



House of Commons

European Scrutiny Committee

Seventeenth Report of Session 2007–08

Documents considered by the Committee on 12 March 2008.



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Report, together with formal minutes

*Ordered by The House of Commons
to be printed 12 March 2008*

Notes

Numbering of documents

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

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

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

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

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

Abbreviations used in the headnotes and footnotes

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

Euros

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

Further information

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

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

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1 Transfers of defence-related products within the Community

(29271) 16534/07 + ADDs 1–2 COM(07) 765	Draft Directive on simplifying terms and conditions of transfers of defence-related products within the Community
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<i>Legal base</i>	Article 95 EC; co-decision; QMV
<i>Department</i>	Business, Enterprise and Regulatory Reform
<i>Basis of consideration</i>	Minister's letter of 29 February 2008
<i>Previous Committee Report</i>	HC 16–xi (2007–08), chapter 3 (6 February 2008)
<i>To be discussed in Council</i>	No date set
<i>Committee's assessment</i>	Legally and politically important
<i>Committee's decision</i>	Not cleared; further information requested

Background

1.1 The draft Directive is one of the measures proposed in a Commission Communication issued in December 2007 and entitled “A Strategy for a stronger and more competitive European defence industry”. The draft Directive aims to simplify the terms and conditions for the transfer of defence-related products within the EU by providing for general and global licences and minimising the use of individual licences. The Directive would require Member States to establish systems of general licences for transfers of defence equipment and supplies to the governments of any Member States or to other recipients in other Member States who are certified in accordance with the common criteria set out in the Directive.

1.2 The Communication also proposed a Directive on defence procurement which would adapt the public procurement regime set out in Directive 2004/18/EC to the award of contracts in the defence and security sectors. Following our recommendation, the Communication was debated in European Committee on 10 March, but we held the two draft Directives under scrutiny.

1.3 In our assessment of the draft Directive we shared the concern expressed by the Government that the proposal might restrict the scope for determining national policy on licence conditions and that in this respect the Government would lose some of its current discretion. We also shared the Minister's concern over the extension of external exclusive Community competence. It seemed to us that adoption of the proposal would lead to the risk that the UK would find itself no longer able to rely on Article 296 EC to justify the making of bilateral agreements with third countries (including NATO Members) in relation to the licensing of exports of military equipment and supplies, and we therefore asked the Minister to explain how the proposal could be amended to avoid this consequence.

1.4 We also asked the Minister for the Government’s view on whether the subject-matter of the proposal might not better be dealt with by the European Defence Agency than by a proposal under the EC Treaty.

1.5 We raised a number of further issues of principle on which we asked for the Minister’s comments. The first was whether any limitation on Member States’ freedom to engage in intergovernmental cooperation was intended by Article 4(4) (which provides that Member States may pursue and extend existing intergovernmental cooperation “in order to achieve the objectives” of the Directive). The second was to ask what was meant by the requirement in Article 4(8) to “determine the recipients of transfer licences in a non-discriminatory way”. Thirdly, we asked if any assessment had been made of the consequences of reproducing the Common Military List of the European Union, which has been adopted intergovernmentally under the EU Treaty, as an Annex to a measure adopted under the EC Treaty. Fourthly, we draw attention to the wide delegation of powers to the Commission, which would be empowered, not only to amend the list of defence-related products in the Annex, but also to amend “non-essential” parts of the Directive, with the Commission — apparently — the judge of what was essential for these purposes.

The Minister’s reply

1.6 In his letter of 29 February 2008 the Minister of State for Energy at the Department for Business, Enterprise and Regulatory Reform (Malcolm Wicks) considers each of these points in detail. On the question of the loss of national discretion and extension of external Community competence, the Minister acknowledges our concerns and informs us that these issues are currently under close consideration by the Government and are of the “utmost importance”. The Minister notes that where there are essential security interests at stake, Member States will still be able to invoke Article 296 EC and that where a Member State may properly do so now, the Directive “will not affect the position at all”. The Minister explains that the danger is not so much that the Directive will change the position on external competence but rather that it will make the Commission more likely to challenge inappropriate use of Article 296 EC or that, taken with the Directive on defence procurement,¹ it will contribute to changing the Commission’s view of what constitutes inappropriate use. In response to our question about amending the proposal to avoid this consequence, the Minister comments that it would be difficult to address this risk by textual amendments, but that the Government is seeking to include text specifically to preserve the effect of Article 296 EC, although the Minister concedes that if the Directive is adopted “this will be of symbolic more than legal significance”.

1.7 The Minister adds that, in view of the above considerations, the Government is pressing for amendments to reduce the scope for conflict between the Directive and bilateral treaties and, in particular, to ensure that provisions are included which would allow the UK to conclude bilateral treaties containing provisions on re-export. The Minister comments that the easiest way to achieve this would be by amending Article 7 to allow individual licensing where required by any international obligations or commitments entered into by a Member State and not merely (as in the proposal) such obligations as relate to non-proliferation.

1 (29267): see HC 16–xi (2007–08), chapter 6 (6 February 2008), HC 16 –xiv (2007–08), chapter 4 (5 March 2008).

1.8 In relation to our observation that the subject-matter of the proposal might not better be dealt with by the European Defence Agency, the Minister comments that the Government believes that the subject is of sufficient complexity and technical detail to raise significant doubts as to whether the EDA has the capability or experience to undertake such a task. The Minister adds that this view was widely shared by the majority of Member States.

1.9 In relation to our question on whether any limitation on Member States' freedom was intended by Article 4(4), the Minister comments as follows:

“The Government understands the Committee’s reasoning for asking whether Article 4(4) would serve to limit efforts to pursue intergovernmental cooperation. Article 4(4) is not specific enough in spelling out the entitlement of Member States to pursue and further develop intergovernmental cooperation to facilitate the restructuring and operation of the European defence industry. Furthermore, the Directive should not prevent some Member States from making specific agreements (for example under the Letter of Intent Framework Agreement) that would facilitate transfers of defence-related products between them that go beyond the Directive. The Government will seek to strengthen the relevant text in order to preserve this form of cooperation among Member States.”

1.10 On our question as to what was meant in Article 4(8) by determining the recipients of licences “in a non-discriminatory way” the Minister replies that the Government is presently unable to confirm the meaning of this provision, but that it seems likely that it refers to discrimination on grounds of nationality. The Minister adds that if no acceptable explanation is forthcoming, the Government will press for the deletion of this wording.

1.11 On the reproduction of the Common Military List in a measure adopted under the EC Treaty, the Minister states that there is some concern over using this in the Directive, and that the Government is still considering the issue.

1.12 On the delegation of powers to the Commission, the Minister acknowledges our comments on this issue and shares our concern about the potential for an increase in the powers of the Commission. The Minister explains that the Government intends to obtain either an amendment or a deletion of the relevant provisions in the course of the negotiations.

Conclusion

1.13 We thank the Minister for his helpful and detailed reply to the points we have raised. We support the approach the Minister is taking on this proposal, and we look forward to a further account, in due course, of the course of the negotiations.

1.14 We shall hold the document under scrutiny in the meantime.

2 Safety of toys

(29449) Draft Directive on the safety of toys
 5938/08
 + ADDs 1–2
 COM(08) 9

<i>Legal base</i>	Article 95EC; co-decision; QMV
<i>Document originated</i>	25 January 2008
<i>Deposited in Parliament</i>	14 February 2008
<i>Department</i>	Business, Enterprise and Regulatory Reform
<i>Basis of consideration</i>	EM of 29 February 2008
<i>Previous Committee Report</i>	None
<i>To be discussed in Council</i>	No date set
<i>Committee's assessment</i>	Politically important
<i>Committee's decision</i>	Not cleared; further information awaited

Background

2.1 Council Directive 88/378/EEC² was adopted in order to harmonise the safety levels of toys throughout the Member States, and to remove obstacles to the trade in toys within the internal market. It specifies that toys may be placed on the market only if their design and use do not pose a risk to safety and/or health when used as intended (or in a foreseeable way). In particular, Member States must take the steps needed to ensure that toys cannot be placed on the market unless they meet certain safety requirements (relating to their physical properties,³ flammability, chemical and electrical properties, and cleanliness, as well as the nature of any relevant warnings), with compliance being presumed where toys bear the EC mark, granted as a result of the type-examination procedure laid down. However, the Commission says that technological developments have raised new safety issues in this area and given rise to increased consumer concerns, and that it is therefore necessary to revise and enhance existing measures, and, in the interests of clarity, to repeal Directive 88/378/EEC.

The current proposal

2.2 It has accordingly put forward in this document a revised Directive, with the aim of enhancing the level of safety of toys, whilst maintaining the smooth functioning of the internal market. In order to achieve this overall aim, the Commission identifies three specific objectives:

- strengthening, clarifying, modernising and completing the essential safety requirements, in response to market developments and scientific progress, and to

² OJ No. L 187, 16.7.88, p.1.

³ Covering such matters as strength, protrusions and fastenings, cables, and risks of swallowing and suffocation.

deal with an increased awareness of health and safety issues by consumers and enforcers;

- improving the understanding, implementation and enforcement of the Directive within Member States; and
- providing clarity and updating the scope, concepts and definitions of the Directive, ensuring that it is in line with the general legislative framework for marketing products within the EU.

2.3 The Commission proposes that these objectives should be achieved by the following measures.

Chemical requirements

The proposal would maintain the safety requirements in the current Directive, but would in addition ban certain allergenic fragrances and require the labelling of 28 other fragrance allergens. It would also ban all substances categorised as carcinogens, mutagens and substances toxic to reproduction (CMRs) in accessible parts of toys unless authorised by comitology procedure in the Directive: and the current reference to the “availability” of certain metals which may be present would be replaced by a reference to their “migration limits”.

Warnings

The new measures are designed to improve the effectiveness of these warnings by providing for the mandatory display of minimum/maximum age for users at point of sale, for specific warnings on age or ability, for a minimum/maximum user weight, and for the need for the relevant toys to be used under adult supervision.

Choking risks

The Directive currently covers the risk of inhalation of small parts from toys intended for children under 36 months, and this provision would be extended to any toys intended to be put in the mouth, regardless of the age of the child.

Suffocation risks

The Directive currently covers the risk of external airway obstruction of the mouth and nose, and this would be extended to include internal airway obstruction.

General safety requirements

These currently refer to the “foreseeable” use of a toy taking into account the “normal” behaviour of children, and, as this has led to problems of interpretation, not least in dealing with previously unforeseen risks, they would instead refer to “behaviour of children”.

Choking as a result of the association of toys and food items

The current Directive contains no specific provisions for toys in food, and there would be a new requirement that toys should be marketed in a package separating them from the food items in question, that the packaging itself should not present a choking hazard, and that toys should not be firmly attached to the food product at moment of consumption, in such a way that the product needs to be consumed in order to get direct access to the toy.

Market surveillance measures

The proposal would reinforce the relationship between the Directive and the General Product Safety Directive (2001/95/EC),⁴ particularly in relation to the specific powers for market surveillance authorities and enforcement cooperation between Member States.

Information on chemicals in the technical files

The proposal would require further information on the chemical components and materials used in toys to be included in the technical file used for market surveillance.

CE Marking

The proposal would extend the current CE Marking requirements by requiring the marking to be fixed to the packaging of the toy if the marking on the toy is not visible through the packaging.

Safety Assessment

Manufacturers and importers etc would in future be required to perform an analysis of the hazards which the toy may present, and to make this available to market surveillance authorities for inspection as part of the toy's technical file.

Alignment of the Directive with the proposed Council and Parliament Decision on the marketing of goods

The new Directive would be aligned with provision in the draft Decision⁵ which the Commission put forward on 14 February 2007 on the marketing of goods in order to ensure consistency between all New Approach Directives, particularly in areas such as conformity assessment bodies, definitions, routes to conformity and rules for CE Marking.

4 OJ No. L 11, 15.1.02, p.4.

5 (28376) 6378/07: see HC 41–xiv (2006–07), chapter 3 (14 March 2007), HC 16–xiv (2007–08), chapter 5 (5 March 2008).

Scope of the Directive

The proposal aims to complete the list of products which are *not* within its scope, particularly as regards new products such as videogames and their peripherals. It would also include definitions specific to the sector (such as functional toys, activity toys, hazard, harm, risk etc).

The Government's view

2.4 In his Explanatory Memorandum of 29 February 2008, the Parliamentary Under Secretary of State for Trade and Consumer Affairs at the Department for Business, Enterprise and Regulatory Reform (Mr Gareth Thomas) says that the text reflects the discussions which have been taking place since 2003 in informal Commission working groups, and that the revision is sensible, given that the current Directive has now been in operation for 20 years. He adds that this has enabled a careful look to be taken at what works in this sector, and how the Directive can best be related to other Community legislation; and he comments that the proposal also reflects the lessons learned from the many toy recalls throughout the Community last year.

2.5 The Minister says that the UK supports the proposal, which it believes will lead to an enhanced level of safety, whilst maintaining the well established and smooth functioning of the market in the UK and within the Community as a whole. He also considers the implications of individual elements in the proposal, and concludes that these should be beneficial, and that, in those instances where there may be further costs, these should not, for the most part, be significant. He does, however, say that the new approach to the banning of CMRs would lead to substitution of chemicals or in some cases withdrawal of certain toys from the market, and would therefore increase manufacturing costs (and to a lesser extent some administration costs), but that there would be considerable long-term beneficial health effects; that the costs to industry of the revised requirements on warning labels are likely to be lower than would be expected, as many manufacturers already provide these (and that, again the health benefits would be considerable); and that the new provision on the Safety Assessment would lead to some additional costs, which were not evaluated in the Commission's impact assessment, but which will be covered in the Impact Assessment being prepared by the UK. He also says that there are no financial costs falling on Government as a consequence of this proposal.

Conclusion

2.6 The safety of toys is self-evidently an important topic, and, for that reason, we think it right to draw to the attention of the House this proposal to amend the existing Community measures in this field, particularly as it represents the first major review in this area since the current Directive was introduced in 1988. Having said that, it does not, on the basis of the evidence available so far, appear likely to give rise to any issues requiring the further consideration of the House, but, as the Government has said that it is preparing a Regulatory Impact Assessment, we think it would be sensible to defer a final view until we have seen that. We are therefore continuing to hold the document under scrutiny.

3 Excise duty

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

<i>Legal base</i>	Article 93 EC; consultation; unanimity
<i>Document originated</i>	14 February 2008
<i>Deposited in Parliament</i>	21 February 2008
<i>Department</i>	HM Treasury
<i>Basis of consideration</i>	EM of 1 March 2008
<i>Previous Committee Report</i>	None
<i>To be discussed in Council</i>	June 2008
<i>Committee's assessment</i>	Politically important
<i>Committee's decision</i>	Not cleared; further information requested

Background

3.1 Council Directive 92/12/EEC sets out the general arrangements for products subject to excise duty and the rules governing the holding, movement and monitoring of such products.

3.2 In June 2003 Decision No 1152/2003/EC introduced an electronic Excise Movement and Control System (EMCS) to replace the existing paper-based system and which will be operative from 1 April 2009.⁶

The document

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

- incorporate the necessary legal basis for the introduction of the EMCS;
- update the language used in the Directive to take account of new legislative standards;
- recast the text to provide a more logical structure and remove obsolete provisions;
- take account of legal developments and European Court of Justice rulings; and
- simplify and modernise excise procedures, with the aim of reducing obligations for business (in particular those carrying out cross-border business) without compromising controls.

3.4 The draft Directive contains chapters:

⁶ (22989) 14372/01: see HC 152–xv (2001–02), chapter 14 (30 January 2002).

- defining which goods are subject to the provisions of the Directive (tobacco, alcohol and energy products), how excise duty is to be applied (per hectolitre, per degree alcohol, per 1000 pieces, etc.), the scope of possible exemptions, minimum rates of duty that Member States have to respect and the territories to which the Directive applies;
- defining the time and place when excise duty becomes chargeable, the procedures for reimbursement and remission of excise duty, and the circumstances under which goods may be exempted from duty;
- allowing Member States to determine their own rules governing production, processing and holding of goods subject to the Directive and requiring that such activities take place only in premises authorised as a tax warehouse by a Member State’s competent authorities and that any person wishing to operate such a warehouse be authorised and fulfil defined obligations;
- setting the basic provisions and procedures to apply to the movement of excise goods under suspension of excise duty under the EMCS, with provision for Member States to simplify the procedures for movements which take place entirely on their territory, for simplifications for frequent and regular movements between certain economic operators and for movements of energy products through fixed pipelines;
- setting provisions on distance purchasing of alcohol and “gifts” of excise goods sent from one Member State to another. Tax would be due in the Member State from where the goods were sent, not as at present, where they were ultimately to be consumed;⁷
- dealing with miscellaneous matters on the use of tax or fiscal markings and allowing Member States to exempt small wine producers from the requirements of the third and fourth chapters; and
- providing a comitology process for the Commission’s implementing powers under the Directive and for repeal of Council Directive 92/12/EEC, on the introduction of the EMCS, but allowing continued use of its paper-based procedure until 31 December 2009.

The Government’s view

3.5 The Financial Secretary to the Treasury (Jane Kennedy), noting that the Government was involved in the review which led to this proposal, says that it welcomes simplifications that reduce burdens on businesses, but that it must ensure that the tax is paid in the right place and that anti-fraud provisions are robust. She continues that the Government will oppose any changes that make it more difficult to counter fraud or smuggling, that

⁷ The proposed provisions in this chapter reproduce Commission proposals of 2004 — (25532) 8241/04: see HC 42–xix (2003–04), chapter 1 (5 May 2004), HC 42–xxii (2003–04), chapter 1 (9 June 2004) and *Stg Co Deb*, European Standing Committee B, 27 October 2004, cols. 3–24 and (26084) 13460/04: see HC 38–i (2004–05), chapter 27 (1 December 2004).

facilitate avoidance or evasion or that seek to introduce unjustified additional burdens on business.

3.6 The Minister comments further that:

- in particular, the Government is opposed to the elements in the draft Directive relating to distance-purchasing of alcohol and “gifts” of excise goods sent from one Member State to another, noting that in both these cases tax would be due in the Member State from where the goods were sent, not, as at present, where they were ultimately to be consumed;
- the proposals would result in the removal of “Minimum Indicative Levels”, which are an important indicator of whether the amount of excise goods transported by cross-border travellers within the Community is reasonable for personal use;
- the proposed arrangements would significantly hinder UK enforcement efforts, as smugglers, using the regulations to mask their activities, would be potentially indistinguishable from legitimate shoppers;
- introduction of the arrangements requires the unanimous agreement of all Member States — the Government will challenge them and is prepared to vote against the proposal as it stands;
- the Government welcome changes to the treatment of irregularities that should remove some of the ambiguity that currently exists, which has led to legal challenge in the UK and throughout the Community; and
- nevertheless, it believes that it still does not go far enough, given that there appeared to be a tacit agreement on other aspects during working group discussion of the draft Directive, such as joint and several liability binding on one or more parties to pay the duty in the event of an irregularity.

3.7 The Minister tells us that:

- it is difficult to make an accurate estimate of the potential financial implications of the draft Directive as these would depend on a number of variables, including the behavioural effects on consumers and businesses;
- but, if adopted, the distance purchasing arrangements alone could put at risk a significant amount of revenue from excise duties on alcohol. Government analysts believe that up to £1.4 billion is not an unreasonable estimate; and
- this would be compounded by measures that will hinder the Government’s anti-smuggling strategies, which could have a negative effect on UK excise duties.

Conclusion

3.8 Clearly introduction of the EMCS and simplification of general excise procedures are important. But we recognise the Government’s concerns about where tax would be due in relation to distance purchasing and “gifts” and about facilitating both tax

avoidance and tax evasion. And we note the Government's willingness to veto the proposal if some of its concerns are not met.

3.9 So we would like to hear, before the Council's debate on the proposal in June 2008, how these matters develop during Council Working Group consideration of the draft Directive. Meanwhile the document remains under scrutiny.

4 The free movement of goods: accreditation and enforcement

(28375) 6377/07 COM(07) 37	Draft Regulation setting out requirements for accreditation and market surveillance relating to the marketing of products
+ ADD1 REV1	Commission staff working document: impact assessment
+ ADD 2 REV 1	Commission staff working document: executive summary of the impact assessment

<i>Legal base</i>	Articles 95 and 133 EC; co-decision; QMV
<i>Department</i>	Business, Enterprise and Regulatory Reform
<i>Basis of consideration</i>	Minister's letters of 26 and 28 February and 5 March 2008
<i>Previous Committee Report</i>	HC 41–xiv (2006–07), chapter 2 (14 March 2007)
<i>To be discussed in Council</i>	18 March 2008
<i>Committee's assessment</i>	Politically important
<i>Committee's decision</i>	Cleared

Legal background

4.1 Article 14 of the EC Treaty provides for the progressive establishment of the internal market, comprising an area without internal borders and in which the free movement of goods, people, services and capital is ensured.

4.2 Article 95 of the EC Treaty provides that, in order to achieve the objectives of Article 14, the Council should adopt measures for the approximation of the laws of the Member States on the establishment and functioning of the internal market.

4.3 Article 133 of the EC Treaty says that the EC's common commercial policy is to be based on uniform principles. It requires the Commission to make proposals to the Council for implementing that policy.

4.4 In order to remove barriers to the free movement of goods and to protect consumers, the health and safety of workers and the environment, the EC has adopted a substantial body of product legislation.

Glossary

4.5 Some of the EC legislation includes a detailed technical specification of the product (“*old approach legislation*”). Since 1985, however, there has been a “*new approach*” to product legislation. Under the new approach, the legislation sets out the “*essential requirements*” the product must meet, leaving it to manufacturers either to define their own technical specifications or to use “*harmonised standards*”, specified by European standards bodies, in order to ensure that the product conforms to the requirements.

4.6 “*Conformity assessment*” is the process for evaluating a product to see whether it meets the technical specification of old approach legislation or the essential requirements of new approach Directives. The evaluation may be made either by the manufacturer or by a *conformity assessment body*. Conformity assessment bodies test products and certify whether they conform to the requirements.

4.7 *Accreditation* is an independent and authoritative assurance of the competence, impartiality and integrity of a conformity assessment body. In most Member States there is one national accreditation body, such as the UK Accreditation Service.

4.8 *Market surveillance* entails checking whether a product which is being marketed conforms to the requirements of the legislation and, if it does not, taking enforcement action. Market surveillance in the UK is done mainly by the Health and Safety Executive and local authority trading standards officers.

Previous scrutiny of the draft Regulation

4.9 When we considered the document last year,⁸ we noted that the purpose of the draft Regulation is to improve the operation of the internal market by:

- i) making uniform EC-wide rules for the accreditation of national conformity assessment bodies;
- ii) providing a common legal framework for market surveillance by Member States; and
- iii) strengthening the control of products imported from countries outside the EU.

4.10 The draft Regulation has four Chapters. The first states the purpose of the measure and defines terms used in the Regulation such as “manufacturer”, “accreditation” and “harmonised standard”.

4.11 Chapter II is about accreditation. The accreditation should be done by one body in each Member State. The national accreditation body should be independent of conformity

8 See HC 41–xiv (2006–07), chapter 2 (14 March 2007).

assessment bodies and immune from commercial pressures. The national accreditation body should:

- seek membership of the EA;⁹
- evaluate the competence of conformity assessment bodies and, if satisfied that they are competent, issue accreditation certificates;
- monitor the performance of certified conformity assessment bodies and, if they cease to be competent, restrict, suspend or withdraw their accreditation certificates; and
- take part in peer evaluation with other accreditation bodies.

4.12 Chapter III sets out Community-wide rules for market surveillance. Member States should:

- ensure that products satisfy the requirements of applicable Community legislation;
- have proper arrangements to deal with complaints about products;
- ensure that enforcement authorities have the necessary powers and resources to perform their functions;
- ensure that products which present a serious risk are banned, recalled or withdrawn from the market;
- tell the Commission and other Member States who their enforcement authorities are; and
- ensure that there is cooperation and the exchange of information between their own enforcement authorities, the Commission and the authorities of other Member States.

4.13 Articles 24 to 26 contain rules for the control of products imported from outside the EU. Article 24 imposes a duty on Member States to ensure that their customs authorities check imported products and suspend the release of a product if it presents a serious risk to health, safety or the public interest. It also requires customs authorities to inform the enforcement authorities if they suspend the release of a product.

4.14 Article 26 provides that, where an enforcement authority finds that a suspended product does, indeed, present a serious risk, it must stop the product from being put on the market. And an enforcement authority may prohibit the marketing of an imported product if it finds that the product does not conform with the requirements of the applicable EC legislation.

4.15 Article 36 requires Member States to:

⁹ European Cooperation for Accreditation (EA) is an association of national accreditation authorities. Article 27 of the draft Regulation provides for the EA to be considered a body pursuing an aim of general European interest and Article 29 makes the EA eligible for financial support from the EC.

“lay down the rules on penalties, which may include criminal sanctions, for serious infringements ... of the provisions of this Regulation ... The penalties provided for must be effective, proportionate and dissuasive”

4.16 The then Minister for Science and Innovation at the Department of Trade and Industry (Malcolm Wicks) told us that the Government strongly supported the Commission’s proposals on accreditation and enforcement. However, HM Revenue and Customs were opposed to the proposal in Article 24 for the imposition of new obligations on customs authorities. The Minister also told us that the Government was concerned that the draft Regulation did not list the products to which it would apply.

4.17 When we considered the draft Regulation a year ago, it appeared to us that it would be in the interests of consumers and businesses to establish rules for accreditation and enforcement which would apply equally throughout the internal market. We noted, however, that the negotiations on the details of the proposal had only just begun. We asked the Minister, therefore, to:

- tell us the outcome of the Government’s discussions with the Commission and other Member States about inserting in the draft Regulation a clear definition of its scope;
- keep us informed of the responses to the Government’s consultations in the UK;
- tell us if it proves possible to make realistic quantified estimates of the costs and benefits of the draft Regulation;
- tell us whether there is any requirement in Article 36 for Member States to create criminal penalties for infringements of the draft Regulation and, if so, to tell us whether the Government considers it appropriate for measures based on Articles 95 and 133 of the EC Treaty to impose such a duty; and
- send us progress reports on the negotiations.

Pending consideration of this further information, we kept the draft Regulation under scrutiny.

The Minister’s letters of 26 and 28 February and 5 March 2008

4.18 The Parliamentary Under-Secretary of State for Trade and Consumer Protection at the Department for Business, Enterprise and Regulatory Reform (Mr Gareth Thomas) tells us that good progress has been made in the negotiations both in the Council and with the European Parliament. A compromise text has been negotiated (the Minister encloses a copy with his letter of 28 February). It was adopted by the European Parliament on 21 February. It contains a large number of amendments to the original draft. Most of the amendments are minor. The Government is content with the compromise text.

4.19 In his letter of 28 February, the Minister tells us that the Government has achieved its aim:

“of ensuring that the controls of products entering the Community market from third countries [are] not placed solely on the Customs authorities and that, instead, [control] should be based on the principles of cooperation and information sharing between the expert Market Surveillance authorities and the Customs authorities.”¹⁰

4.20 The Minister also tells us that Article 13 has been amended in response to the European Parliament’s advocacy of the application of the principle of *lex specialis*. In his letter of 5 March, he says:

“It may be helpful if I outline the intention of those who advocated this approach. The starting point is to ensure that there is an adequate Community-wide system of Market Surveillance in place to ensure that the requirements of harmonising legislation are met. The draft Regulation is seen as providing the *minimum standard* [our emphasis] which is to apply in all cases except where there is specific legislation in place which provides a better or more targeted approach to Market Surveillance.

“In order to avoid the risk of loopholes the draft Regulation is applied to all products subject to harmonising legislation irrespective of whether or not specific legislation includes bespoke market surveillance provisions. Under the *lex specialis* principle, any gap will be filled by the draft Regulation’s provisions without the negative effect of displacing the more specific provisions.

“Whilst it is true that this does create a degree of legal uncertainty in certain circumstances, in practice, the coordinators for the Health and Safety Executive and the Trading Standards Services do not consider that this is a significant issue.

“The draft Regulation’s approach to Market Surveillance is to place on Member States a duty to ensure that their Market Surveillance authorities have, *inter alia*, the necessary powers to perform their tasks. The UK has tended to confer on the Market Surveillance authorities the powers provided for under the Consumer Protection Act 1987, or under the Health and Safety at Work etc Act 1974, or an adapted version of these, depending on the nature of the product concerned. If the draft Regulation is adopted we will need to examine whether these powers are sufficient for them to perform their tasks and meet the requirements of the Regulation From a practical perspective, this should mean that, in the UK, the powers that the Market Surveillance authorities have will be clear because they will be set out (as now) in domestic legislation.”

4.21 As to the specific questions we asked when we considered the draft Regulation last year, the Minister says in his letter of 5 March that the Government had expressed its concerns about the lack of a definition of the scope of the measure:

“but the European Commission has concluded that it is impossible to produce a reliable and comprehensive list of all the pieces of European legislation that fall within its scope. It further pointed out that there would be additional product legislation in future and that therefore the Regulation would need to be changed to take this into account.

10 In the UK, the authorities are mainly the Health and Safety Executive and trading standards authorities.

“Although this is not ideal, I am persuaded that the negative impact of a lack of clarity in this area is less than we first perceived. The draft Regulation only applies to products that are already covered by harmonising legislation,¹¹ which in effect means that businesses with responsibilities for such products should already be aware of the rules on the conditions for the marketing of products. Furthermore, all the draft Regulation does is place requirements on Member States to provide an adequate system of Market Surveillance to enforce Community rules. Such an obligation for enforcement already exists.

“Therefore, businesses are not suddenly going to find themselves being made subject to new substantive rules, [and] so the practical implications for them are likely to be minimal.”

4.22 We also asked whether Article 36 would require Member States to create criminal penalties for infringement of the draft Regulation. The answer is that the Article gives Member States a discretion, not a duty, to create criminal penalties. The provision is well precedented in EC legislation.

4.23 The Minister’s letter of 26 February encloses both a summary of the responses to his Department’s consultations about the draft Regulation and a copy of a Regulatory Impact Assessment (RIA). The consultation paper invited views on 13 questions. The Department received responses from 31 businesses (including four SMEs) and representative organisations and one from local government. The Minister says that the quality of the responses was high and that they broadly supported both the Commission’s proposals and the Government’s evaluation of them.

4.24 The RIA of the draft Regulation was prepared for the Department by consultants (Metra Martech). It takes account of the views of 134 interested bodies, including trade associations, local authorities, conformity assessment bodies and businesses. It finds that the likely costs (mainly for HM Revenue and Customs, the Health and Safety Executive and trading standards authorities) of implementing the Regulation would be greatly outweighed by the benefits to industry. The Minister warns, however, of the difficulty of estimating the costs and benefits because of the wide application of the Regulation and the variation in its impact from sector to sector.

4.25 Finally the Minister tells us that the draft Regulation may be proposed for adoption at the Council on 18 March and, accordingly, asks the Committee to clear the document.

Conclusion

4.26 We are grateful to the Minister for the fullness and clarity of his letters and for his answers to our questions. It remains our opinion that the draft Regulation — including the amendments incorporated in the compromise text which was adopted by the European Parliament on 21 February — is in the interests of consumers and businesses and will help to improve the operation of the single market.

¹¹ Article 2(19) of the compromise text of the draft Regulation defines “harmonising legislation” as “any Community legislation harmonising the conditions for the marketing of products”.

4.27 We should have preferred it if the document had included an express statement of the harmonisation legislation to which it refers. On balance, however, we accept that the absence of a definition of the scope should not cause practical difficulties for the reasons the Minister gives in his letter of 5 March. We are also grateful to the Minister for his lucid explanation of the application of the principle of *lex specialis* to Article 13. We are persuaded by his letter that the amendments to the Article should not cause practical difficulties in the UK because the powers of the Market Surveillance authorities will be set out in domestic legislation.

4.28 There are no further questions that we need put to the Minister and we are now content to clear the draft Regulation from scrutiny.

5 Single Market Scoreboard

(29475) 6693/08 SEC(08) 76	Commission Staff Working Paper: <i>Internal Market Scoreboard No 16 bis</i>
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<i>Legal base</i>	—
<i>Document originated</i>	14 February 2008
<i>Deposited in Parliament</i>	21 February 2008
<i>Department</i>	Business, Enterprise and Regulatory Reform
<i>Basis of consideration</i>	EM of 7 March 2008
<i>Previous Committee Report</i>	None
<i>Discussed in Council</i>	No date set
<i>Committee's assessment</i>	Politically important
<i>Committee's decision</i>	Cleared

Background

5.1 The Commission produces a “Single Market Scoreboard” every six months. Each Scoreboard reports on the extent to which, during the preceding six months, Member States have “transposed”¹² Internal Market Directives into national law without delay or inaccuracy. It also reports on the number of cases in which the Commission has initiated action against Member States for the incorrect application of Internal Market legislation.

5.2 The European Council has set Member States targets for transposition:

- In 2001, it agreed that the “transposition deficit” should not exceed 1.5% (that is, the percentage of Directives not notified to the Commission as having been

¹² That is, implemented EC legislation through national law.

transposed as a proportion of the total number that should have been transposed should not exceed 1.5%).

- In 2002, the European Council agreed that the transposition of no Directive should be more than two years overdue.
- In March 2007, the European Council decided that the transposition deficit should be below 1% by 2009 at the latest.

Scoreboard Report 16 bis

5.3 Scoreboard 16 bis is about Member States' performance in the second half of 2007. It is in two main parts. The first reports on progress towards achieving the transposition targets. The second is about the number of cases where, in the Commission's opinion, Member States have not transposed Internal Market legislation correctly or have not applied it correctly.

5.4 In the second half of 2006, the transposition deficit of the 25 Member States¹³ taken together fell to 1.2%. This was the first time that the rate had been below 1.5%.

5.5 The EU 25 deficit rose to 1.6% in the first half of 2007.

5.6 For the second half of 2007, the transposition deficit for the EU 27 as a whole (including Bulgaria and Romania) was 1.2%. The deficit of 22 Member States was less than 1.5%.

5.7 On 10 November 2007, the UK's transposition deficit was 1%, making it one of 15 Member States which achieved the target set for 2009. The Czech Republic had the worst transposition deficit (3.4%), followed by Luxembourg (2.8%).

5.8 On 10 November 2007, the UK was one of 11 Member States which were in breach of the target for no Directive's transposition to be more than two years overdue. The UK had one case which exceeded the deadline.

5.9 On 1 November 2007, the EU 25 average number of cases in which the Commission had begun infringement proceedings either for incorrect transposition or incorrect application of Internal Market legislation was 53, the same number as in the first half of the year. On 1 November 2007, the UK was the subject of 63 cases.

The Government's view

5.10 The Parliamentary Under-Secretary of State for Trade and Consumer Affairs at the Department for Business, Enterprise and Regulatory Reform (Mr Gareth Thomas) says that, although the Scoreboards have no direct policy implications, they have proved to be a useful means of evaluating developments and a spur to improved performance. The Government supports the continued use and development of the Scoreboard.

13 Excluding Bulgaria and Romania.

Conclusion

5.11 We share the Government's view about the importance of these reports. Accordingly, we draw Scoreboard 16 bis to the attention of the House and clear it from scrutiny.

6 Simplification of Community legislation

(a) (29418) 6077/08 COM(08) 32	Commission Communication: <i>Second strategic review of Better Regulation in the European Union</i>
(b) (29423) 6082/08 COM(08) 33	Commission Working Document: <i>Second progress report on the strategy for simplifying the regulatory environment</i>
(c) (29434) 6192/08 COM(08) 35	Commission Working Document: <i>Reducing administrative burdens in the European Union — 2007 progress report and 2008 outlook</i>

<i>Legal base</i>	—
<i>Documents originated</i>	30 January 2008
<i>Deposited in Parliament</i>	(a) 6 February 2008 (b) 7 February 2008 (c) 8 February 2008
<i>Department</i>	Business, Enterprise and Regulatory Reform
<i>Basis of consideration</i>	EM of 5 March 2008
<i>Previous Committee Report</i>	None, but see footnote 14
<i>To be discussed in Council</i>	No date set
<i>Committee's assessment</i>	Politically important
<i>Committee's decision</i>	Cleared

Background

6.1 The first initiative to simplify Community legislation was launched in 1997, and the Commission has since issued a series of Communications addressing this issue. The most recent of these was in November 2006, providing a strategic review of Better Regulation in the European Union, and it was accompanied by two Commission Working Documents comprising respectively a first progress report on the strategy for the simplification of the

regulatory environment, and a summary of the steps taken to measure administrative costs and reduce administrative burdens.¹⁴

The current documents

6.2 In this latest Communication (document (a)), which provides a second strategic review of better regulation within the EU, the Commission recalls that it has given the highest priority to simplifying and improving the regulatory environment in Europe, and it notes that the Better Regulation Agenda, adopted in 2005, aims to ensure that all new initiatives are of high quality, and to modernise and simplify existing legislation, thereby contributing to the Lisbon Strategy. It adds that it is making improvements at the various stages of the policy cycle, with proposals now being systematically assessed and a wide range of regulatory and non-regulatory options being examined in each case. In addition, it says that existing laws are being simplified and codified, in an attempt to reduce administrative costs; that pending proposals are being withdrawn if they are no longer relevant; and that, in partnership with the Member States, a more effective approach is being developed to implementation. It suggests that the Agenda is already bringing concrete benefits for businesses and consumers, but that these will be obtained in full only if all the European institutions and Member States work together. The remainder of the Communication — and the two accompanying Commission Working Documents (documents (b) and (c)) — then consider various aspects of the simplification process in more detail.

Modernising existing legislation

Simplification

6.3 The Commission says that its Simplification Rolling Programme now forms part of its annual work programme, and covers 164 measures for the period 2005–09, of which 91 have already been proposed or adopted, with a further 44 to be presented during 2008. It believes that this exercise has brought concrete benefits in a number of areas, such as agriculture (where 21 Common Market Organisations have been brought into a single scheme); the repeal of pre-packaging requirements for some 70 products; reduced fees and administrative assistance for small and medium-sized enterprises (SMEs) registering pharmaceuticals; simplified type-approval for motor vehicles; and a more efficient and competitive payments market. It says there will also be simpler insurance rules once the revision of existing law is adopted in the near future.

6.4 The Commission says that it will finish screening all existing areas to identify those where future simplification might focus, and will include the result in the rolling programme to be presented in early 2009, giving priority to simplification which benefits SMEs. It also points out:

- that it is increasingly re-casting¹⁵ legislation and pressing ahead with codification,¹⁶

14 (28073) 15510/06: see HC 41–v (2006–07), chapter 6 (10 January 2007).

15 This involves combining an act and all previous amendments into one measure when new amendments are adopted.

16 This combines all existing acts with all subsequent amendments into one law, without any new amendments.

having in the latter case finalised 152 of the 400 acts which can be codified (with the expectation of completing the process within the next 18 months);

- that it is identifying and repealing obsolete acts which no longer have real effect (though it says that this work, which covers about 2,500 legal acts, could be speeded up if fast-track procedures could be agreed by the Council and European Parliament); and
- that 78 proposals still before the Council and Parliament have been withdrawn since 2005, with a further 30 having been identified for 2008.

Reducing administrative burdens

6.5 The Commission says that it presented in January 2007 an Action Programme, subsequently endorsed by the European Council, to reduce administrative burdens by 25% by 2012. This included a call on Member States to set comparable national targets by 2008, and the Commission says that 12 have now done so. It adds that a key element in the Programme is to measure administrative burdens arising from the need for businesses to provide information under Community (and national implementing) legislation, and that an exercise launched in 2007 covers 43 pieces of legislation in 13 priority areas, estimated to account for over 80% of the administrative burden of Community origin. This process is due to be completed in 2008, and the Commission will then identify which obligations go beyond Community requirements and at what cost. It also says that recommendations for reducing administrative burdens should be ready by the end of 2008, and indeed that it will be in a position to table proposals on company law by this summer. In the meantime, it is also reviewing suggestions submitted by Member States and other respondents to an on line consultation, and will continue to reduce unnecessary burdens by promoting the use of information and communication technologies.

6.6 The Commission points out that, in order to produce quick results, the Action Programme also identified 10 “fast track actions”, intended to generate significant benefits, estimated at €1.3 billion, through relatively minor changes to underlying legislation. It notes that it adopted four corresponding packages of measures in approximately six months, with one being agreed by co-decision in record time, and that the remaining five are expected to be adopted in early 2008. It adds that it will present a number of further such proposals before the meeting of the European Council this spring.

Using impact assessment in the policy process

6.7 The Commission observes that impact assessment leads to better-informed decision making, improves the quality of proposals, promotes subsidiarity and proportionality, and ensures consistency with objectives such as the Lisbon and Sustainable Development Strategies. It says that it has carried out 284 such assessments since 2003, and that the process has now become embedded in its working practices and decision making, having resulted in the abandonment of a number of planned initiatives where impact assessments had shown that Community action would not be worthwhile.

6.8 The Commission says that it is also committed to improving the system further, for example by preparing assessments earlier in the policy development process and avoiding

the impression that assessments are carried out to justify a pre-determined policy choice. It therefore proposes to introduce a number of improvements after the European Council has reviewed progress in this area, notably by consolidating impact assessment in policy making; focussing resources where most value is added; providing more support; and exercising rigorous quality control.

Sharing responsibility

6.9 The Commission notes the role of the other European institutions and Member States in the legislative process, and says that the Better Regulation Agenda therefore needs to be pursued as a joint effort. It also notes that higher quality standards can increase the time needed to prepare and adopt Commission initiatives and to transpose these into national legislation. It highlights the importance of the Council and European Parliament giving priority to simplification proposals, and producing their own impact assessments when they envisage significant amendments to a Commission proposal.

Shaping global regulation

6.10 The Commission notes that that, in an increasingly globalised world, and after many years of eliminating tariff barriers, non-tariff barriers are increasingly identified as obstacles to international trade and investment, and that some of these may be unintended side-effects of the way different parties regulate. It says that, in drawing up initiatives, it already has an input from third countries, and that the impact assessment system requires external impacts to be taken into account. It will therefore ensure that these are examined thoroughly, and that, where international standards exist, it will consider relying on these, rather than taking a specific European initiative.

The Government's view

6.11 In her Explanatory Memorandum of 5 March 2008, the Parliamentary Under Secretary of State for Business and Competitiveness at the Department for Business, Enterprise and Regulatory Reform (Shriti Vadera) says that the Government welcomes the fact that the Commission has adopted a number of simplification proposals and administrative burden fast-track actions since the last Strategic Review in November 2006. Nevertheless, UK business has yet to benefit significantly from these efforts to date, and it is therefore essential that the Commission maintains the momentum, and focuses on initiatives which are meaningful to business. She also says that it is essential for the Commission to keep its promise to make better use of impact assessment and consultation when drawing up simplification measures in future, otherwise there is a real danger that initiatives will not make a significant real-world impact on businesses and citizens, and the credibility of the whole better regulation agenda will be at risk. The Government therefore looks forward to seeing tangible proof of stakeholder input and strengthening the evidence-base of proposals from now on.

6.12 The Minister adds that the endorsement by the European Council in spring 2007 of the Commission proposal to set a target to reduce administrative burdens stemming from Community law by 25% by 2012, was a landmark achievement for better regulation, but that delivery may prove challenging. She suggests that this will, in part, depend on the

Commission pushing ahead with bold proposals in the face of vested interests, and that individual services within the Commission must take more ownership of the need for simplification in their areas of competence, if the programme is to have a chance of sustainable success. Consequently, whilst the UK recognises that culture change takes time, it believes that more needs to be done to engage officials across Commission services in the simplification exercise, and the Government itself is also committed to doing all it can to ensure that the Council and the Parliament play a constructive role in agreeing both simplification proposals and other better regulation initiatives proposed by the Commission.

6.13 As regards the other elements in the Communication, the Minister says that:

- The UK welcomes the independent evaluation of the Commission's impact assessment system, and supports the recommendation that all proposals with significant impacts should be subject to impact assessment, including those decided in comitology committees. However, she notes that the Commission has not yet reported on how it is implementing these recommendations, and she says that the Government would like a firm commitment that the Commission will improve the coverage and quality of its impact assessment system in response to this evaluation as soon as possible.
- The Government welcomes the work of the Impact Assessment Board which has created more quality control of impact assessments within the Commission. However, she points out that, through focussing almost exclusively on initiatives appearing on the Commission Annual Work Programme, major comitology proposals have not been subject to impact assessment, and she suggests that this needs to change if the Board is to be fully effective in improving the quality of proposals by the Commission.
- The Government agrees with the Commission that the Council and Parliament need to do more in improving the regulatory environment within the Community, and that they need to give priority to proposals to simplify legislation or reduce administrative burdens. Equally, she says that it is imperative that they find a way to fulfil the commitment they made in 2003 to produce impact assessments on any substantive amendments they make to Commission proposals, and thus help to ensure that no unnecessary burdens or unintended consequences result from changes made during the negotiation of the legislation.

Conclusion

6.14 **In common with the earlier Communications which we have considered, these documents seek to take forward the welcome aim of simplifying Community legislation. As such, they are of obvious interest, and, although we do not think they give rise to any particular issues requiring further consideration, we think it right, in clearing them, to draw them to the attention of the House.**

7 European Security and Defence Policy: Policing in Afghanistan

(29517)	Council Joint Action amending Joint Action 2007/369/CFSP on the establishment of the European Union Police Mission in Afghanistan (EUPOL AFGHANISTAN)
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<i>Legal base</i>	Articles 14 and 25(3) TEU; unanimity
<i>Department</i>	Foreign and Commonwealth Office
<i>Basis of consideration</i>	EM of 6 March 2008
<i>Previous Committee Report</i>	None; but see (28556) —: HC41–xviii (2006–07), chapter 16 (25 April 2007)
<i>To be discussed in Council</i>	17 March Agriculture and Fisheries Council
<i>Committee’s assessment</i>	Politically important
<i>Committee’s decision</i>	Cleared; but further information requested

Background

7.1 As the preamble to Joint Action 2007/369/CFSP noted, on 16 November 2005 the Council agreed on the Joint Declaration “Committing to a new EU Afghan Partnership”, which stated the commitment of the European Union and the Government of the Islamic Republic of Afghanistan “to a secure, stable, free, prosperous and democratic Afghanistan as laid out in the Afghan Constitution adopted on 4 January 2004 [14 Dalwa 1383]. Both parties wish to see Afghanistan play a full and active role in the international community and are committed to building a prosperous future free from the threats of terrorism, extremism and organised crime.”

7.2 Subsequently, on 31 January 2006, the Afghanistan Compact (London) affirmed the commitment of the Government of Afghanistan and the international community and established a mechanism for coordinating Afghan and international efforts over the next five years “to work towards conditions where the Afghan people can live in peace and security under the rule of law, with good governance and human rights protection for all, and can enjoy sustainable economic and social development”.

7.3 Against this background, and following two assessment missions, the Council agreed to the establishment of the EU police mission to Afghanistan (EUPOL Afghanistan), who would “work towards an Afghan police force in local ownership that respects human rights and operates within the framework of the rule of law”; it should “build on current efforts and in doing so it should address issues of police reform at central, regional and provincial level”. This decision was subsequently endorsed in March 2007 in United Nations Security Council Resolution 1746 (2007), which welcomed the decision by the European Union “to establish a mission in the field of policing with linkages to the wider rule of law and counter-narcotics, to assist and enhance current efforts in the area of police reform at central and provincial levels, and looks forward to the early launch of the mission”.

7.4 The mission’s detailed terms of reference and modus operandi were set out in Joint Action 2007/369/CFSP, which we cleared on 25 April 2007.¹⁷ In a nutshell, EUPOL Afghanistan was established on 30 May 2007 with a three-year mandate; its role is to increase the capacity of the Government of Afghanistan in the rule of law sector, including working closely with European Commission and US efforts in Afghanistan in the field of policing with linkages to the wider rule of law. Its main tasks are to:

- develop police reform strategy, including work towards a joint overall strategy of the international community;
- support the Government of Afghanistan in coherently implementing strategy;
- improve cohesion and coordination among international efforts; and
- address linkages to the wider rule of law.

The draft Joint Action

7.5 Although the Mission was launched with a three-year mandate, decisions on financing are taken annually. This Joint Action, due to be adopted at the 17 March Agriculture and Fisheries Council, extends the financing for EUPOL Afghanistan beyond 29 March 2008.

7.6 In his 6 March 2008 Explanatory Memorandum, the Minister for Europe at the Foreign and Commonwealth Office (Mr Jim Murphy) explains that:

- funding for Common Costs (HQ, in-country transport, office equipment etc) is met from the Common Foreign and Security Policy budget, to which the UK currently contributes approximately 17%;
- the Mission does not yet require additional funding beyond the €43.6m allocated in 2007, of which the UK contributed approximately £5.7m; and
- this Joint Action therefore allows the Mission to continue to draw from that allocation.

The Government’s view

7.7 The Minister says that the quality of policing in Afghanistan is crucial for the success of security and development efforts, and that it is also essential for efforts to reduce narcotics trafficking — “a key focus for the UK and an area with serious implications on our own streets, where 90% of heroin is sourced from Afghanistan”. He describes EUPOL Afghanistan as “an essential complement to the large US investment in police reform (\$2billion)”, in that “it provides civilian policing expertise to focus on the strategic and institutional issues that will determine the success of police reform in the long term”, with EUPOL Afghanistan “concentrated at the strategic level whereas the US programme is currently focussed on district by district training”, and “working with the Afghan Border Police to support them in gaining control over Afghanistan’s large and porous border”.

17 See headnote.

7.8 EUPOL Afghanistan also “brings coherence to the efforts of non-US police reform donors and works closely with the US programme through the International Police Co-ordination Board (IPCB), for which it provides a Secretariat”, which body he describes as “a crucial mechanism for driving forward work on a shared Afghan/international vision for the police in Afghanistan which will be essential to ensure that police reform gains the momentum it needs to make real progress.”

7.9 He supports EUPOL Afghanistan because:

“it is a fundamental element of the UK’s strategy for engagement in police reform in Afghanistan, which also encompasses work with the US on its policing programme and additional ground-level support in Helmand. These complementary approaches can be clearly seen in Helmand province, where UK secondees within EUPOL work alongside tactical mentors in the field, and are also working to support the US Focussed District Development programme as it rolls out into the province.”

Conclusion

7.10 We understand that, although the EUPOL Afghanistan mandate is for 3 years, the financial timeline was set until March 2008 in order to avoid over-commitments on the 2008 budget at that early stage in the budget cycle; that, so far, only €9 million of the €43.6 million allocated in 2007 has been spent; but that a large bill is expected in April and the spend rate is expected to increase as deployment and procurement speed up.

7.11 When we cleared the initial Joint Action, we noted that it called for a six monthly review process in order to adjust mission size and scope as necessary (as well as a full review of the mission by March 2010), and asked the Minister to write to us on the occasion of the second such six monthly review, with details of the final budget, any proposed changes to the mission size and scope, the next year’s budget, and his assessment of the mission’s achievements thus far. We look forward to receiving this shortly, and ask that this assessment include his views on the commitment of the national and regional political leadership to the objectives outlined in paragraphs 7.1–7.3 above, and thus to EUPOL Afghanistan’s success.

7.12 In the meantime, we clear the document, which we are reporting to the House in view of the widespread interest in the international effort in Afghanistan, particularly in this field of institutional capacity-building.

8 The Military Staff of the European Union

(29518)	Council Decision amending Council Decision 2001/80/CFSP of 22
—	January 2001 on the establishment of the Military Staff of the
—	European Union

<i>Legal base</i>	Article 23 (1)EU; unanimity
<i>Department</i>	Foreign and Commonwealth Office
<i>Basis of consideration</i>	EM of 6 March 2008
<i>Previous Committee Report</i>	None; but see (22015) —, (22016) — and (22020) —: HC 28–iv (2000–01), chapter 2 (24 January 2001); (26494) 8159/05: HC 34–i (2005–06), chapter 47 (4 July 2005)
<i>To be discussed in Council</i>	17 March 2008 General Affairs and External Relations Council
<i>Committee’s assessment</i>	Politically important
<i>Committee’s decision</i>	Cleared; but further information requested

Background

8.1 On 9 February 2000, the then Committee cleared three draft Council Decisions establishing three interim bodies aimed at strengthening what was then styled the Common European Security and Defence Policy (CESDP) — the interim Political and Security Committee, the interim Military Body and the interim Military Staff, which were duly established in March 2000.¹⁸

8.2 Then, on 28 November 2000, the then Minister of State at the Foreign and Commonwealth Office (Mr Keith Vaz) submitted an Explanatory Memorandum on a draft Presidency Report on Strengthening the CESDP, which included draft texts on the formal establishment of these three bodies — the Political and Security Committee (PSC), the European Union Military Committee (EUMC) and the European Union Military Staff (EUMS). The then Committee cleared it on 29 November 2000.¹⁹ The Presidency Report was agreed at the Nice European Council.²⁰

8.3 The then Minister then wrote to the Committee on 19 January 2001 saying that there had been pressure for swift implementation and that the Swedish Presidency wanted the 22 January General Affairs Council to agree the three Decisions establishing the three bodies. He noted that the Presidency report included detailed recommendations on their role and functions:

18 (20931) —, (20932) — and (20933) — : see HC 23–viii (1999–2000), chapter 18 (9 February 2000).

19 (21826) —: see HC 23–xxxi (1999–2000), chapter 3 (29 November 2000).

20 Press Release: Brussels (04–12–2000) — Nr. 14056/2/0.

The Political and Security Committee (PSC)

The main forum for the preparation of advice to the General Affairs Council on common foreign and security policy matters, dealing with all aspects of CFSP, including ESDP:

- drawing up opinions for the Council to help define policy;
- providing guidelines to other Committees on matters falling within CFSP issues;
- receiving the opinions and recommendations of the Military Committee and the Committee for Civilian Aspects of Crisis Management;
- taking responsibility, under the auspices of the Council, for the political direction of the development of military capabilities; and
- in the event of a crisis, examining all the possible EU responses, proposing to the Council the political objectives to be pursued, recommending a cohesive set of options aimed at contributing to the settlement of the crisis and exercising the political control and strategic direction of the EU's response.

The European Union Military Committee (EUMC)

Its mission is to provide the PSC “with military advice and recommendations on all military matters within the EU. It exercises military direction of all military activities within the EU framework.” This includes military direction to the European Union Military Staff (EUMS).

The EUMC is to be “the source of military advice based on consensus”. The Decision states that “It is the forum for military consultation and co-operation between the EU Member States in the field of conflict prevention and crisis management.”

The EUMC will act within guidelines from the PSC, particularly with regard to the EU's military relationship with non-EU European NATO Members, the other candidates for accession to the EU, other states and other organisations, including NATO.

The European Union Military Staff (EUMS)

The EUMS would be formed from military personnel seconded from Member States to the General Secretariat of the Council. Its mission would be to perform “early warning, situation assessment and strategic planning for Petersberg tasks including identification of European national and multinational forces” and to “implement policies and decisions as directed by the European Union Military Committee (EUMC)”.

It would support the EUMC “over the full range of Petersberg tasks, for all cases of EU-led operations, whether or not the EU draws on NATO assets and capabilities”.²¹

It was to take into account the need “to ensure coherence with NATO’s Defence Planning Process (DPP) and the Planning and Review Process (PARP) of the Partnership for Peace (PfP) in accordance with agreed procedures”.

8.4 The then Minister reiterated the view set out in his Explanatory Memorandum on the Presidency report, that the Government considered that the EU needed a small, permanent military secretariat staff to provide the link between the EU Military Committee and the military resources available to the EU, from Member States and from NATO.

8.5 He went on to say that the Government was eager to support the strengthening of CFSP and ESDP and welcomed these draft Decisions, which reflected the objectives of what was originally a United Kingdom initiative. He accordingly hoped that the Committee would understand that the Government would “find it difficult to argue in isolation against the adoption of the Decisions for the length of time normally needed for Parliamentary scrutiny”, and, “since the legal base of the Decisions provides for them to be agreed by simple majority”, that it was therefore “best to agree it” at the GAERC.

8.6 The Minister also said that the establishment of these bodies did not imply that the European Union had acquired a military operating capability; the Presidency report had made it clear that a separate Council Decision would be required for the EU to declare itself operational in this area. He added that, to this end, the Nice European Council had “tasked the Swedish Presidency to pursue discussions with NATO with a view to establishing the permanent arrangements between the EU and NATO”.

8.7 In commenting on the proposals and the way in which they had been handled, the then Committee noted that although the Minister had explained in November 2000 that endorsement of the report at Nice would represent political agreement to the proposals, it appeared that the Government had not expected such swift action by the Swedish Presidency, which resulted in the Decisions being adopted without its having any further opportunity to consider them, and that there had been no opportunity for prior debate; they accordingly asked the Minister to be more alert in future to the requirements of the House and to keep a closer watch on fast-moving issues, such as those in the area of CFSP, informing the Committee at an earlier stage of significant proposals, if necessary only in outline before even unofficial texts were available.

8.8 They also recommended that the documents be debated on the Floor of the House, together with the Presidency report on strengthening the Common European Security and Defence Policy, which on 29 November 2000 it had recommended for debate in the then European Standing Committee B. The detailed terms of reference of the EUMS, including role, tasks and organisation, as set out in Council Decision 2001/80/CFSP, were cleared

21 The “Petersberg tasks” constitute an integral part of ESDP and are set out in Article 17 EU. They cover: humanitarian and rescue tasks; peace-keeping tasks; and tasks of combat forces in crisis management, including peacemaking. These tasks were set out in the Petersberg Declaration adopted at the Ministerial Council of the Western European Union (WEU) in June 1992. On that occasion, the WEU Member States declared their readiness to make available to the WEU, but also to NATO and the European Union, military units from the whole spectrum of their conventional armed forces.

from scrutiny by the resolution following the debate on the Floor of the House on 19 March 2001.²²

The draft Council Decision

8.9 In his 6 March 2008 Explanatory Memorandum, the Minister for Europe at the Foreign and Commonwealth Office (Mr Jim Murphy) explains that, as a result of the EU mission to the Democratic Republic of Congo in 2006 having identified a number of areas for improving the EU's ability to conduct strategic planning, the May 2007 GAERC had requested the Secretary General/High Representative (SG/HR) "to examine the ability of the EU Military Staff's (EUMS) to conduct planning at the strategic level and to submit his recommendations at the November 2007 GAERC meeting"; and that the latter consequently recommended four measures:

- a) "Extend the requirement for English language competence;
- b) "Increase the flexibility of the EUMS to manage strategic planning within its existing resources;
- c) "Enhance Member States' intelligence and information support to the EUMS;
- d) "A modest (5) increase to the number of EUMS strategic planning personnel."

8.10 The Minister further explains that, in implementing the four measures, the Director General of the EUMS²³ was advised by the Council Legal Service that the EUMS Terms of Reference and Organisation agreed in 2001 should be further amended slightly to align with the proposed changes, in particular with re-structuring of the EUMS's planning branches in line with measure b).

8.11 The Minister adds that "the amended Terms of Reference also take account of the relationship of the EUMS with various Council Secretariat bodies established since 2005, such as the Civilian Planning and Conduct Capability which is, in a sense, the civilian counterpart of the EUMS".

8.12 As for the financial aspects, the Minister says that there are none for the internal re-organisation and that, for the additional 5 EUMS planning personnel, the costs are on a "lie where they fall" basis:

"This means that the Member States from which the personnel are seconded would be responsible for meeting all of the associated costs. If the UK were to second an officer to the EUMS to fill one of the new slots this would be financed from MOD operational budget. This would have to be cost neutral, i.e. met from savings/efficiencies made in other areas."

8.13 He concludes by noting that "the Terms of Reference will be subject to further review later in 2008 and 2009, when the effect of the SG/HR's recommended measures is evaluated".

²² *HC Deb*, 19 March 2001, Col 138–61.

²³ Lieutenant General Leakey (UK).

The Government's view

8.14 The Minister comments as follows:

“The UK welcomes the SG/HR’s recommendations of practical measures to improve the ability of the EUMS to provide robust strategic planning to underpin EU missions, in line with UK objectives for the EUMS. We agree with the amendments made to the EUMS Terms of Reference and Organisation.

“The amendments to the EUMS Terms of Reference do not represent any substantive change to the role and tasks of the EUMS, but rather represent a legal tidying exercise to ensure that the Terms of Reference align with the measures agreed for improving the EUMS’s ability to carry out its existing strategic planning task.”

Conclusions

8.15 We agree with the Minister’s assessment of this particular Council Decision, and now clear it.

8.16 However, it touches upon some important, wider considerations relating to both the nature and the scrutiny of European Security and Defence Policy. As noted above, effective scrutiny got off to a bad start. Since then, successive Ministers for Europe have endeavoured to improve it, and have largely succeeded. But it has also faltered on important occasions since then — for example, with regard to the 2003 European Security Strategy, and then in the initial stages of the planning for the new civilian ESDP mission in Kosovo.

8.17 More broadly, there are clearly indications that, particularly during the French Presidency in the second half of this year, that the December 2003 European Security Strategy, and thus the future shape and scale of ESDP, and its relationship with NATO, will be put under the microscope. In particular, France seems keen once again that the EU should have its own independent military planning capability. This was one of the major bones of contention during the negotiation of the 1998 St Malo Declaration. That Declaration — an Anglo-French creation that facilitated the launch of the European Security and Defence Policy — said that the European Union ought to have the capability for “autonomous action backed up by credible military forces”, with “a capability for relevant strategic planning” but — the key words — “without unnecessary duplication”, i.e., that it made no sense for both NATO and the EU to have their own full-blown military planning capability.²⁴

8.18 We accordingly remind the Minister of our predecessors’ words concerning the need to inform the Committee at an early stage of significant proposals — such as the issues touched on immediately above — “if necessary only in outline before even unofficial texts were available”. Specifically, we note that we shall be making our customary visit (in early June) to the incoming (French) Presidency, and with this in mind would be grateful if the Minister would write to us before the Whitsun recess with

²⁴ For the full text of the St Malo Declaration, see <http://www.atlanticcommunity.org/Saint-Malo%20Declaration%20Text.html>.

whatever information is then available — and his views thereon — concerning French ideas on revising the European Security Strategy and/or the St Malo Declaration, to include the vexed question of an EU military planning capability and its relationship to that of NATO.

9 Customs

(a)		
29011	Draft Regulation amending Regulation (EEC) No. 918/83 setting up a	
14090/07	Community system of relief from customs duty	
COM(07) 614		
(b)		
29012	Draft Regulation amending Council Regulation (EEC) No. 2658/87 on	
14093/07	the tariff and statistical nomenclature and on the Common Customs	
COM(07) 615	Tariff	

<i>Legal base</i>	Article 26 EC; —; QMV
<i>Department</i>	Revenue and Customs
<i>Basis of consideration</i>	Minister’s letter of 9 March 2008
<i>Previous Committee Report</i>	HC 16–iv (2007–08), chapter 11 (28 November 2008)
<i>To be discussed in Council</i>	17 March 2008
<i>Committee’s assessment</i>	Politically important
<i>Committee’s decision</i>	Cleared

Background

9.1 Regulation (EEC) No. 918/83 established a Community system of relief from customs duty. Annex 1 of Council Regulation (EEC) 2658/87 set down the standard duty rate and the upper limit of value to be used for goods imported from third countries by travellers in their personal baggage or sent in small consignments by a private individual in a third country to another private individual in the Community. A Directive updating the VAT and excise exemptions in 69/169/EEC was agreed in November 2006 to increase the allowances from €175 (£145)²⁵ to €430 (£300) for air and sea passengers and €300 (£210) for land and inland waterway passengers.²⁶ However, the new limits cannot come into effect until the customs duty reliefs have been brought into line.

9.2 The first draft Regulation, document (a), would amend a number of provisions in Regulation (EEC) No. 918/83 in order to improve the clarity and transparency of the

25 This amount was fixed at the exchange rate in force at the time that the €175 threshold was introduced and is the sterling amount shown in the UK guidance to travellers.

26 (27317) 6746/06: see HC 34–xxiii (2005–06), chapter 22 (29 March 2006).

Regulation, improve the parallels between the exemption from VAT and duty relief, harmonise the application of customs provisions in the Member States, and simplify customs clearance for certain goods. The second draft Regulation, document (b), would amend the provisions in Annex 1 of Council Regulation 2658/87 that lay down the standard duty rate and the upper limit of value to be used for goods imported from third countries by travellers in their personal baggage or sent in small consignments by a private individual in a third country to another private individual in the Community.

9.3 When we considered these documents in November 2007 we commented that higher travellers' allowances for customs and excise duties and VAT reliefs and simplification of the related administration were to be welcomed. However, we also said that before considering these proposals further we should like to hear about the outcome of:

- the Government's discussion with the removal business about the impact of a change proposed in relation to secondary residence provisions;
- its consideration of the implications of the combined effect of the changes to the *de minimis* limit in Regulation (EEC) No. 918/83 and the standard duty rate and upper limit in Council Regulation (EEC) 2658/87;
- the negotiation on an end user issue related to educational, scientific and cultural materials; and
- the Government's analysis of the possible consequences for the Exchequer.

Meanwhile the documents remained uncleared.²⁷

The Minister's letter

9.4 The Financial Secretary to the Treasury (Jane Kennedy) now tells us that

- her officials have discussed the proposed changes with the British Association of Removers and have established that the industry is content with the proposed change;
- in relation to the combined effect of the proposed changes to the two Regulations, the *de minimis* limit for customs duty relief in the original Regulation was based on the value of the goods. Earlier versions of the draft amendments to the Regulation suggested moving to a duty-based *de minimis* of €10, so that if the customs duty chargeable on a consignment was less than €10 it would be waived. This would have been more complex to administer as the duty would have to be calculated before deciding whether it could be waived. Following discussions, the proposal has now reverted to a value-based limit of €150 (around £105);
- the Government is content with this change — its best estimate of the financial effect of the changes is a reduction in Community customs duty collected in the UK of about £16 million annually. The impact of the changes to the standard duty rates in Council Regulation (EEC) 2658/87 is negligible;

²⁷ See headnote.

- the Commission has dropped the end user element of the proposal — it seems to have been included in error;
- on possible consequences for the Exchequer, of the £16 million Community annual loss of customs duty collected in the UK the Exchequer would have retained 25 per cent to cover the costs of collection; and
- additionally, the Commission expects to lose overall about £200 million a year and will adjust Member States' budget contributions accordingly. Once the increased contributions and abatement adjustments have been taken into account, the net cost to the Exchequer should be around £15.5 million a year.

9.5 The Minister also tells us that Council working group discussions have resulted in revised texts which will be presented to the Council for adoption on 17 March 2008.

Conclusion

9.6 We are grateful to the Minister for this account of where matters now stand on these draft Regulations. We have no further questions to raise and clear the documents.

10 Financial services

(29462) 6436/08 + ADD 1 COM(08) 64	Commission Report on the application of Regulation (EC) No. 2560/2001 on cross-border payments in euro
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<i>Legal base</i>	—
<i>Document originated</i>	11 February 2008
<i>Deposited in Parliament</i>	14 February 2008
<i>Department</i>	HM Treasury
<i>Basis of consideration</i>	EM of 29 February 2008
<i>Previous Committee Report</i>	None
<i>To be discussed in Council</i>	Not known
<i>Committee's assessment</i>	Politically important
<i>Committee's decision</i>	Cleared

Background

10.1 Regulation (EC) No. 2560/2001 provides that the price a bank charges for a cross-border euro payment into another Member State should be no more than the price it charges for a similar transaction within a Member State. The Regulation applies in the

European Economic Area and to payments in euro of up to €50,000 made with credit transfers, card payments and cash machine withdrawals.

10.2 The intentions were to reduce cross-border charges, which were perceived as excessive (a €100 transfer costing on average €24), to encourage the payments industry to improve its cross-border service and to prevent discrimination between costs for national and cross-border transactions, by increasing transparency. The concern of banks was that there is a justification for some price differentiation and the Regulation would lead to a rise in the charge made for national payments in order to compensate.

10.3 The Regulation also provides for a Commission review of its impact, and if appropriate, Commission proposals for amendment. It published a preliminary review, a staff working document, in December 2006 which found that:

- costs for cross-border transactions had decreased markedly — a €100 transfer now costing an average of €2.50;
- the reductions have not led directly to any substantial increase in charges for national payments; and
- the Regulation had been a factor in promoting the move to a Single Euro Payment Area (SEPA), including progress on the draft Payment Services Directive, which was designed to reduce regulatory barriers which might inhibit creation of a SEPA.²⁸

The Commission said that it was continuing its review and would publish a full report by mid-2007, possibly with suggested amendments to the Regulation.²⁹

The document

10.4 In this document the Commission reports the findings of its completed review. It is backed by the previously published staff working document and by a second, annexed, staff working document with further detailed analysis of application of the Regulation. The Commission finds that overall impact of the Regulation has been broadly positive, achieving its intended objectives. However it also discusses its intention to propose amendments to the Regulation to address current gaps, in order better to reflect recent market developments and to align the Regulation with changes that will be introduced in relation to the SEPA and by the Payments Service Directive, implementation of which is to be by 1 November 2009.

10.5 Amongst the matters covered in the Commission's report are:

28 (27104) 15625/05 + ADD1 (27503) 8758/06: see HC 34–xvi (2005–06), chapter 8 (25 January 2006), HC 34–xxxii (2005–2006), chapter 6 (21 June 2006) and HC 41–iv (2006–07), chapter 16 (14 December 2006) and the final Payment Services Directive, 2007/64/EC, OJ No. L 319, 5.12.07, p.1.

29 (28314) 17063/06: see HC-x (2006–07), chapter 24 (21 February 2007).

Geographical scope of application

- the Regulation applies to payments that are made in euro, however, it provides for non-euro Member States to notify the Commission of their intent to extend the Regulation's application to their currencies. In July 2002 the Commission accepted Sweden's application to extend the Regulation to kronor. No further applications have been received (and UK sterling payments are not affected);

Credit transfers

- when implemented the Payment Services Directive will introduce a number of conduct of business requirements that payment service providers will have to adhere to when conducting payment transactions. As these requirements will cover all electronic payment methods, including cross-border credit transfers, the Commission will propose amendment to the Regulation to align it with the Directive so as to eliminate discrepancies in the regulatory framework;
- such amendment would introduce the SHARE charging option (whereby payment charges are shared between the originator and the beneficiary) as obligatory for all regulated cross-border payment transactions, remove the other current payment charging options (OUR, where all charges are borne by the originator and BEN, where all charges are borne by the beneficiary), ensure the full amount specified in a payment order is credited to the beneficiary in credit transfers executed between euro and non-euro Member States, without any further deduction from the amount paid, and ensure customers will pay their bank a rejection, repair or return charge on a euro credit transfer only if they have previously agreed such charges;

Card payments

- the Commission acknowledges that surcharging of card payments is outside the scope of the Regulation but notes that, if a surcharge is made on a card payment, there should be no discrimination between cards issued by domestic financial institutions and those issued by institutions located in another Member State;

Competent authorities and out-of-court redress bodies

- because of the number of enquiries the Commission has received it proposes amendment of the Regulation to make the competent authorities and redress bodies of the Payment Services Directive responsible also for supervising the Regulation and the related out-of-court redress mechanism, so obliging Member States to provide information on Regulation-related competent authorities and out-of-court redress bodies;

Consumer awareness

- although information on charges for euro payments has been provided to consumers in a number of ways, the Commission suggests that consumer knowledge about the existence of the Regulation, their rights, transparency

conditions and provision of information for electronic payment transactions remains limited. So the Commission encourages banks, media and public authorities to effectively communicate the advantages of the Regulation to the general public;

Changes in cross-border payment system infrastructures: SEPA, the Payment Services Directive and the Regulation

- the Commission recalls that, encouraged by the objectives of the Regulation, the SEPA, a banking industry-led initiative, was announced in 2002, that the SEPA aims to deliver pan-European schemes and infrastructure that enable payments in euro across the Community to be made as cheaply, easily and efficiently as payments inside individual Member States, that there are three core SEPA services, direct debits, credit transfers and card payments, and more to be added, for example e-invoicing and that the first SEPA-compliant product, the SEPA credit transfer was to be launched at the end of January 2008;
- the Commission also recalls that its draft Payment Services Directive was proposed in order to create the legal foundation to enable a single market for payments and that, although the Directive was partly motivated by the underlying principles of the Regulation, its scope and application is greater — for example, both non-euro Member State currencies and the euro are covered and the standardised conduct of business requirements within the Directive seek to provide even wider consumer protection by improving transparency of pricing and service levels between providers, which in turn aim to encourage further cross-border competition and innovation;
- the Commission notes that when the Regulation was introduced there were a limited number of electronic cross-border payment mechanisms and its scope reflected the mechanisms that were available at the time and that the Payment Services Directive, together with the SEPA, has enabled the development of the payment services market and will enable the creation of the cross-border direct debit. So it propose an increase to the scope of the Regulation to incorporate cross-border direct debits in euros;

Commission inquiry into the European retail-banking sector

- the Commission recalls that in 2005, following the 2004 *Regulation 2560/2001: study of competition for cross-border payment services*,³⁰ it launched a sector inquiry into the European retail banking sector to analyse, amongst other issues, competition in the market for payment cards and payment systems. The inquiry concluded that there were barriers to entry into the Community payment market, large differences in merchant, cardholder and interchange fees and rules,

30 Prepared for the Commission by Retail Banking Research Ltd — see http://ec.europa.eu/internal_market/payments/docs/reg-2001-2560/competition_en.pdf.

procedures and market structures that weakened competition at the merchant level,³¹

- the Commission believes that many of these barriers to competition will be resolved with the launch of the SEPA and implementation of the Payment Services Directive. At present, it does not propose to introduce any further competition legislation but will continue to monitor the market carefully;

Balance of payments

- the Commission notes that the Regulation includes an exemption from balance of payment reporting requirements³² of institutions for payments below €12,500, that for SEPA compliant products a threshold of €50,000 is deemed necessary and that some Member States have voluntarily raised their balance of payment reporting threshold to €50,000, but others may insist on retaining the current threshold for SEPA payments — which could make the migration to SEPA difficult. So the Commission intends to propose an amendment to the Regulation to increase the reporting exemption threshold to €50,000.

10.6 The Commission concludes its report by recapitulating its intention to propose amendment of the Regulation to:

- introduce the SHARE cost option as obligatory for all regulated transactions;
- have the competent authorities and out-of-court redress schemes established for the purposes of Payment Services Directive deal with Regulation issues;
- extend the scope to cover direct debit transactions; and
- increase the balance of payments reporting exemption threshold to €50,000 and introduce a deadline for a complete exemption of banks from the balance of payments reporting obligations.

The Commission adds that some changes in definitions and in the review clause appear necessary. And it says that it will bring forward draft legislation once it has completed its impact assessments.

The Government's view

10.7 The Exchequer Secretary to the Treasury (Angela Eagle) says the Government welcomes the Commission's comprehensive evaluation and analysis, which is in line with the Government's better regulation commitment to improve the quality of legal provisions, to keep administrative burdens to a minimum and to develop a clear rationale for amending or proposing new regulation. She continues that the Government agrees with the Commission's view that any proposals to amend the Regulation should take into account the Payment Services Directive and the emerging outcomes of SEPA, in particular:

31 (28352) 6238/07 + ADD 1: see HC 41–xii (2006–07), chapter 1 (7 March 2007) and *Stg Co Debs*, European Standing Committee, 14 May 2007, cols. 3–22.

32 Regulation (EC) No 184/2005, OJ No. L 35, 8.2.05, p.23, governs collection of balance of payments data.

- introduction of the SHARE cost option as obligatory for all regulated transactions;
- extension of the scope of the Regulation to cover direct debit transactions; and
- an increase in the balance of payments reporting exemption threshold to €50,000.

She says this should create a simplified regulatory framework, which would be easier for business and consumers alike to understand.

10.8 However the Minister says the Government is concerned about the proposal for a requirement whereby the competent authority and out-of-court redress mechanism would mirror that of the Payment Services Directive — it should be for Member States to decide which competent authority and out-of-court redress mechanisms are most appropriate for the Regulation.

10.9 The Minister concludes that it is the Government's priority to ensure that the UK and European payments market should be as transparent, competitive, innovative and efficient as possible and that it looks forward to the Commission's completed impact assessments.

Conclusion

10.10 **This Report signals a useful review of an important element in facilitating a single payment services market. We shall, of course, be scrutinising any draft legislation to amend Regulation (EC) No. 2560/2001 which now emerges, particularly in relation to the Government's reservation the Minister mentions. Meanwhile we clear this document.**

11 Value added taxation and fraud

(29493) 6859/08 + ADD1 COM(08) 109	Commission Communication on measures to change the VAT system to fight fraud
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<i>Legal base</i>	—
<i>Document originated</i>	22 February 2008
<i>Deposited in Parliament</i>	27 February 2008
<i>Department</i>	HM Treasury
<i>Basis of consideration</i>	EM of 29 February 2008
<i>Previous Committee Report</i>	None
<i>Discussed in Council</i>	4 March 2008
<i>Committee's assessment</i>	Politically important
<i>Committee's decision</i>	Cleared

Background

11.1 In a Communication of May 2006 the Commission examined the fight against fraud in relation to VAT, excise duties and direct taxes. It recognised that the functioning of fiscal systems is and should remain primarily a Member State responsibility. But it asserted a responsibility to stimulate and facilitate cooperation between Member States in order to guarantee the proper functioning of the single market and to protect the financial interests of the Community. The document drew attention to some relevant legislative proposals already in the pipeline, but much of its emphasis was on improved non-legislative mechanisms. Much of the document was concerned with combating missing trader, particularly, carousel fraud — a major VAT problem in the Community. It suggested that weaknesses in the current arrangements for cross-border trade should be examined and commented on reverse charge solutions (where the ultimate purchaser is responsible for VAT returns, rather than each supplier under the standard fractionated system) that had been suggested by some Member States.³³

11.2 In May 2007 the Commission published a staff working document summarising progress in developing an anti-tax fraud strategy. In June 2007, on the basis of this document, the ECOFIN Council asked the Commission to come forward with legislative proposals to improve the efficiency of a wide range of conventional anti-fraud measures and to explore more far reaching anti-fraud measures, including taxation in the Member State of departure (rather than the current system of zero rating, with tax payable in the Member State of arrival), together with an analysis of the effects of an optional reverse charge system.³⁴ In November 2007 the Commission responded in a Communication, which, rather than making specific legislative proposals, further discussed possible changes to current conventional anti-fraud legislation, but did undertake to present proposals early in 2008. It did not cover taxation in the Member State of departure and reverse charging, instead promising also the results of its work on these points in early 2008.³⁵

The document

11.3 This document is the foreshadowed Communication on taxation in the Member State of departure and reverse charging. It is supported by an annexed detailed staff working document. The Commission first discusses a system for taxation of intra-Community supplies of goods in the Member State of departure at a uniform rate of 15%. Such a system would mean:

- a VAT registered business making a supply of goods to a VAT registered business in another Member State would charge the customer a flat rate of 15% VAT;
- as now, the supplier would declare the sales on a separate statement but would pay the VAT through their normal VAT return to their tax authority;
- the tax administration would then remit this VAT to the Member State of arrival at regular intervals through a bilateral clearing house mechanism;

33 (27562) 10054/06: see HC 34–xxxiii (2005–06), chapter 20 (28 June 2006).

34 See http://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressData/en/ecofin/94513.pdf, pages 14–18.

35 (29200) 15672/07 + ADD 1, (29249) 10052/07: see HC 16–viii (2007–08), chapter 24 (16 January 2008).

- the customer would recover the VAT on their purchase through their normal VAT return, but would also have to submit a purchase list — a new requirement; and
- if the purchaser was unable to deduct all the VAT on their purchases, to ensure neutrality, they would be required to make an adjustment to account for the difference between the 15% charged and the local rate of VAT relevant to the transaction.

11.4 In commenting on this scheme the Commission:

- asserts that taxation of intra-Community supplies would significantly reduce the problems caused by missing trader fraud;
- recognises risks of an increase in other forms of fraud (such as repayment fraud using fictitious intra-Community invoices) as well as potential negative cash flow implications for business; and
- concludes that there would be additional burdens on business, with suppliers being required to submit monthly instead of quarterly recapitulative statements (a change which is, in any case, shortly to be the subject of a Commission proposal) while purchasers would for the first time also have to submit separate monthly statements of their intra-community purchases.

11.5 The main question posed by the Commission is whether Member States are prepared to accept the level of dependency on other Member States in ensuring their revenues that would follow from a system such as that discussed. It estimates that a system of taxing intra-Community supplies might have an impact on some 10% of the overall VAT receipts in the Community.

11.6 An alternative suggested by the Commission is a new system of taxation at the place of consumption, facilitated by an extended version of the One Stop Scheme, recently adopted as part of a VAT package and applying from 2015. This would:

- require suppliers to account for VAT at the rate applying to the goods in the Member State of destination and to pass the VAT payments to that country's VAT authority through their domestic VAT authority; and
- the Member State of consumption would then assure itself that the correct tax had been declared by using the administrative cooperation system to ask the supplier's domestic VAT authority to carry out any necessary checks. This system would be less costly than a clearing house.

This option was not part of the Commission's study and no further details are provided in the staff working document, since the Commission wishes to take the Council's view before committing any resources to additional work on it. It also seeks more generally Council guidance on the issues it raises in relation to taxation of intra-Community supplies of goods in the Member State of departure.

11.7 Under the general reverse charge the Commission was asked to consider, and next discusses in this document, tax liability would be shifted from supplier to recipient with respect to domestic business-to-business supplies of goods. Only those supplies over a

certain threshold would be affected, those below the threshold and supplies to final consumers would remain subject to the existing VAT system. The Commission's study focuses on examining practical issues surrounding the application of a general reverse charge, the new risks of fraud that it could create and the effect it would have on the coherence of the VAT system. The Commission:

- accepts that it would be effective at reducing missing trader fraud and other forms of input tax deduction fraud;
- notes that it is vulnerable to other forms of fraud;
- says that the additional measures needed to ensure compliance, not least additional reporting requirements, would significantly increase burdens for both business (including those not engaged in intra-Community trade) and tax administrations;
- argues that allowing Member States to choose whether they used a general reverse charge system would have negative consequences for the operation of the single market and be contrary to the objective of simplifying the VAT system; and
- holds that a general reverse charge system should apply in all Member States or not at all.

11.8 In the Communication the Commission also discusses the idea of a pilot project to establish whether the general reverse charge would be an effective means of fighting fraud. But it again makes clear that it would only be prepared to propose a pilot to test a general reverse charge if such a system would be mandatory for all Member States in the event it was introduced. It therefore asks the Council to consider whether it could support a pilot project on that basis.

The Government's view

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

- strongly supports the Commission's commitment to combating VAT fraud and believes that action to improve the operation of the existing Community VAT system is necessary to help tackle fraud where national action is not sufficient;
- looks forward to the Commission producing detailed legislative proposals for discussion in Council on conventional measures to tackle fraud, as these are likely to be able to be agreed much more quickly than more fundamental substantive changes to the system;
- accepts the analysis in the Commission's documents that far reaching changes to the VAT system would lead to increased burdens on both legitimate businesses and the tax authorities, whilst still leaving potentially significant opportunities for fraud or other revenue losses; and
- remains open to further consideration of far reaching reform of the VAT system, including following an assessment of the effectiveness of any conventional measures put in place.

Conclusion

11.10 This is an important, albeit inconclusive, discussion of possible radical changes to the Community's VAT system. But we note the Government's wish to push forward with legislation on conventional measures to tackle fraud, which we will be scrutinising in due course. Meanwhile we clear this document.

12 Terrorism

(29246) 16611/07 COM(07) 649	Commission Communication: <i>Stepping up the fight against terrorism</i>
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<i>Legal base</i>	—
<i>Document originated</i>	6 November 2007
<i>Deposited in Parliament</i>	11 December 2007
<i>Department</i>	Home Office
<i>Basis of consideration</i>	EM of 10 March 2008
<i>Previous Committee Report</i>	None; but see (27046) 14469/1/05: HC 34–xvi (2005–06), chapter 13 (25 January 2006)
<i>To be discussed in Council</i>	No date set
<i>Committee's assessment</i>	Legally and politically important
<i>Committee's decision</i>	Cleared

Background

12.1 In December 2005 the European Council adopted an updated version of a Counter-Terrorism Strategy. An Action Plan was adopted at the same time, and has since been revised, most recently in the spring of 2007.

12.2 When we considered the Strategy on 25 January 2006 we noted that it was constructed around four themes or elements, whereby it was proposed to (i) prevent, (ii) protect, (iii) disrupt and (iv) respond to terrorism and set out a general commitment “to combat terrorism globally while respecting human rights, and to make Europe safer, allowing its citizens to live in freedom, security and justice”. The element of the strategy concerned with the prevention of terrorism concentrated on countering radicalisation and recruitment to terrorist groups such as Al Qa’ida, but noted that these challenges were primarily for the Member States. The element concerned with protection drew attention to the need to protect critical infrastructure, to protect the EU’s external borders and to raise standards in transport security. The element concerned with disruption had as its objective the impeding of terrorist planning, the disruption of terrorist networks and the activities of recruiters, the cutting off of funding and access to materials and the bringing to justice of offenders. Finally, the element of the Strategy concerned with responding to a terrorist

incident acknowledges that the Member States have the lead role, but notes a need to ensure that the EU collectively “has the capability to respond in solidarity to an extreme emergency which might overwhelm the resources of a single Member State and constitute a serious risk to the Union as a whole”.

12.3 We noted the view of the then Home Secretary that the Strategy would not affect the vast majority of ongoing counter-terrorist work, but agreed with him that the Strategy gave a more comprehensible structure to the work and explained better the role of the EU.

The Commission Communication

12.4 The Commission’s Communication, entitled “Stepping up the fight against terrorism” refers to current activities under the various elements of the Strategy. The Commission notes that it is developing a policy on identifying and addressing the factors leading to violent radicalisation and is funding studies, conferences and projects to share experience and better understand the issues. On the protection of critical infrastructure, the Commission notes that a general policy framework is being discussed in the Council. On urban transport security, the Commission announces that it will set up an expert working group which will work in close association with other groups set up under the general policy framework on critical infrastructure protection.

12.5 In relation to the exchange of information, the Communication states that “much has been done by the Commission” and reference is made to the proposal on PNR data, the Data Retention Directive³⁶ and the “principle of availability” under the Prüm Treaty, and agreement on giving law enforcement authorities access to the Visa Information System (VIS) once this becomes operational.

12.6 The Communication announces that the Commission intends to submit a package of policy proposals on chemical, biological, radiological and nuclear weapons early in 2009. The Communication also explains that responses to the Commission’s 2006 Green Paper on detection technologies are being considered. It also notes that there has been a substantial increase (to €1.4 billion) in the budget for security research in the period 2007–2013, which would include topics such as the detection of explosives, protection against chemical, biological, radiological and nuclear terrorism, crisis management and the protection of critical infrastructure. The creation of a European Security Research and Innovation Forum (ESRIF) to support civil security policy-making is also noted.

12.7 The final part of the Communication announces what is described as a new package of proposals, although most are already under consideration in the Council. The first of these is a proposal to amend the 2002 Framework Decision on terrorism to expand the scope of terrorist crimes to include dissemination of terrorist propaganda, financing of terrorism, circulation of information on bomb-making and explosives and public provocations to commit terrorist offences. The proposal was in fact made in November 2007 and is under consideration by the Council.³⁷ The second matter referred to is practical action to stem the use of explosives, where the Commission explains that “a large number

36 Directive 2006/24/EC on the retention of data generated or processed in connection with the provision of publicly available electronic communications services or of public communications networks. OJ No. L 105, 13.4.06, p.54.

37 (29115) 14960/07: see HC 16 –vii (2007–08), chapter 8 (9 January 2008).

of different actions” will be pursued aimed at making it more difficult for terrorists to gain access to explosives or their precursors, such as rapid alert systems on lost and stolen explosives, a network of bomb-disposal experts and the vetting of personnel in the explosives industry.³⁸

12.8 Thirdly, the Commission refers to the proposal on Passenger Name Record (PNR) data³⁹ and states that “Member States must collect these records, process them and, where appropriate, exchange them with others. The Commission notes that the question of PNR data has been associated mostly with negotiations with the United States, but observes that “the Union is at least as much a potential target as the United States”.

12.9 Finally, the Commission refers to the fact it is adopting its report on the implementation of the 2002 Framework Decision on Terrorism and comments that “Member States need to act more decisively to put the regime adopted in 2002 into their law to support the work of their police forces, prosecutors and judges”. The Commission did, in fact, adopt its second report on the 2002 Framework Decision at the beginning of November 2007. We drew attention, in our report of 5 December, to our concern that the Commission’s approach to implementation of this Framework Decision sought to establish terrorism as a special class of crime and thereby to give its perpetrators a special status. Whether or not this should be done was, in our view, a major issue of policy which should be plainly addressed on the face of the Framework Decision and not left to be inferred by the Commission.

The Government’s view

12.10 In his Explanatory Memorandum of 10 March the Minister of State for Security, Counter-Terrorism, Crime and Policing at the Home Office (Tony McNulty) explains that the Communication outlines nine ways in which the EU can contribute to the fight against terrorism. The Minister comments on each of these from the UK perspective. On measures against violent radicalisation, the Minister explains that the Government supports the Commission’s approach and believes that “only through international cooperation and the transfer of best practice will we successfully be able to counter violent extremism”.

12.11 On the protection of critical infrastructure, the Minister comments that the Government fully supports the point that it is the responsibility of each Member State to protect critical infrastructure within its national borders. The Minister notes that the aim of the EPCIP programme is to improve the protection of critical infrastructure in the EU, but that the Government does not accept that introducing minimum standards for security would necessarily achieve this aim and considers that existing security arrangements with owner/operators of infrastructures must not be compromised by the imposition of minimum standards.

12.12 On urban transport security the Minister explains that the Government believes that the new expert working group could be a useful forum and is proposing to participate so long as the group adds value to the work of other groups. However, the Minister also

38 We considered the Commission’s Communication on enhancing the security of explosives on 5 December 2007: (29114) 14959/07: see HC 16–v (2007–08), chapter 18 (5 December 2007).

39 (29109) 14922/07: see HC 16–vii (2007–08), chapter 7 (9 January 2008).

explains that the UK would resist the extension of the group's remit to the development of commonly agreed security criteria, since the diversity of land transport systems in Europe means that any attempt to create and impose common standards would not be useful or practical.

12.13 On the exchange of information, the Minister comments that the Government supports EU efforts to improve cooperation between Member States, including the proposal to share PNR data. The Minister explains that the UK is currently excluded from the Visa Information System (VIS) but is currently considering a legal challenge to that exclusion. The Minister adds that the UK supports the Commission's efforts in relation to terrorist financing and victim support.

12.14 On the 'new' package of proposals in the Communication, the Minister explains that the UK supports the amendment of the 2002 Framework Decision on Terrorism and that the Commission's recommendations on practical action to stem the use of explosives are broadly acceptable to the UK.

Conclusion

12.15 The Commission's Communication contains little, if anything, which is new, but is rather a recapitulation of work in progress.

12.16 Nevertheless, the Minister has provided a useful summary of the Government's attitude to the various proposals, which should be brought to the attention of the House. We have no questions to put to the Minister and clear the document from scrutiny.

13 A European Border Surveillance System

(29478) 6665/08 COM(08) 68	Commission Communication examining the creation of a European Border Surveillance System (EUROSUR)
+ ADDs I-2	Commission staff working documents: impact assessment of EUROSUR and summary of the assessment

<i>Legal base</i>	—
<i>Document originated</i>	13 February 2008
<i>Deposited in Parliament</i>	22 February 2008
<i>Department</i>	Home Office
<i>Basis of consideration</i>	EM of 6 March 2008
<i>Previous Committee Report</i>	None
<i>To be discussed in Council</i>	No date set
<i>Committee's assessment</i>	Politically important
<i>Committee's decision</i>	Cleared

Background

13.1 In January 2007, we considered a Commission Communication on ways to help deal with the surge of illegal immigration by sea to the Member States which border the Mediterranean and southern Atlantic.⁴⁰ The document made proposals for practical cooperation between Member States, third countries and FRONTEX (the EC Agency which manages operational cooperation between Member States at the external borders of the EC) to help alleviate the problem in the short term. It also outlined possible initiatives for the longer term. These included the possibility of creating a European Border Surveillance System (EUROSUR) to link national surveillance systems. In December 2006, the European Council concluded that priority should be given to the examination of the case for EUROSUR.⁴¹

The Commission's proposals for EUROSUR

13.2 The Commission distinguishes between “border checks” at border crossing points and “surveillance” of borders between crossing points. The Communication is concerned with the latter.

13.3 The Commission notes that Member States' own surveillance systems currently cover only a few parts of the EC's external borders and that the places under surveillance tend to be restricted (because of, for example, the current technical limitations of radar) to flat or coastal areas. A more effective system of border surveillance would not only help to prevent

40 (28109) 16126/06: see HC 41–vi (2006–07), chapter 10 (17 January 2007).

41 European Council of 14–15 December 2006, Presidency Conclusions, paragraph 25(c).

illegal migration and the loss of life at sea; it would also contribute to counter-terrorism and the prevention and detection of illicit trafficking in people, guns and drugs.

13.4 Against this background, the Commission proposes three policy objectives for border surveillance:

- to reduce the death toll of asylum seekers and illegal immigrants by rescuing more of them at sea;
- to reduce the number of illegal immigrants who enter the EC outside border crossing points; and
- to increase the EC's internal security by countering terrorism and other serious crimes which involve crossing the EC's external borders.

13.5 The Commission proposes the creation of EUROSUR to help achieve these objectives. It says that EUROSUR would support Member States in reaching *situational awareness* and increase the *reaction capability* of their law enforcement authorities. (“Situational awareness” is a measure of a Member State’s ability to detect cross-border movements and to take rational control measures based on evidence. “Reaction capability” is a measure of the time the law enforcement authorities take to get to a cross-border movement so as to control it and of the time needed to react to unusual circumstances.) The Commission says that EUROSUR would not affect the jurisdiction of the Member States or replace any existing surveillance systems.

13.6 EUROSUR would operate in the Member States which border the Mediterranean, the South Atlantic, the Black Sea and the Member States with land borders with third countries to the east of the EC. The Commission envisages that the implementation of EUROSUR would comprise three parts:

- upgrading and extending national border surveillance systems and linking them together;
- commissioning R&D to improve the performance of surveillance equipment, such as satellites and unmanned aerial vehicles; and
- sharing information through the central collection, analysis and dissemination of data from national surveillance systems, FRONTEX, intelligence sources and international systems.

The first two parts would be done simultaneously and would apply to land and maritime borders. The third part would build on the first two and apply only to maritime borders.

13.7 The Communication refers to several studies the Commission is planning, including one on the legal aspects of the interoperability of surveillance systems. In the spring of 2009, the Commission will make a progress report to the Council on the development of the EUROSUR concept and make detailed proposals for establishing it. Meanwhile, the Commission invites the Council of Ministers and the European Council to discuss the recommendations in the Communication.

The Government's view

13.8 The Parliamentary Under-Secretary of State at the Home Office (Meg Hillier) tells us that the Government welcomes the Communication. It notes that some of the Commission's proposals are at a very early stage and awaits the further details and firm proposals which are promised for Spring 2009.

13.9 The Minister adds that;

“The Government would welcome clarity from the Commission over how surveillance will translate into practical action and how to ensure information gained via border surveillance is fully utilised. We are keen to follow developments in the study of the legal aspects of ... different surveillance systems, particularly those relating to the international law of the sea... ”.

13.10 The Minister also tells us that the Government:

“accepts that common application of surveillance tools requires a central coordination point, but greater analysis is required to assess the likely benefits, for example, whether irregular migrants will be deterred from crossing external EU borders if they face a greater chance of detection.”

Conclusion

13.11 We recognise the benefits of practical cooperation between Member States and between them and EC and other agencies to improve the surveillance, and hence the control, of the EC's external borders. In principle, therefore, we share the Government's welcome for this Communication. But the Commission's proposals are still being developed and we shall await the details before commenting further.

13.12 Because of the importance of the subject, we draw the document to the attention of the House, but we see no need to keep it under scrutiny.

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

- (29413) Draft Council Regulation on the common rules for imports.
6041/08
COM(08) 21
- (29419) Draft Directive on coordination of safeguards which, for the
6047/08 protection of the interests of members and third parties, are required
COM(08) 39 by Member States of companies within the meaning of the second
paragraph of Article 48 of the Treaty, with a view to making such
safeguards equivalent (codified version)

Department for Environment, Food and Rural Affairs

- (29496) Commission Report assessing progress reported by Italy to the
6958/08 Commission and the Council on recovery of additional levy due by
COM(08) 95 milk producers for the periods 1995/96 to 2001/02 (pursuant to
Article 3 of Council Decision 2003/530/EC).

Foreign and Commonwealth Office

- (29467) Proposed amendments to the Rules of Procedure of the Court of
5952/08 Justice incorporating provisions necessary to govern the conduct of
— the review procedure.
- (29468) Draft Council Decision amending the Rules of Procedure of the Court
5953/08 of Justice to specify the language rules which are to apply to the
— review procedure.
- (29469) Draft Council Decision on the signing and provisional application of a
6521/08 Protocol to the Euro-Mediterranean Agreement establishing an
COM(08) 65 Association between the European Community and its Member States
and the Republic of Lebanon to take account of the accession of the
Republic of Bulgaria and Romania to the European Union.
Draft Council Decision on the conclusion of a Protocol to the Euro
Mediterranean Agreement establishing an Association between the
European Community and its Member States and the Republic of
Lebanon, to take account of the accession of the Republic of Bulgaria
and Romania to the European Union.
- (29507) Draft Council Regulation imposing certain restrictive measures on the
7110/08 illegal authorities of the island of Anjouan in the Union of the
COM(08) 126 Comoros.

Home Office

(29486)
6424/08
—
Draft Council Decision establishing the European Police Office (EUROPOL) — Chapter V.

(29487)
6566/08
—
Draft Council Decision establishing the European Police Office (EUROPOL) — Annex I.

Department for Transport

(29466)
6295/08
+ ADDs 1–3
COM(08) 54
Commission Communication: *Multi-annual contracts for rail infrastructure quality.*

(29482)
6717/08
COM(08) 66
Commission Report on Noise Operation Restrictions at EU Airports (Report on the application of Directive 2002/30/EC).

(29488)
6581/08
COM(08) 81
Draft Council Decision on the signature and provisional application of the Agreement between the European Community and the Islamic Republic of Pakistan on certain aspects of air services.
Draft Council Decision on the conclusion of the Agreement between the European Community and the Islamic Republic of Pakistan on certain aspects of air services.

HM Treasury

(29357)
5139/08
—
OLAF Report on the achievement of the objectives of the Hercule programme.

(29473)
6659/08
+ ADD 1
COM(08) 82
Draft Council Regulation adjusting with effect from 1 July 2007 the remuneration and pensions of officials and other servants of the European Communities.

(29483)
6748/08
+ ADD 1
COM(08) 2
Commission Report to the budgetary authority on guarantees covered by the general budget — Situation at 30 June 2007.

Formal minutes

Wednesday 12 March 2008

Members present:

Michael Connarty, in the Chair

Mr Adrian Bailey

Mr David S Borrow

Mr William Cash

Mr James Clappison

Ms Katy Clark

Jim Dobbin

Mr Greg Hands

Kelvin Hopkins

Mr Anthony Steen

1. Future programme

Resolved, That the Committee visit The Hague for discussions with EURPOL and EUROJUST.

Ordered, That the Chairman seek the approval of the Liaison Committee for expenditure in connection with the visit.

Resolved, That the Committee visit Brussels for discussions with the European Institutions and UKRep.

Ordered, That the Chairman seek the approval of the Liaison Committee for expenditure in connection with the visit.

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 14 read and agreed to.

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

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

[Adjourned till Wednesday 19 March 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*)