 read and agreed to.

Resolved, That the Report, as amended, be the Twenty-first Report of the Committee to the House.

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

[Adjourned till Wednesday 30 April 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*)