



House of Commons

European Scrutiny Committee

---

# **Nineteenth Report of Session 2008–09**

---

**Documents considered by the Committee on 13 May 2009,  
including the following recommendation for debate:**

Cultivation of genetically modified maize





House of Commons  
European Scrutiny Committee

---

**Nineteenth Report of  
Session 2008–09**

---

Documents considered by the Committee on 13 May 2009,  
including the following recommendation for debate:

Cultivation of genetically modified maize

*Report, together with formal minutes*

*Ordered by The House of Commons  
to be printed 13 May 2009*

**HC 19-xvii**

Published on 22 May 2009  
by authority of the House of Commons  
London: The Stationery Office Limited  
£0.00

## Notes

### Numbering of documents

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

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

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

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

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

### Abbreviations used in the headnotes and footnotes

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

### Euros

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

### Further information

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

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

### Staff

The staff of the Committee are Alistair Doherty (Clerk), Laura Dance (Second Clerk), David Griffiths (Clerk Adviser), Terry Byrne (Clerk Adviser), Sir Edward Osmotherly (Clerk Adviser), Peter Harborne (Clerk Adviser), Paul Hardy (Legal Adviser) (Counsel for European Legislation), Dr Gunnar Beck (Assistant Legal Adviser), Claire Cozens (Senior Committee Assistant), Allen Mitchell (Committee Assistant), Mrs Keely Bishop (Committee Assistant), Dory Royle (Committee Assistant), Karuna Bowry (Committee Support Assistant), and Paula Saunderson (Office Support Assistant).

### Contacts

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

# Contents

---

<b>Report</b>			<i>Page</i>
<b>Documents for debate</b>			
1	DEFRA	(30620) (30621) Cultivation of genetically modified maize	3
<b>Documents not cleared</b>			
2	DEFRA	(30271) Petrol vapour recovery at filling stations	6
3	FCO	(30633) EU police, rule of law and civilian administration mission to Iraq	9
4	MOJ	(30519) Sexual abuse and exploitation of children and child pornography	15
<b>Documents cleared</b>			
5	DEFRA	(30535) Adapting to climate change	23
		Annex A: UK Comments on Aspects of the White Paper	30
6	DEFRA	(30545) Sustainable development of European aquaculture	33
7	FCO	(27791) (26227) (29544) (30446) Development Assistance and Governance	39
8	FCO	(30437) (30438) EU Enlargement: Romania and Bulgaria	45
9	HMT	(30526) Competition: the insurance sector	51
10	MOJ	(30333) (30334) Bilateral Agreements	54
<b>Documents not raising questions of sufficient legal or political importance to warrant a substantive report to the House</b>			
11		List of documents	58
<b>Formal minutes</b>			59
<b>Standing order and membership</b>			60



## 1 Cultivation of genetically modified maize

(a)	
(30620)	Draft Council Decision regarding the placing on the market, in accordance with Directive 2001/18/EC, of a maize product ( <i>Zea mays</i> L.line Bt11) genetically modified for resistance to certain lepidopteran pests
—	
—	
(b)	
(30621)	Draft Council Decision regarding the placing on the market, in accordance with Directive 2001/18/EC, of a maize product ( <i>Zea mays</i> L.line 1507) genetically modified for resistance to certain lepidopteran pests
—	
—	

<i>Legal base</i>	Article 18(1) of Directive 2001/18/EC
<i>Department</i>	Environment, Food and Rural Affairs
<i>Basis of consideration</i>	EMs of 6 May 2009
<i>Previous Committee Report</i>	None
<i>To be discussed in Council</i>	June 2009
<i>Committee's assessment</i>	Politically important
<i>Committee's decision</i>	For debate in European Committee

### Background

1.1 The deliberate release into the environment of genetically modified organisms (GMOs) is subject to Directive 2001/18/EC.<sup>1</sup> This provides that, where a GMO is to be placed on the market, consent should initially be sought from the competent authority of the Member State concerned. If it is minded to recommend approval, it has to forward its assessment to the Commission, and thence to the other Member States: if no objections are received within a stated period, it may give written consent, but, if objections are raised, the matter has to be considered by the Regulatory Committee of Member States set up under the Directive, on the basis of a draft Commission Decision. If that does not achieve a qualified majority, it has to be referred to the Council (which must take a decision by qualified majority within three months), failing which the Commission may adopt the Decision.

1.2 The Regulatory Committee recently considered proposals to approve the cultivation within the Community of two maize lines (*Zea mays* Bt11 and 1507) which have been genetically modified to be resistant to certain insects,<sup>2</sup> but, as these failed to secure the requisite qualified majority, they are being referred to the Council under the procedure described above. We have yet to receive official texts of the draft Council Decisions, but these are expected to follow closely the draft proposals put to the Regulatory Committee, which the Government has made available to us.

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

2 Notably the European Corn Borer.

## The current proposals

1.3 The two proposals would approve applications first made to the French and Spanish competent authorities (CA) in 1996 and 2001 respectively to place genetically modified maize on the market for cultivation. The lines in question are already authorised for feed and food use, and, if agreed, the Decisions would require the consent to be granted, permitting their cultivation in all Member States. The consent would, however, be subject to a number of conditions, including the need to monitor the emergence of any tolerance on the part of both target insects and others, the planting of adjacent “refuge borders” (designed to reduce the exposure of non-target species to pollen from the genetically modified maize), and the use of the herbicide glufosinate.

1.4 After conducting an initial assessment, the competent authorities in question concluded that there was no scientific evidence to indicate any risk to human or animal health or the environment, and that consent should be given. Those assessments were duly conveyed to the Commission and other Member States, following which the Department for Environment, Food and Rural Affairs (DEFRA) consulted the UK’s statutory Advisory Committee on Releases to the Environment (ACRE). When ACRE first considered the applications, it felt that the possible impact of the insect resistance trait on non-target insects had not been adequately addressed in the environmental risk assessment or in the case-specific post market monitoring plan, and it therefore advised that consent for cultivation should not be issued at that stage. However, after revised post market monitoring plans had been submitted, the Committee was satisfied that its concerns had been addressed.

1.5 DEFRA also consulted the Food Standards Agency, the Health and Safety Executive, the statutory conservation bodies and the GM Inspectorate, and their comments, together with the advice from ACRE, were subsequently reflected in the opinions submitted by the UK, which contained no safety objections and agreed to the issuing of the consents for these two maize lines. However, as some Member States maintained objections, the Commission consulted the European Food Safety Authority (EFSA), which concluded that there was no evidence to indicate that the placing of the lines in question (and derived products) on the market was likely to cause adverse effects on human or animal health or the environment in the context of their proposed use.

1.6 The EFSA subsequently added two Annexes to each of its opinions. The first provided clarification for Member States on issues where they raised particular concerns, in particular on the potential for adverse effects on non-target organisms: and the second responded to a request from the Commission to consider relevant scientific papers which had been published since the Authority published its original opinion. In both cases, it concluded that this information did not invalidate the former risk assessment, a view which was shared by ACRE.

1.7 On the basis of this scientific advice, the UK voted in favour of each of these proposals at the Regulatory Committee on 25 February 2009, but, as noted above, no qualified majority was reached in either case, with six Member States (including the UK) voting in favour, seven abstaining, twelve voting against, and two being absent. (According to the Government, nine Member States voted on purely political grounds rather than basing their decisions on whether there is any new scientific evidence of risk to human health and

the environment, whilst one abstained as it had not received Ministerial approval to vote due to administrative problems, but claimed that it would have voted in favour.)

### The Government's view

1.8 In his Explanatory Memoranda of 6 May 2009, the Minister for the Natural and Marine Environment, Wildlife and Rural Affairs at the Department for Environment, Food and Rural Affairs (Mr Huw Irranca-Davies) notes that the proposed course of action is in line with the requirements of Directive 2001/18/EC, and the Government's GM policy statement of 9 March 2004. However, he points out that, although Northern Ireland agreed with the UK having voted in favour of these consents being granted, the Scottish Government was unable to support this "on the grounds that the Scottish Government believes that the precautionary principle and our own commitment to a clean and sustainable natural environment make any cultivation of GM crops unacceptable and undesirable. In the best interests of Scotland and our citizens we would wish to oppose and would vote accordingly were we in a position to do so." Also, although Wales agreed to the UK voting position in these instances, the Welsh Assembly Government's policy is to take the most restrictive approach to GM crop cultivation which is consistent with UK and EU legislation. He adds that bilateral ministerial meetings have been held with Wales and Scotland to discuss how to reach an agreement on how the UK should vote on future GM applications, and a round table meeting of all four ministers is to be scheduled shortly: if differences cannot be resolved, the matter will need to be brought before a Ministerial Committee.

### Conclusion

1.9 **On the grounds that they involve matters in which there is a considerable public interest, we have in recent years drawn to the attention of the House as a number of applications relating to the use of *imported* genetically modified crops in food and feed within the Community, but, as these have not in the main raised any particular or novel issues, we have usually cleared them as not requiring further consideration. These two proposals are however different, in that they involve the *cultivation* of genetically modified crops within the Community, and hence give rise to a number of additional considerations which are reflected in the terms of the proposed consents.**

1.10 Furthermore, there are two points specific to the handling of these applications within the UK which raise important questions. First, the Minister has highlighted a difference of view between the UK Government and Northern Ireland on the one hand, and Scottish Government and Welsh Assembly Government on the other, over the approach which should be taken to applications of this sort. We note that the Scottish Government in particular is apparently unwilling to endorse the views of the Advisory Committee on Releases to the Environment or the European Food Safety Authority. Quite apart from this fundamental difference between the various administrations in the UK over the principle of allowing the cultivation of genetically modified crops, such an approach also strikes us as being at odds with the long-standing UK approach, in this (and other) areas, of taking full account of scientific advice when reaching policy decisions of this kind.

1.11 Secondly, when we dealt recently with a report<sup>3</sup> by the Commission on the steps being put in place by Member States to tackle the need to segregate genetically modified crops from conventional and organic agriculture, we noted that the UK was one of the relatively small number of Member States which had not introduced legislation in this area, and that there also appeared to be differences of opinion on the need for such legislation between the Scottish Government and the other devolved administrations and DEFRA. We were also told that, although the intention — at least in England and Northern Ireland — was to finalise such plans once further information was available, no commercial GM cultivation was expected in England for several years, and that it remained the intention to have appropriate coexistence measures in place beforehand. The question which now arises is whether such measures could be put in place sufficiently quickly if the consents for these two maize lines were to be granted, and also whether it would in that event be possible for the Scottish Government to prevent their cultivation in Scotland.

1.12 In view of these considerations, we are recommending these documents for debate in European Committee.

## 2 Petrol vapour recovery at filling stations

(30271) 17170/08 + ADDs 1–2 COM(08) 812	Draft Directive on Stage II petrol vapour recovery during refuelling of passenger cars at service stations
--	--

<i>Legal base</i>	Article 175EC; co-decision; QMV
<i>Document originated</i>	4 December 2008
<i>Deposited in Parliament</i>	16 December 2008
<i>Department</i>	Environment, Food and Rural Affairs
<i>Basis of consideration</i>	EM of 4 February and SEM of 30 April 2009
<i>Previous Committee Report</i>	None
<i>To be discussed in Council</i>	See para 2.5 below
<i>Committee's assessment</i>	Politically important
<i>Committee's decision</i>	Not cleared; further information awaited

### Background

2.1 Because emissions of volatile organic compounds from petrol contribute to air quality problems, notably those relating to benzene and ground level ozone,<sup>4</sup> the Community

<sup>3</sup> (30533) 8420/09: see HC 19–xv (2008–09), chapter 9 (29 April 2009).

<sup>4</sup> Benzene is a known carcinogen, whilst ozone is a significant greenhouse gas.

introduced a Directive (94/63/EC) to recover vapour emitted from the storage of petrol and its distribution between terminals and service stations (“Stage I petrol vapour recovery”). However, the Commission recalls that, in its Thematic Strategy on Air Pollution, it pointed out that the measures being taken to increase the volume of biofuels in petrol involved changes in vapour pressure limits and would thus lead to higher emissions of volatile organic compounds. It said that it would therefore bring forward a proposal to introduce the recovery of vapour during the refilling of passenger cars at filling stations.

## The current proposal

2.2 The Commission has now fulfilled that intention in the current document, which would require Member States to ensure:

- that as from 1 July 2012 any new service station is equipped with a Stage II petrol vapour recovery system<sup>5</sup> if its annual throughput is more than 500m<sup>3</sup>, though this requirement would apply to any such stations situated under permanent living quarters or working areas, irrespective of throughput;
- that any existing service station with a throughput greater than 500m<sup>3</sup> is from 1 July 2012 equipped with such a system when it undergoes major refurbishment;
- that any existing service station with an annual throughput in excess of 3000m<sup>3</sup> is fitted with such a system no later than 31 December 2020.

Member States would also have to ensure that the hydrocarbon capture efficiency of any Stage II vapour recovery system is tested at least once a year (or once every three years where an automatic monitoring system<sup>6</sup> is installed), and that the capture efficiency is at least 85%: where recovered petrol vapour is transferred to an underground storage tank, the vapour/petrol ratio<sup>7</sup> would have to be between 0.95 and 1.05.

## The Government’s view

2.3 In his Explanatory Memorandum of 4 February 2009, the Minister for Sustainable Development, Climate Change Adaptation and Air Quality at the Department for Environment, Food and Rural Affairs (Lord Hunt) pointed out that most petrol stations in the UK comply with Directive 94/63/EC, and that from 2010 many will also be required under domestic regulations to implement provisions akin to those in this proposal, although the trigger thresholds are slightly different. Thus, the UK regulations will have an upper threshold of 3500m<sup>3</sup> (rather than the 3000m<sup>3</sup> now proposed), whilst the 500m<sup>3</sup> threshold would apply only to new service stations (and not to existing ones undergoing major refurbishment).

---

5 This would recover the petrol vapour displaced from car fuel tanks during refuelling, and transfer it either to underground tanks or back to dispensers for resale.

6 Such a system must be able to detect faults, indicate these to the service station operator, and automatically stop the flow of petrol if the fault is not rectified within 7 days.

7 This is the ratio between the volume of petrol vapour passing through the recovery system and the volume of petrol dispensed.

2.4 The Minister described these thresholds as being the principal issue for the UK, and said that the Government was consulting stakeholders, and would be undertaking an Impact Assessment in order to determine the implications, adding that it was not at that stage clear whether any further progress would be made in Brussels, pending the European Parliament elections and the installation of a new Commission. We therefore said that we thought it would be sensible to await that Assessment before taking a view of the proposal.

### Supplementary Explanatory Memorandum of 30 April 2009

2.5 We have now received from the Minister a supplementary Explanatory Memorandum of 30 April 2009, in which he says that the negotiations are now proceeding very rapidly, with the aim of securing a first reading agreement at the beginning of this month. He anticipates that there will be pressure either to reduce the deadline by which existing petrol stations must fit the new equipment, or to lower from 3000 m<sup>3</sup> the threshold determining which of these must be fitted, adding that the former course would be preferable to UK objectives and interests.

2.6 In view of current timetable, the Minister has enclosed a draft report by the consultants who have been preparing the UK Impact Assessment, and says that the final assessment will be submitted as soon as possible. In the meantime, he draws attention to the consultants' conclusion that the typical capital costs of installing Stage II controls is around £30,000 for a new service station with a throughput between 3000m<sup>3</sup> and 3500m<sup>3</sup>, or as part of major refurbishment of such a station; that the capital costs increase to around £130,000 if the upgrade is undertaken outside the scheduled refurbishment cycle (although this will vary according to how much the scheduled refurbishment is brought forward); and that the comparative costs per tonne of VOC abated is £700–£1300 (depending on whether the value of the recovered fuel is included) for new stations and on-schedule upgrade, or £1900–£2400 where upgrading is required in advance of scheduled upgrade. He adds that the consultants' report concludes on the benefits of implementing the proposal in terms of health and environmental benefits from reducing VOCs and avoidance of greenhouse gas emissions.

### Conclusion

2.7 Whilst we are grateful to the Minister for the information he has recently supplied, we do not feel able to clear the document at this stage. We recognise that, to the extent the original Commission proposal reflects the approach in the UK regulations due to come into force next year, it does not raise any major questions of principle. It does nevertheless give rise to a number of unresolved issues, and we would be concerned if a decision were to be rushed through simply in order to reach a first reading agreement.

2.8 In particular, we have found it difficult to form a clear view of how the proposal may have evolved during discussions in Brussels. The Minister refers to possible changes in the 3000m<sup>3</sup> threshold, whereas the consultants' report appears to place greater emphasis on the possibility of the 500m<sup>3</sup> threshold being lowered (albeit combined with a derogation for those stations with a throughput between 100m<sup>3</sup> and 500m<sup>3</sup> if they are situated in areas where vapour emissions are unlikely to contribute significantly to environmental or health problems). Likewise, although the consultants'

report provides a plethora of information, we are unclear whether, on the assumptions contained in it, the quantified benefits will be outweighed by the costs, and this is of course even less easy to establish if the proposal were to be amended by the Council in the way suggested by the Minister.

2.9 Against this background, we are reporting the document to the House, but we think it right to await further clarification from the Government of its latest contents and the overall cost-benefit balance.

### 3 EU police, rule of law and civilian administration mission to Iraq

(30633)	Council Joint Action on the European Union Integrated Rule of Law mission for Iraq
—	
—	

<i>Legal base</i>	Articles 14 EU; unanimity
<i>Department</i>	Foreign and Commonwealth Office
<i>Basis of consideration</i>	EM of 8 May 2009
<i>Previous Committee Report</i>	None; but see (26356) — : HC 38–ix (2004–05), chapter 9 (23 February 2005) and (27480) —: HC 34–xxix (2005–06), chapter 9 (17 May 2006)
<i>To be discussed in Council</i>	To be determined
<i>Committee’s assessment</i>	Politically important
<i>Committee’s decision</i>	Not cleared; further information requested

#### Background

3.1 At the General Affairs and External Relations Council on 2 November 2004, EU Foreign Ministers agreed a package of assistance for Iraq (consistent with the EU medium-term strategy for Iraq agreed at the European Council in June 2004). One element was an agreement, based on the findings of an earlier EU fact-finding mission, to send an expert team to Iraq (before the end of November) to work with the interim Iraqi government with a view to a possible EU integrated police and rule of law mission for Iraq, starting after the January 2005 elections. The expert team was tasked to continue the dialogue with the Iraqi authorities, to start initial planning for a possible integrated police and rule of law mission and, in particular, to assess the security needs and conditions for such a mission. We cleared the Joint Action setting out its terms of reference on 1 December.<sup>8</sup>

8 HC 38–i (2004–05), chapter 22 (1 December 2004).

3.2 The expert team was sent on 30 November and worked in Iraq and Jordan. Meetings were also conducted in Geneva, Berlin, Kuwait and Dubai. Preparatory work and security training was conducted in Brussels. In all, over 140 Iraqi and international interlocutors were consulted, including the Chairman of the Iraqi Council of Judges, Iraqi police generals and prison governors. Its report in January set out detailed options for such a mission, supported by detailed analysis of both the feasibility of the options, their added value in terms of existing and planned national and international initiatives in this field and the security constraints. The expert team’s recommendations included:

- the provision of integrated training in Europe or the region for 520 mid to senior officials across the criminal justice system and 250 investigating magistrates and police;
- a coordination office in Brussels;
- a liaison office in Baghdad where a small team (4–5) would liaise with the Council of Judges and the Iraqi Ministries of Justice and Interior;
- an incremental approach to assess whether the mission could train in Iraq should the security situation and availability of infrastructure allow for such activities in the future;
- the planning team to be established immediately so that training could start as soon as practicable after agreement was reached with the Iraqi government; and
- completion of the mission within one year from the start of the first course.

3.3 The Joint Action that we cleared on 23 February 2005 provided for the establishment of an integrated rule of law mission for Iraq on these lines, to become operational no later than 1 July 2005. It would address what the then Minister described as “the urgent needs in the Iraqi criminal justice system” through integrated training for high and mid-level officials in senior management and criminal investigation. Its aim was “to improve the capacity, coordination and collaboration of the different components of the Iraqi criminal justice system.” An “effective strategic and technical partnership with Iraqi counterparts” would be developed throughout the mission, particularly in relation to the design of the curricula”. There would be 13 senior management courses (for 520 mid to senior officials across the criminal justice system) and seven criminal investigation courses (for 250 investigating magistrates and police).

3.4 The structure of the mission was to consist of a Head of Mission, a coordination office in Brussels, a liaison office in Baghdad, and training facilities and trainers provided by Member States and coordinated by the Mission. The Joint Action also “reflects the Expert Team’s recommendation that the best means to achieve an independent and secure ESDP mission is by conducting training outside Iraq, either in the EU or the region. However the preference of Iraqis is that this training is delivered in Iraq. If the security situation allows and infrastructure becomes available the Council will review whether training could be delivered in Iraq”.

3.5 On the financial and staffing aspects, the then Minister explained that costs would be divided between the CFSP budget — an estimated total of €10.9 million — and Member

States, who would bear the costs of any training they provided and of any seconded staff they contributed, including salaries, medical coverage, allowance and other *per diems* and travel expenses. The UK had offered to provide three courses (at an estimated total cost of £720,000) and hoped to contribute two or three secondees to the planning team or mission staff. The British Embassy would host the Baghdad Liaison Office and provide office space and accommodation for its staff; the CFSP budget would cover the running costs, including security, up to €2.3 million (included in the total budget outlined above) The Commission would sign a contract with the Head of Mission, who would report fully to, and be supervised by, the Commission on the budgetary aspects of the activities undertaken in the framework of his contract.

3.6 The then Minister explained that the Iraqi authorities wanted the European Union to engage in Iraq so that their formerly isolated criminal justice mechanisms were exposed to modern international and European practice. In the short term, the challenges of the current operating environment, the nature of the expertise required and the urgency of the intervention needed were such that an ESDP crisis management operation was justified. At a certain stage, significant complementarity could be achieved through Community-supported institution building, good governance and rule of law programmes as a follow up to the proposed training. The Government believed that the response to the crisis in the Iraqi criminal justice system needed to be swift, effective and as safe as possible; and that the proposed training intervention fulfilled these criteria. Its success would depend on an effective strategic and technical partnership with the Iraqis, including course design, quality control, selection of participants and follow-up to training. For these reasons, the mission should have a Liaison Office in Baghdad where a small team (4–5) could conduct technical liaison with the Council of Judges and the Iraqi Ministries of Justice and Interior. The team could also facilitate assistance for Member States' ongoing bilateral efforts. The Government believed that a planning team should be established immediately, so that training could start as soon as practicable after agreement was reached with the Iraqi government, and that the intervention, as proposed, should be executed through a Joint Action falling under ESDP.

3.7 For our part, we noted that the Expert Team's approach had been commendably thorough, and its recommendations were sensible. We noted that, with the security situation plainly remaining dangerous, if human life in a civilian mission was not to be jeopardized, a cautious, testing-the-water approach was right; despite pressure from the Iraqi authorities for in-country training, we thought it right that the EU had maintained its position. It was gratifying that the UK was to play a leading role in this mission, which was important not just in its own right but also as only the second such Rule of Law Mission. We felt that it would also be good to see widespread participation by other Member States, not only to spread the burden but also, we hoped, to begin to reduce the then strains in US/EU relations stemming from the war in Iraq.<sup>9</sup>

3.8 In June 2006, the Council of Ministers adopted Council Joint Action 2006/708/CFSP. This extended the mission's mandate for a further 18 months, until 31 December 2007, and authorised the provision of more specialised courses as well as secondments in EU Member States for senior Iraqi police officers and prison governors. Although no questions

---

9 See headnote: see (26356) — : HC 38–ix (2004–05), chapter 9 (23 February 2005).

arose, we reported this to the House because of Iran’s unique political importance at the time and the central role being played by the UK, which now included a British head of mission.<sup>10</sup> At the time at which the draft Joint Action was submitted for scrutiny, the additional cost was yet to be worked out; the financial reference amount was subsequently increased by € 11.2 million.

3.9 Then, in November 2007, the Council decided on a further extension, until 30 April 2008. The UK was to continue to contribute by providing specialised courses and offering a work-experience prisons secondment for a senior Iraqi official, as well as continuing to support the Baghdad Liaison Office with office and living accommodation. This further extension would be at no additional cost. Looking ahead, the then Minister for Europe (Mr Jim Murphy) said that, with the arrival of an EC Delegation in Baghdad, there was potential for the eventual development of Community-supported institution-building and rule of law programmes to carry forward EUJUST LEX’s work, which was expected to end in 2009.

3.10 In April 2008 the then Minister for Europe submitted the draft of a further Council Joint Action, which extended the mandate, at no additional cost, until 30 June 2008. He supported the continuation of the mission, which had facilitated training for over 1400 Iraqis from the police force, the judiciary and the penitentiary system; as of January 2008, the Mission had received commitments for over 40 training interventions by Member States until June 2009 and would therefore be able to maintain its level of activities.

3.11 Finally, a further “no cost” extension was submitted for scrutiny by the then Minister on 12 June 2008, which we cleared on 18 June 2008. This authorised continuation of the mission until June 2009.

3.12 We judged that none of these straightforward, “no cost”, extensions warranted a substantive Report to the House, and were cleared accordingly.

## The draft Joint Action

3.13 This Joint Action extends the current mandate for the European Security & Defence Policy (ESDP) rule of law mission to Iraq (EUJUST LEX) for a further 12 months, until 30 June 2010.

3.14 It says that, during the period from 1 July 2009 until 30 June 2010, EUJUST LEX shall start a pilot phase of activities in Iraq, including providing strategic advice, follow-up mentoring and training activities, as and where security conditions and resources allow; and that, taking into account further developments in the security conditions in Iraq and the availability of appropriate infrastructure, the Council shall examine the results of the pilot phase and shall decide on the future of the Mission after 30 June 2010.

3.15 It also says that “EUJUST LEX shall be secure, independent and distinct but shall be complementary and bring added value to the efforts of the Government of Iraq and the international community, in particular those of the United Nations and the US”, and also “develop synergies with relevant activities of the Community and Member States.”, in

which context, EUJUST LEX “shall liaise with the relevant Iraqi authorities and the Member States which presently conduct training projects.”

### The Government’s view

3.16 In her Explanatory Memorandum of 9 May 2009, the Minister for Europe at the Foreign and Commonwealth Office (Caroline Flint) says that, in addition to its existing activities, the Mission will introduce a pilot phase in which up to 18 activities are undertaken in Iraq, specifically in Baghdad, Sulamanayah and Talil regions:

“These activities will include further training courses, providing strategic advice on the ground and follow up mentoring sessions for previous course participants. Planning for these activities is ongoing but by engaging in country EU Just Lex will be able to be more visible, proactive and better placed to aid the Iraqi authorities when needed.”

3.17 The Minister says that, though the courses are currently run and hosted by Member States, “this may change when the mission begins undertaking activities in country.” She notes that, so far, the mission has provided 88 training courses and 17 work experience secondments for over 1,900 Iraqis since summer 2005; the UK has provided 17 courses and 3 secondments; and “the mission’s success was recognised in 2008 when the Head of Mission Stephen Wright won the prestigious Webber-Seavey Award for “excellence in law enforcement and leadership”. She continues as follows:

“In the past four years EUJUST LEX has had significant achievements in training senior Iraqi officials through letting them experience best practice by hosting the courses in Europe. The participants are then able to take back their experience and use it to help with rule of law reform in country. EU Member States continue to demonstrate an increased willingness to engage in Iraq, and the Government of Iraq remains highly supportive of the mission. This can be seen by the Iraqi Chief Justice and Acting Minister of Justice who have both recently been on EUJUST LEX courses in Europe.

“The UK has judged that the EU’s original strategic objectives for an ESDP mission for Iraq remain valid. An EU contribution to the emergence of a stable, secure and democratic Iraq through addressing the needs of the Iraqi criminal justice system is still required and will help to improve Iraqi stability and security.

“The UK has been a strong advocate of EUJUST LEX moving in country, which will allow the mission to further assist the Iraqi government in strengthening the rule law through the provision of follow up programs with past course participants. The move in-country should increase the impact of the EU’s intervention by building on the mission’s activities so far, improving evaluation of the mission’s activities, and improving local ownership, including through increased contact and participation.

“Other EU Member States continue to demonstrate an increased willingness to engage in Iraq, and in January 2008, the Mission received commitments for over 40 training interventions by Member States until June 2009. The Government of Iraq also remains highly supportive of the mission with the Iraqi Chief Justice and Acting

Minister of Justice both visiting EUJUST LEX courses in Europe in the last few months.”

## Financial Aspects

3.18 The Minister says that the mission is operating within budget and continues to deliver a full training schedule; has cost €28.4 million since 2005; and will require a further €11.5million to cover the period from 1 July 2009 to 30 June 2010.

## Conclusion

3.19 We note that the Minister’s predecessor envisaged that the Mission was likely to end in 2009, and that the Commission would thereafter be left to pursue Community-supported institution-building and rule of law programmes. Neither from her Explanatory Memorandum nor the draft Joint Action is it clear to us why this has not happened, or why, as she asserts, “an EU contribution to the emergence of a stable, secure and democratic Iraq through addressing the needs of the Iraqi criminal justice system is still required.”

3.20 Nor are we entirely clear as to what she means when she says that, though the courses are currently run and hosted by Member States, “this may change when the mission begins undertaking activities in country.” The draft Joint Action refers to a review in 2010 and a further decision on the mission’s future, suggesting at least the possibility of a further extension.

3.21 In sum, we would like the Minister to explain more fully what the rationale is for continuing with the Mission for a further year when, last April, her predecessor said that he expected it to end in 2009, and the basis of her thinking about its longer-term future.

3.22 We also now see that, when what became Council Joint Action 2008/190/CFSP was adopted on 23 June 2008, it contained a provision authorising a new financial reference amount to cover the period 1 July 2008 to 30 June 2009; and that, from the draft text, this amounted to a further €7.2 million. Yet we were told by the Minister’s predecessor that this was to be a “no cost” extension. We ask the Minister to explain this discrepancy.

3.23 In addition to the UK share of the overall CFSP expenditure, we would also like to know the cost of the UK’s direct and indirect contributions to EUJUST LEX so far.

3.24 In the meantime we shall retain the document under scrutiny.

## 4 Sexual abuse and exploitation of children and child pornography

(30519) 8150/09 COM(2009) 135	Draft Council Framework Decision on combating the sexual abuse, sexual exploitation of children, and child pornography, repealing Framework Decision 2004/68/JHA
+ ADD 1 + ADD 2	Commission Staff Working Paper: Impact Assessment

<i>Legal base</i>	Articles 29, 31(1)(e) and 34(2)(b) EU; consultation; unanimity
<i>Document originated</i>	25 March 2009
<i>Deposited in Parliament</i>	1 April 2009
<i>Department</i>	Justice
<i>Basis of consideration</i>	EM of 16 April 2009
<i>Previous Committee Report</i>	None
<i>To be discussed in Council</i>	No date set
<i>Committee's assessment</i>	Legally and politically important
<i>Committee's decision</i>	Not cleared; further information awaited

### Background: existing regional and international instruments in this field

4.1 At EU level, Council Framework Decision on “combating the sexual exploitation of children and child pornography”<sup>11</sup> requires approximation of Member State legislation to criminalise the most serious forms of child sexual exploitation and pornography; to extend domestic jurisdiction extra-territorially for the prosecution of these crimes when committed abroad by an offender who is a national of an EU Member State; and to provide for a minimum of assistance to victims. The Framework Decision came into force in 2006. The proposed draft Framework Decision would repeal and replace the current Framework Decision.

4.2 At Council of Europe level,<sup>12</sup> a Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (the CoE Convention) was opened for signature in October 2007. It has been ratified by two CoE Member States but has not yet entered into force. It will do so once five States, including three CoE Member States, have ratified it.

4.3 At UN level, the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography of 2000 sets the international standard. Seven EU Member States have not ratified the Protocol.

<sup>11</sup> 2004/68/JHA.

<sup>12</sup> The Council of Europe comprises 47 Member States, including the 27 Member States of the European Union.

## Legal base

4.4 Title VI of the EU Treaty contains the legal base for EU action on offences against children. Article 29 EU says that the Union’s objective is to provide its citizens with a high level of safety in an area of freedom, security and justice through police and judicial cooperation in criminal matters. Offences against children are singled out as a particular objective. Article 31(1)(e) EU states that common action on judicial cooperation in criminal matters includes adopting measures establishing minimum rules on both the constituent elements of criminal acts and penalties “in the fields of organised crime”. Article 34(2)(b) authorises the Council to adopt Framework Decisions for the approximation of the laws of the Member States. Framework Decisions are binding as to the results to be achieved but leave Member States discretion how to give effect to them; they do not entail direct effect.

## Need for further EU legislation — the Commission’s explanatory memorandum

4.5 The Commission considers that the existing Framework Decision needs updating and reinforcing. In its explanatory memorandum of March 2009, the Commission states that “[d]espite a lack of accurate and reliable statistics, studies suggest that a significant minority of children in Europe may be sexually assaulted during their childhood, and research also suggests that this phenomenon is not decreasing over time, rather that certain forms of sexual violence are on the rise”. It comments that the EU’s policy to prevent and combat offences against children “should be done by building a more coherent framework for combating these crimes under the third pillar and by increasing its effectiveness. Specific objectives would be to effectively prosecute the crime; to protect victims’ rights; to prevent child sexual exploitation and abuse; and to establish effective monitoring systems.”

4.6 With regard to child victims, the Commission reports that “the main cause of this phenomenon is vulnerability resulting from a variety of factors. Insufficient response by law enforcement mechanisms contributes to the prevalence of these phenomena, and the difficulties are exacerbated because certain forms of offences transcend national borders. Victims are reluctant to report abuse, variations in national criminal law and procedure may give rise to differences in investigation and prosecution, and convicted offenders may continue to be dangerous after serving their sentences. Developments in information technology have made these problems more acute by making it easier to produce and distribute child sexual abuse images while offering offenders anonymity and spreading responsibility across jurisdictions. Ease of travel and income differences fuel so-called child sex tourism, resulting often in child sex offenders committing offences abroad with impunity. Beyond difficulties of prosecution, organised crime can make considerable profits with little risk.”

4.7 In terms of existing legislation in EU Member States, the Commission comments that national legislation covers some of these problems, but only “to varying degrees”. National legislation “is not strong or consistent enough to provide a vigorous social response to this disturbing phenomenon”.

4.8 In relation to the existing Framework Decision the Commission concludes that “[a]lthough the requirements have generally been put into implementation, the

Framework Decision has a number of shortcomings. It approximates legislation only on a limited number of offences, does not address new forms of abuse and exploitation using information technology, does not remove obstacles to prosecuting offences outside national territory, does not meet all the specific needs of child victims, and does not contain adequate measures to prevent offences.”

4.9 So the Commission proposes a replacement Framework Decision to include the following new elements:

“– On substantive criminal law in general

“Serious forms of child sexual abuse and exploitation currently not covered by EU legislation would be criminalised. This includes, for instance, the organisation of travel arrangements with the purpose of committing sexual abuse, something particularly relevant, but not exclusively, in the context of child sex tourism. The definition of child pornography is amended to approximate it to the CoE Convention and the [UN] Optional Protocol.

“– On new criminal offences in the IT environment

“New forms of sexual abuse and exploitation facilitated by the use of IT would be criminalised. This includes knowingly obtaining access to child pornography, to cover cases where viewing child pornography from websites without downloading or storing the images does not amount to ‘possession of’ or ‘procuring’ child pornography. Also the new offence of ‘grooming’ is incorporated closely following the wording agreed in the CoE Convention.

“– On criminal investigation and initiation of criminal proceedings

“A number of provisions would be introduced to assist with investigating offences and bringing charges. A mechanism to coordinate prosecution in cases of multiple jurisdictions is included, but may be superseded once the Proposal for a Framework Decision on conflict of jurisdiction in criminal proceedings is adopted.

“– On prosecution of offences committed abroad

“Rules on jurisdiction would be amended to ensure that child sexual abusers or exploiters from the EU face prosecution even if they commit their crimes outside the EU, via so-called sex tourism.

“– On protection of victims

“New provisions will be included to ensure that victims have easy access to legal remedies and do not suffer from participating in criminal proceedings.

“– On prevention of offences

“Amendments would be introduced to help prevent child sexual abuse and exploitation offences, through a number of actions concentrating on previous offenders to prevent recidivism, and to restrict access to child pornography on the internet. The aim of restricting such access is to reduce the circulation of child

pornography by making it more difficult to use the publicly-accessible Web. It is not a substitute for action to remove the content at the source or to prosecute offenders.”

## **The draft Framework Decision**

### ***Article 1 — definitions***

4.10 Article 1 sets out the definitions for the purposes of this Framework Decision. These are generally in line with the existing Framework Decision but also incorporate definitions of “child pornography” and “child prostitution” from the CoE Convention, and a new definition of “pornographic performance”. A “child” is any person below the age of 18 years.

### ***Articles 2–6 — offences***

4.11 Articles 2 to 6 set out offences covering sexual abuse of children (Article 2), sexual exploitation of children (Article 3), child pornography (Article 4) and the solicitation of children for sexual purposes (Article 4). Article 5 covers liability of secondary parties for instigating, aiding and abetting the above crimes, and also liability of principals for attempts and “preparatory offences”.

### ***Article 7 — penalties and aggravating circumstances***

4.12 Article 7(1) prescribes a maximum penalty for the above crimes of “at least six years”; and of “at least ten years” (Article 7(2)) when their commission involves any of the following aggravating circumstances: the child has not reached the age of sexual consent under national law; the offence was committed against a child in a particularly vulnerable situation, notably because of a mental or physical disability or a situation of dependence; the offence was committed by a member of the family, a person cohabiting with the child or a person having abused his or her authority; the offence was committed by several people acting together; the offences are committed within the framework of a criminal organisation within the meaning of Framework Decision 2008/841/JHA; and the perpetrator has previously been convicted of offences of the same nature. Article 7(3) prescribes a maximum penalty of “at least twelve years” where the offence “endangered the life of the child” or where the offence involved “serious violence or caused serious harm to the child”. Article 7(4) provides that Member States may, depending on a risk assessment on the offender, apply other sanctions or measures alongside imprisonment, which shall include intervention programmes or measures as referred to in Article 17.

### ***Article 8 — disqualification arising from convictions and exchange of information***

4.13 Article 8 provides for Member States temporarily or permanently to exclude people convicted of the offences in Articles 2 to Article 6 from situations which involve regular contact with children, after a risk assessment has established that the person represents a danger and there is a risk of repetition. Article 8(3) facilitates the exchange of information between Member States about disqualification from activities with children. Article 8(4)

requires measures to ensure recognition of the disqualification measures by each Member State.

### **Articles 9 and 10 — legal persons**

4.14 These articles outline corporate liability for the commission of these crimes. Similar articles are contained in the existing Framework Decision (Articles 6 and Article 7).

### **Articles 11, 12, 14 and 15 — victims**

4.15 Articles 11 and 12, along with Articles 14 and 15, represent a much greater focus than in the existing Framework Decision on the needs of child victims. Article 11 states that Member States shall provide for the possibility of not prosecuting or imposing penalties on child victims even where such victims were involved in the offences in Articles 2 to 6 (for example being a ‘child prostitute’). Article 12 sets out measures which would help enable investigations to take place, including in the absence of a complaint being made by the victim, or where a complaint has been withdrawn. These include staying a prosecution until the victim has become an adult; ensuring that rules on confidentiality applied by children’s services do not hinder the reporting of any of the crimes listed in Articles 2 to 6; allowing for the possibility of covert investigations into computer networks; and the identification of victims by investigators by analysing child pornography material.

4.16 Article 14 seeks to ensure that Member States provide a range of assistance to address the need of child victims. This includes a presumption that a victim is a child when his or her age is uncertain; the appointment by a court of a special representative for the child victim in the absence of parents or guardians; short- and long-term actions to assist the child victim in their “physical and psycho-social recovery” following a specific assessment; and free legal counselling and free legal representation in criminal proceedings. Article 15 sets out a list of procedures Member States should follow when child victims are interviewed with a view to bringing criminal proceedings, and stipulates that videotaped interviews may be used as evidence in a criminal court, that a judge may order court hearings to be in camera, and that the child victim may be heard in the court room without being physically present (for example by video-link).

### **Article 13 — Jurisdiction and co-ordination of prosecutions**

4.17 Article 13 sets out requirements for States to establish jurisdiction over prosecutions for offences covered by Articles 2 to 6. It extends the extra-territorial jurisdiction to prosecute these crimes to the nationality or permanent place of residence of the victim as well as offender, and removes the discretion contained in Article 8(2) of the existing Framework Decision for Member States not to assert jurisdiction where an offence is committed outside its territory. Article 13(5) addresses cooperation between Member States where more than one Member States has jurisdiction to prosecute.

### **Article 16 — Risk Assessment**

4.18 Article 16 is a new Article which requires Member States to ensure that persons convicted of the offences set out in Articles 2 to 6 are made subject to an assessment

process to establish what danger they present, their risk of re-offending and the subsequent need for an intervention programme and/or disqualification from working with children.

### **Article 17 — Intervention Programmes or measures**

4.19 Article 17 is a new Article which seeks to ensure that all Member States have intervention or treatment programmes available for individuals who may sexually offend against children. It sets out requirements for access to such programmes by offenders, those charged with offences and those who fear they might commit offences.

### **Article 18 — Blocking of websites containing child pornography**

4.20 Article 18 is a new article which requires Member States to take the necessary measures to enable judicial or police authorities to block access by internet users to internet pages containing or disseminating child pornography.

### **Miscellaneous**

4.21 Articles 19 and 21 are procedural, repealing the existing Framework Decision and requiring implementation of the new Framework Decision within two years of its adoption.

### **The Minister’s Explanatory Memorandum of 16 April**

4.22 In his Explanatory Memorandum of 16 April, the Parliamentary Under Secretary of State at the Ministry of Justice (Lord Bach) provides an overview of the Government’s response to each Article of the proposed Framework Decision. In sum, the Minister is broadly supportive of the proposal subject to certain concerns being met in the Council working group negotiations.

4.23 **Offences (Articles 2 — 6):** The Minister comments that the conduct covered in Articles 2 to 6 is wider than in the existing Framework Decision. For example, the provisions on aiding and abetting have been expanded to include preparatory offences so that organising travel arrangements with the purpose of sexual tourism are covered. He also notes that the new proposal does not contain the same protections for those above the age of consent but still under the age 18, thus it may inadvertently criminalise legal sexual activity. The Minister will seek to rectify this.

4.24 The Minister comments on Article 5 on “grooming” in particular. He reports that this type of activity was made illegal in the United Kingdom in 2004 (Sexual Offences Act 2003) and in 2005 (The Protection of Children and Prevention of Sexual Offences (Scotland) Act 2004). Whilst welcoming the provision, the Minister notes that the wording of the Article restricts solicitation to situations where it is carried out only “by means of an information system” (i.e. computer). It is not apparent to him why it has been limited in this way: the Government would prefer a more wide-ranging definition. He also notes that the offences referred to in Articles 2 to 6 represent a minimum consensus which does not preclude the UK supplementing them or establishing higher standards in domestic law.

**4.25 Penalties (Articles 7):** The Minister comments that there is a need to have effective and dissuasive penalties for the offences set out in Articles 2 to 6 and so Article 7 appears unobjectionable. He notes that the suggested maximum sentences have been increased substantially in this proposal (and reference to minimum sentences removed). Overall, the Minister supports the harmonisation of maximum penalties to ensure that there is no advantage for a criminal in travelling to another Member State to commit acts of abuse against children. The Government will however reflect further on the detail of the “intervention programmes or measures” referred to in Article 7(4).

**4.26 Disqualification and exchange of information (Article 8):** The Minister states that the Government supports the principle of exchanging and recognising disqualifications from working with children between Member States but will wish to ensure that the final draft of the Article reflects workable mechanisms to achieve this. The Government also supports specific provision for the exchange of information between Member States on the conviction of sex offenders.

**4.27 Victims (Articles 11, 12, 14 and 15):** The Minister comments that the Government recognises the key importance of ensuring that victims are at the heart of the criminal justice system in each Member State. That said, it is vital to ensure that EU legislation takes account of different national systems. He therefore broadly welcomes the new focus of these provisions on the victim, albeit that further work will need to be done to ensure that these provisions build on existing good practice (including national practice) and is consistent with existing international obligations. The UK already has a range of special measures for children when they participate in court proceedings as victims or witnesses and the Government will need to consider these alongside its international obligations.

**4.28 Jurisdiction and co-ordination of prosecutions (Article 13):** The Minister reports that the UK already has some extra-territorial jurisdiction for child sexual abuse offences. He notes that the provisions in the proposal go further than those in the existing Framework Decision. The Government will consider the implications further. The Minister welcomes all efforts to encourage dialogue between Member States regarding where criminal proceedings should be brought, and in particular recognises the importance of Eurojust in helping to settle any conflicts. However, it will be important to ensure that there is consistency between the provisions of this Framework Decision and the Framework Decision on Conflicts of Jurisdiction.

**4.29 Risk Assessment (Article 16):** The Government will be comparing these provisions with the current processes which already exist in the UK but the Minister broadly welcomes the principle behind the Article.

**4.30 Intervention programmes (Article 17):** The Minister welcomes the principle behind this Article and will again be comparing this approach to the programmes which already exist in the UK.

**4.31 Blocking of websites (Article 18):** The Minister comments that such blocking already occurs in the UK through voluntary action by the internet industry. The Government will be seeking further clarification on the wording of this Article but it strongly supports such action to prevent access to these images.

## Conclusion

4.32 We recognise the importance of reinforcing legislation for preventing this type of crime and for prosecuting those who perpetrate it. We similarly recognise that legislation combating this type of crime must keep up with changing patterns of offending, particularly in view of the increased scope for offending offered by the Internet.

4.33 But we note that a Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (CoE Convention) was only recently opened for signature, and is yet to come into force. The Commission in its explanatory memorandum states that this Convention “arguably constitutes the highest international standard for protecting children against sexual abuse and exploitation to date”. Given this, we would be grateful to know the Minister’s views on how the proposed Framework Decision will coexist with the CoE Convention, and also on whether it will have the effect of marginalising the Convention, making its ratification less pressing for EU States and, as a consequence, other CoE States. It seems to us that this is a matter of general importance, if not concern. We raised a similar point when we recently reported on the draft Framework Decision on preventing and combating trafficking in human beings, and protecting victims.<sup>13</sup>

4.34 We look forward to being regularly updated on the progress of negotiations. We limit ourselves to the following comments at this stage:

- Articles 11, 12, 14 and 15 of the draft framework Decision contain far-reaching provisions on investigative procedure and the needs of child victims. Some of these provisions seek to bind police and prosecutorial discretion in the investigation and prosecution of these crimes. In our view this would limit the independence of our national police and prosecution services. We would be grateful to know whether the Minister shares this view. Similarly, some of the provisions on the needs of child victims appear overly-prescriptive and are inconsistent with existing national provisions. Again, we would be grateful to know from the Minister in due course which of these provisions the Government intends to challenge.
- Article 13 of the draft Framework Decision binds Member States to assert extra-territorial jurisdiction on the basis of nationality of the victim (as well as of the offender). We would be grateful to know whether the Minister intends to agree to this proposal.
- We note that Article 7 proposes that Member States should ensure that these crimes should be punishable by imprisonment for a maximum term of imprisonment of not less than 6 years, 10 years, or twelve years depending on the circumstances. We are minded to conclude that this might unacceptably fetter the discretion of the judiciary to decide sentence on the facts of each particular case. But before we reach a final view, we should be grateful for the Minister’s comments on the question.

---

13 (30513) 8151/09: see HC 19–xv (2008–09), chapter 3 (29 April 2009).

4.35 Pending the Minister’s replies to our requests for further information, we shall keep the document under scrutiny.

## 5 Adapting to climate change

(30535) 8526/09 + ADDs 1–4 COM(09) 147	Commission White Paper: <i>Adapting to climate change: Towards a European framework for action</i>
---	--

<i>Legal base</i>	—
<i>Document originated</i>	1 April 2009
<i>Deposited in Parliament</i>	9 April 2009
<i>Department</i>	Environment, Food and Rural Affairs
<i>Basis of consideration</i>	EM of 29 April 2009
<i>Previous Committee Report</i>	None, but see footnotes 14 and 15
<i>To be discussed in Council</i>	No date set
<i>Committee’s assessment</i>	Politically important
<i>Committee’s decision</i>	Cleared

### Background

5.1 According to the Commission, addressing climate change requires two types of response — *mitigation* action of the sort already taken to reduce greenhouse gas emissions, and *adaptation* action to deal with those impacts which are already unavoidable as a result of previous emissions. It points out that adaptation is already taking place, but in a piecemeal fashion, and that a more strategic approach is necessary, ensuring coherence across different sectors and levels of government. It says that it has, in the light of the wide-ranging consultation launched by its Green Paper<sup>14</sup> on this subject in 2007, set out in this White Paper a framework to reduce the Community’s vulnerability to the impact of climate change: and it notes that the Community is currently working with other countries in the United Nations Framework Convention on Climate Change (UNFCCC) towards reaching in Copenhagen at the end of this year a post-2012 agreement, on which it has recently put forward a Communication.<sup>15</sup> It also points out that investing in a low-carbon economy, by promoting energy efficiency and the uptake of green products, is one of the key objectives of the European Economic Recovery Plan put forward in response to the current financial crisis.

14 (28753) 11490/07: see HC 41–xxxii (2006–07), chapter 4 (25 July 2007).

15 (30412) 5892/09: see HC 19–ix (2008–09), chapter 1 (4 March 2009).

## The current document

### *The need for an adaptation strategy at a European level*

5.2 The Commission notes that the impacts of climate change will vary by region, and will also affect a number of sectors, notably agriculture (in terms of crop yields, livestock management, and production location, with particular risks of increased crop failure, and the depletion of organic matter in soil); forests; fisheries and aquaculture; coasts and marine eco-systems; energy supply and demand (arising from both increased temperatures and decreases in rainfall); infrastructure (buildings, transport, energy and water supply); tourism; and human, animal and plant health. It says that the challenge for policy-makers will be to understand these climate change impacts, and to develop and implement policies to ensure an optimal level of adaptation, and it suggests that action at Community and Member State levels should involve promoting strategies which increase the resilience to climate change of health, property and the productive functions of land, by increasing the management of water resources and ecosystems.

5.3 The Commission adds that the economic case for such an approach rests on the basis that individual actions are unlikely to be optimal, and that some may actually increase vulnerability: it also notes that studies, such as the Stern Report, have indicated that the costs of taking action will over the medium to long term be lower than those of inaction. It also points out that, although the regional variability and severity of climate change impacts mean that most measures will be taken at national, regional or local levels, these can be supported and strengthened by an integrated and coordinated approach at a Community level, particularly where the impact of climate change transcends national borders, or where it affects sectors which are subject to single market and common policies.

### *Proposed Community framework*

5.4 The Commission suggests that any Community framework should adopt a phased approach. The first phase (from 2009–13) would lay the ground work, and would focus on four pillars of action:

- building a solid knowledge base on the impact and consequences of climate change for the Community;
- integrating adaptation into key Community policy areas;
- employing a combination of market based instruments, guidelines and public-private partnerships to ensure effective delivery of adaptation;
- stepping up international cooperation.

The Commission suggests that this would pave the way for a comprehensive adaptation strategy to be implemented during the second phase, commencing in 2013.

### *Developing the knowledge base*

5.5 The Commission says that more knowledge is needed on climate impact and vulnerability, but adds that the considerable amount of information which already exists is not shared across Member States. It suggests that an effective measure would be to establish a Clearing House Mechanism, which would contribute to the Shared Environmental Information System established by the Commission and the European Environment Agency, and that it would also rely on the information provided by the Global Monitoring for Environment and Security (GMES). It adds that a proactive research and education policy is needed to promote better understanding and the development of the necessary technologies, and that climate change will also be an important issue for the recently inaugurated European Institute of Innovation and Technology.

### *Integrating adaptation into Community policies*

5.6 The Commission says that, for each sector concerned, further work should be started during the 2009–13 period to determine the actual and potential climate change impacts, the costs of both action and inaction, and how any proposed measures impact upon or interact with policies in other sectors. However, it says that early action is needed in the following key policy areas.

#### *Health and social systems*

5.7 The Commission notes that the EU Health Strategy anticipates action on adaptation, and that, whilst this should be taken mainly by Member States, the Community should use measures under the EU Health Programme to assist them, and should explore with the World Health Organisation (WHO) and other agencies ways of ensuring adequate surveillance and control of the impact of climate change on health. It suggests that the impact of animal health will need to be addressed principally at farm level, but points out that the Community Animal Health Strategy aims to prioritise disease control, improve data gathering, and step up disease surveillance. In the social domain, it says that there is mounting evidence that low-income groups are more vulnerable to climate change, and that adaptation policies need to ensure that the burdens are distributed equitably. It proposes that:

- guidelines and surveillance mechanisms on the health impacts of climate change should be developed by 2011;
- existing animal disease surveillance and control systems should be stepped up;
- the impacts of climate change and adaptation policies on employment and on the well-being of vulnerable social groups should be assessed.

#### *Agriculture and forests*

5.8 The Commission believes that the Common Agricultural Policy (CAP) is well placed to make a central contribution to adaptation, both through direct help to farmers and by providing wider ecosystem services dependent upon specific land management. It says that Member States should be encouraged to embed climate change adaptation into the three strands of rural development aimed at improving competitiveness, the environment, and

the quality of life in rural areas, with the Farm Advisory System being used to disseminate knowledge. It adds that, more generally, consideration should be given to the CAP providing an adequate framework for sustainable production, and that consideration should be given to support for farms which are particularly vulnerable to climate change. The Commission summarises the action needed as being:

- to ensure that measures for adaptation and water management are embedded in rural development national strategies and programmes for 2007–2013;
- to consider how adaptation can be integrated into the three strands of rural development and give adequate support for sustainable production, including how the CAP contributes to the efficient use of water in agriculture;
- to examine the capacity of the Farm Advisory System to reinforce training, knowledge and the adoption of new technologies which facilitate adaptation;
- to update forestry strategy and launch a debate on options for a Community approach on forest protection and forest information systems.

#### *Biodiversity ecosystems and water*

5.9 The Commission points out that ecosystem services such as carbon sequestration, flood protection, and protection against soil erosion are all directly linked to climate change, and that healthy ecosystems are an essential defence against some of its more extreme impacts. It says that, in view of this, a comprehensive and integrated approach towards the maintenance and enhancement of ecosystem goods and services is needed. It adds that, in the case of water, a number of Community policies (such as the Water Framework Directive) contribute to adaptation, but that the Commission will need to assess the need for further measures to address water scarcity, with the impact of climate change also being factored into the management of habitats. It proposes:

- to explore the possibilities to improve policies and develop measures which address biodiversity loss and climate change in an integrated manner to fully exploit co-benefits and avoid ecosystem feedbacks which accelerate global warming;
- to develop guidelines and a set of tools (guidance and exchange of best practices) by the end of 2009 to ensure that the River Basin Management Plans are climate-proofed;
- to ensure that climate change is taken into account in the implementation of the Floods Directive;
- to assess the need for further measures to enhance water efficiency in agriculture, households and buildings;
- to explore the potential for policies and measures to boost ecosystem storage capacity for water in Europe;
- to draft guidelines by 2010 on dealing with the impact of climate change on the management of Natura 2000 sites.

*Coastal and marine areas*

5.10 The Commission says that climate change must also be properly integrated into the Marine Strategy Framework Directive, which requires the achievement of good environmental status for the Community's marine waters by 2020, but that a more coherent and integrated approach to maritime and coastal planning is also needed. In addition, it notes the further pressure which climate change puts on European fisheries, and the need to take this into account in ensuring long-term sustainability under the future reformed Common Fisheries Policy (CFP). The Commission proposes:

- to ensure that adaptation in coastal and marine areas is taken into account in the framework of the Integrated Maritime Policy, in the implementation of the Marine Strategy Framework Directive and in the reform of the Common Fisheries Policy;
- to develop European guidelines on adaptation in coastal and marine areas.

*Production systems and physical infrastructure*

5.11 The Commission says that protecting infrastructure from the impact of climate change will be predominantly a Member State responsibility, but that the Community nevertheless has an important role in promoting best practice. It adds that improving the resilience of transport infrastructure and energy networks requires a coordinated approach, which provides a basis for strategic choices, adding that adaptation should be considered in the course of the Strategic Energy Review. It also says that infrastructure receiving Community funding should take climate proofing into account, with the methodologies in question being incorporated into guidelines for the Trans-European Transport (TEN-T) and Energy (TEN-E) Networks and Community Cohesion Policy. In summary, the Commission proposes:

- to take account of climate change impacts in the Strategic Energy Review process.
- to develop methodologies for climate-proofing infrastructure projects and consider how these could be incorporated into the TEN-T and TEN-E guidelines and guidance on investments under Cohesion Policy in the current period.
- to explore the possibility of making climate impact assessment a condition for public and private investment.
- to assess the feasibility of incorporating climate impacts into construction standards, such as Eurocodes.
- to develop guidelines by 2011 to ensure that climate impacts are taken into account in the Environmental Impact Assessment and Strategic Environmental Assessment Directives.

**Financing**

5.12 The Commission notes that the Stern Review identified financial constraints as one of the main barriers to adaptation, and says that climate change is one of the priorities for the current (2007–13) multi-annual financial framework. It adds that it is therefore important

to ensure that the funds available are used to reflect this priority, and that there is scope for adaptation action by Member States and for better targeting of the funds available. It also notes that the European Economic Recovery Plan contains a number of proposals in this area, and that it is essential for the relevant sectors to develop strategies for adaptive actions. It recommends a number of actions, namely:

- the development of detailed cost estimates by 2011 for relevant policy areas so that they can be taken into account in future financial decisions.
- a further examination of the potential use of innovative funding measures for adaptation.
- an exploration of the potential for insurance and other financial products to complement adaptation measures and to function as risk sharing instruments.
- encouraging Member States to utilise revenues from the Community's Emissions Trading Scheme for adaptation purposes.

### ***External Dimension and ongoing work under UNFCCC***

5.13 The White Paper highlights the urgent need to step up efforts to mainstream adaptation into all of the Community's external policies, to strengthen dialogue with the most vulnerable developing countries by fully exploiting the assistance provided under Global Climate Change Alliance by 2010, and to take the Framework for Action on Adaptation forward in the UNFCCC. It also acknowledges that failure to adapt to climate change could have significant security implications, and points out that the Community is therefore strengthening its analysis and early warning systems, and integrating climate change into existing tools such as conflict prevention mechanisms and security sector reform. It suggests that the effects of climate change on migratory flows should also be considered in the Community's broader reflection on security, development and migration policies.

### ***Working in partnership with Member States***

5.14 The White Paper proposes that an Impacts and Adaptation Steering Group (supported by a number of technical groups dealing with key sectors) should be established by September 2009 to strengthen cooperation on adaptation, and in particular help to develop the four pillars, play a role in developing the EU strategy, and consider the level at which action would be most appropriate. This group would comprise representatives from the Member States involved in the formulation of national and regional adaptation programmes, and would consult with representatives from civil society and the scientific community.

5.15 The Commission concludes by observing that adaptation will be a long and continuous process, operating at all levels, and requiring close coordination. It suggests that the Community should support national and international efforts by ensuring adequate resources are available, and it says that it will regularly review the progress made towards the first phase of the actions identified in this White Paper.

## The Government's view

5.16 In his extremely detailed Explanatory Memorandum of 29 April 2009, the Secretary of State for Environment, Food and Rural Affairs (Mr Hilary Benn) says that the Government welcomes the proposal to establish an EU Adaptation Framework and the overall approach in the White Paper, particularly the emphasis on partnership working, adding that it attaches great importance to establishing effective national strategies and programmes, given that impacts can vary considerably from region to region, and the need to make sure that action is taken at the most appropriate level.

5.17 That said, he believes that the four pillars identified in the White Paper usefully cover areas where action at the Community level would be appropriate, integrating adaptation into key policy areas under the second pillar being particularly important in pointing the way for Member States and other countries. He adds that the UK will be able to assist in building a solid knowledge base under the first pillar, since its Climate Projections, due to be launched later this year, are a comprehensive package which will describe how the UK's climate might change through the 21<sup>st</sup> century.

5.18 The Minister observes that the White Paper covers a broad range of issues, and that, although it is not expected to result in specific legislation on adaptation, careful consideration will need to be given to any changes to existing legislation and policies as a result of any actions arising from it. In the meantime, he has dealt at some length with the various elements in it, and his comments are set out in Annex A.

## Conclusion

5.19 **This document clearly deals with a subject of great topicality, importance and interest, and we are therefore reporting it to the House. We have also considered carefully whether to recommend it for debate in European Committee. However, notwithstanding the document's importance, its basic thrust is uncontentious, and its main aim is to identify areas where work can be started now, with a view to the adoption of a comprehensive European strategy in 2013. Consequently, we feel that a debate at this stage would probably achieve very little, since there is likely to be a broad consensus on the need for action to adapt to climate change, whilst Ministers would probably not be able to say very much in response to any questions on the detailed aspects. We are therefore clearing the document, while drawing it to the attention of the Committee on the Environment, Food and Rural Affairs.**

## Annex A: UK Comments on Aspects of the White Paper

### *Health and Social Systems*

1. The Government agrees that adaptation to climate change needs to be integrated into the delivery of social programmes and policy at EU, national and local level, and welcomes the recognition that the main policy actions should be taken at Member State level. It will shortly be developing a national Climate Change Risk Assessment, which will include consideration of the impacts on vulnerable groups and distributional impacts.

2. It agrees that links with the World Health Organisation (WHO) should be explored, and notes that a WHO-European Strategy on climate change, which includes suggestions of a clearing house mechanism, is currently being drafted. However, it observes that the White Paper makes very little mention of the health effects of climate change or the health co-benefits of adaptation policies, and that it does not recognise the link between human and animal health. Nevertheless, it welcomes the recognition of the impact that a changing climate will have on animal health, and says that constant monitoring is important to understand emerging animal diseases, it being important that Member States should work together in providing and sharing knowledge.

3. The Government notes that the UK's planning policy framework sets out approaches to the assessment of risks including flooding and coastal erosion, and is implementing a risk based approach to development, with emphasis on mitigation and adaptation.

4. The Government welcomes the recognition that changes in the climate will impact on employment, and that it is important, not only to identify any negative impacts, but also to highlight and plan for the positive opportunities which may also arise.

### *Agriculture and Forests*

5. The Government welcomes recognition that agriculture has a significant role in adapting to climate change, noting that farmers in England look after around three quarters of the land, with around 50,000 of them now being part of Environmental Stewardship Schemes. It notes that changing climate will require land to be managed so as to secure long term environmental sustainability, but points out that CAP is not the only — or necessarily the best — tool to achieve this, and it therefore welcomes the recognition that its contribution should be examined within the context of the EU Budget Review. It also believes that the important role played by agricultural land, labour and capital markets needs to be recognised.

6. The Government recognises that, in light of the long time frame of the forestry cycle, early action on adaptation is essential, and points out that the ecosystem services provided by forests are reflected in the EU Forest Action plan, which the White Paper proposes could provide the framework for a debate on an EU approach on protection and information systems for forests.

*Biodiversity, ecosystems and water*

7. The Government recognises the importance of biodiversity, and says that climate change brings into sharp focus the need to adopt an increasingly dynamic approach to conservation. It notes that the White Paper focuses on rivers, marine and coastal issues, and touches on the Natura 2000 network, and suggests a need for biodiversity to be considered more widely when looking at the actions in relation to adaptation to climate change.

8. The Government will be fully implementing the Water Framework Directive (WFD) in accordance with the timetable laid down, and believes that both water scarcity and drought can be handled adequately under the River Basin Planning Framework. It adds that the Environment Agency has developed Catchment Abstraction Management Strategies which provide a consistent and structured approach to local water resource management, and that these are complemented by the resource management plans which all water companies in England and Wales have been required to produce since 1 April 2007.

9. The Government considers that action at Community level has an important role to play in supporting a more effective and informed market in water efficient appliances and fittings, thereby helping to inform and change household behaviour. The UK has already welcomed the Commission's proposals for a review of the EU energy label for dishwashers and washing machines and for standards for these products via the Framework Directive for the Eco-Design for Energy Using Products, and it is encouraging the Commission to include maximum water consumption standards for dishwashers and to consider the scope for including other water-using products within its proposals for eco-design requirements under the Integrated Product Policy Framework.

10. In the meantime, the Government is taking action to promote the production and uptake of water efficiency products, including the setting of minimum performance standards for key products; the development of a scheme for enhanced capital allowances for businesses investing in designated water efficient products; and the development of a UK voluntary Water Efficiency Labelling Scheme. It is also taking action to improve the water efficiency of new buildings, with minimum water efficiency standards for all new homes due to be introduced from 1 October 2009.

11. The Government is proposing to transpose the Floods Directive, including the criteria for determining potential significant risk, the scope and content of flood maps and plans, and an extension of the existing flood risk management policy in England to include local flood sources such as surface water, groundwater and reservoirs. It also intends to invest in flood and coastal erosion risk management, and to manage those risks so as to reduce the threat to people and property; and it is working closely with its operating authorities to achieve this. Adapting to climate change is a key objective, which is being achieved through better land use, planning, development of property resilience measures, and in supporting communities to adapt to climate change to overcome flood and coastal impacts.

### *Coastal and marine areas*

12. Whilst the Government acknowledges the potentially significant impacts of climate change on the coastal and marine environment and economy, its knowledge and understanding of these is still developing, and the Marine Climate Change Impacts Partnership has been set up to bring together scientists, government, its agencies and NGOs. The UK is in the early stages of implementing the aim in the Marine Strategy Framework Directive of achieving good environmental status in its marine waters, and should in the process be able to take account of the growing understanding of the impacts of climate change.

13. The Government also supports of the Commission's approach to Integrated Coastal Zone Management, which will be reflected in the UK-wide Marine Policy Statement proposed under the Marine and Coastal Access Bill, and the Bill also supports the Commission's approach to Maritime Spatial Planning. Marine planning will be used to ensure a sustainable approach to development in the marine and coastal area, and will address and consider all aspects of sustainable development.

14. The Government is proactively involved in the current reform of the Common Fisheries Policy (CFP), and supports the goal of securing the long-term sustainability of European fisheries. It is particularly keen to secure equal prominence between the CFP and wider marine environmental policies such as the Marine Strategy Framework Directive.

### *Production systems and physical infrastructure*

15. The Government recognises that climate change is likely to affect production systems and infrastructure, and that, as recognised in the Planning Act 2008, there is a need to ensure that new and existing infrastructure is resilient to the potential long term impacts. The Government is already taking action to achieve an effective transport system, designed and maintained to be resilient to future climate impacts, and is committed to using the Act in a risk based, targeted and efficient way. Officials are also currently exploring the impact on the telecoms sector of the reporting requirements under the Climate Change Act 2008, and standards and guidance addressing sustainability, including climate change and adaptation, have already been developed, as have Eurocodes for the design of construction work.

### *International adaptation*

16. The Government says that the priority at the UNFCCC meeting in Copenhagen will be a comprehensive agreement to mobilise the international community to take action on climate change, and it welcomes the commitment to stepping up efforts to integrate adaptation to climate change into the Community's external policies.

### *Financing*

17. The Government notes that the White Paper suggests that both the EU and Member States examine the potential use of innovative funding measures for adaptation, but says that there are no indications of what is meant by this. It says that it has consistently opposed the hypothecation of auction revenues under the Emissions Trading Scheme, but notes that, under the new Directive, Member States have made non-legally binding

commitments to spend at least half of the revenues from auctioning (or the equivalent) to tackle climate change both within the Community and in developing countries. The Government is content with this approach, which it believes will provide a strong signal of the Community's willingness to invest in a low carbon economy and offer support to the international community ahead of the negotiations in Copenhagen.

18. On the use of insurance and other financial service products, it notes that the UK is unusual in having a statement of principles, which ensures that flood insurance is widely available and protects Government from stepping in as insurer of last resort in the event of a flood.

19. As part of a reprioritised EC Budget, the UK could envisage additional spending on climate change adaptation, but believes that future EC expenditure should be examined as part of the Budget Review.

### *Security*

20. The Government notes that the EU High Representative has started looking at what climate security will mean for the Community, and says that it recognises the potential significance of the security implications of climate change, adding that the National Security Strategy in March 2008 identified this as “potentially the greatest threat to global stability and security”. The Ministry of Defence published its climate change strategy, in December 2008 setting out the process by which it will factor climate change into policy planning, estate development and equipment procurement.

## 6 Sustainable development of European aquaculture

(30545) 8677/09 + ADDs 1–2 COM(09) 162	Commission Communication: <i>Building a sustainable future for aquaculture – A new impetus for the Strategy for the Sustainable Development of European Aquaculture</i>
---	---

<i>Legal base</i>	—
<i>Document originated</i>	8 April 2009
<i>Deposited in Parliament</i>	17 April 2009
<i>Department</i>	Environment, Food and Rural Affairs
<i>Basis of consideration</i>	EM of 5 May 2009
<i>Previous Committee Report</i>	None, but see footnote 16
<i>To be discussed in Council</i>	June 2009
<i>Committee's assessment</i>	Politically important
<i>Committee's decision</i>	Cleared

## Background

6.1 One of the aims of the Common Fisheries Policy (CFP) has been to provide the best possible conditions for the sustainable development of aquaculture, and our predecessors reported to the House in November 2002 on a Commission Communication<sup>16</sup> setting out a strategy to achieve this. That document concluded that, although the sector had developed well over the previous two decades, there was room for improvement in areas such as health protection, environmental impact and market stability, and it went on to explore ways in which these might be addressed. The Commission now notes that, although there has been further progress since 2002 in ensuring the environmental sustainability, safety and quality of Community aquaculture, production has been stagnant, in contrast to the high growth rate seen in the rest of the world. It has therefore sought in this latest Communication to identify the reasons for this, and to provide a fresh impetus for the strategy.

## The current document

### *Current challenges and outlook*

6.2 The Commission notes that the industry within the Community produced 1.3 million tonnes of fish, shellfish and crustaceans in 2006, representing a turnover of €3 billion, and generating some 65,000 jobs, but that consumption accounted for about 12 million tonnes. It observes that the Community is therefore one of the world's largest aquatic food markets, and that it benefits from a cutting-edge research and technology sector, advanced equipment, innovative enterprises, and a solid environment and health protection legal framework. However, it also describes the challenges facing it as numerous, including limited access to space, fragmentation, limited access to seed capital or loans for innovation, pressure from imports, and insufficiency of medicines and vaccines. It also says that stringent Community rules, particularly on environmental protection, create constraints vis-à-vis its competitors.

### *Building the future of the Community aquaculture industry*

6.3 The Commission notes an FAO prediction that world seafood consumption will continue to rise, and cannot be met from the wild, even if stocks were to recover, and it suggests that the Community must be in a position to meet this growing demand from aquaculture production, whilst being at the forefront of sustainable development. It says that production must be supported by the most advanced research and technology, and that Community producers should market their output as high value products, based on their environmental performance, high health standards and traceability, with voluntary labelling and certification schemes helping to strengthen consumer confidence. It also notes the increasing emphasis placed by consumers on produce meeting high environmental standards, and that public authorities must establish a framework which enables this to happen.

---

16 (23818) 12137/02: see HC 152–xl (2001–02), chapter 12 (20 November 2002).

### *Promoting the competitiveness of Community aquaculture production*

6.4 The Communication than addresses ways of promoting the competitiveness of Community aquaculture production, through a diverse industry which covers the whole supply chain, and involves the following elements.

#### *Research and technological development*

6.5 The Commission says that €98 million was allocated to aquaculture projects under the Sixth Research Framework Programme, and that it is essential to continue and reinforce this support. It notes the recent launch of a European Aquaculture Technology and Innovation Platform to define the priorities for the sector, and suggests that publicly funded research may act as a lever to private research and development, and should concentrate on research with high investment risks, and where synergies can be found with other maritime activities. The Commission says that it will:

- allocate a sufficient Community budget to aquaculture projects, looking for a more efficient use of existing instruments at a European level, whilst inviting Member States and the industry to increase their investment;
- promote the development of key research infrastructures and reinforce the integration of this sector into broader scientific networks to address global challenges such as adaptation to climate change;
- invite Member States to consider developing aquaculture production in existing sites and facilities.

It also points out that adequate insurance, covering stock and/or technology-related risks, can play a significant role in supporting the development of aquaculture, especially of innovative projects, and it says that it will therefore consider whether it is appropriate to adapt the current guidelines relating to state aids in this sector.

#### *Competition for space*

6.6 The Commission suggests that the increasing competition for space represents a major challenge for the further development (or even maintenance) of coastal aquaculture, as well as freshwater fish farming, adding that choice of area and planning have a key role to play. It says that it will:

- continue its initiatives to promote the development of marine spatial planning and Integrated Coastal Zone Management;
- invite all Member States to develop marine spatial planning systems which fully recognise the strategic importance of aquaculture, and that it will also, in connection with the next reform of the CFP, consider strengthening the links between Community funding and the issue of space for activities such as aquaculture;
- invite Member States to ensure that land planning fully integrates the needs of fresh water aquaculture.

### *Coping with market demands*

6.7 The Commission says that the European aquaculture industry should be able to respond to consumer demands, be adaptable to changing market conditions, and be capable of interacting on an equal footing with others in the marketing chain. It says that it will review the market policy for fisheries and aquaculture products in 2009, and will:

- address the needs of the sector, in particular as regards producer organisations, consumer information and marketing instruments (such as labelling), in connection with the future reform of the marketing aspects of the CFP;
- continue to work with Member States and the European Parliament to develop and promote standards, notably on organic aquaculture;
- continue its international cooperation on labelling and certification issues, notably with the FAO.

### *The international dimension*

6.8 The Commission points out that there is an opportunity for the industry to expand and export its know-how to other parts of the world, and that it will in this context:

- consider establishing a basis for promoting aquaculture development in third countries and to increase the business opportunities for Community aquaculture firms;
- develop an export strategy at Community level in order to strengthen the Community role in negotiating export conditions relating to animal health issues;
- continue to promote the need for sustainability in aquaculture development at international level.

### *Establishing sustainable growth*

6.9 The Commission says that the Community should ensure that its aquaculture industry develops in a way which is compatible with a high level of protection for the natural environment, and which includes a high level of health and welfare protection for farmed species.

### *Compatibility between aquaculture and the environment*

6.10 The Commission notes that, in order to achieve an environmentally-friendly aquaculture, it is necessary to develop techniques which improve water quality by removing wastes and contaminants, and that it will continue to emphasize the importance of an environmentally sustainable aquaculture in its policies and actions, and to monitor developments: equally, it points out that an aquaculture-friendly environment requires water of the highest quality, and that the first river basin management plans under the Water Framework Directive (WFD) must maintain the present level of protection in shellfish areas (with this being maintained as a minimum in the first updates in 2015). In this last context, it says that it will ensure that Member States provide an appropriate level

of protection, ensure proper implementation of the WFD and Marine Strategy Framework Directive as regards aquaculture activities, and assess the need to complement the Community's legal framework for water protection.

### *Shaping a high performance industry*

6.11 The Commission says that optimal husbandry conditions, good health and adequate feed are essential, and it points out that the Community's legislative framework in this area was reviewed in 2006. It adds that it will ensure that aquatic needs are taken into account in the Community's new animal health policy strategy, and that it will:

- assess (and possibly review) the list of important diseases for aquatic animals by 2011;
- review in 2009 current provisions regarding additional guarantees for some diseases imposed at Member State level, in order to ensure that these do not involve unjustified barriers; and
- assess the present financial instruments available for measures dedicated to aquatic health, and integrate this into the reform of the CFP.

6.12 The Commission also stresses the importance of animal welfare to consumers, and says that, as the scientific basis for welfare in this area is far less developed than that for farm animals, it will:

- seek advice on fish welfare on a species basis, and promote the need for this in international fora;
- launch in the next two years an evaluation of fish welfare in aquaculture;
- encourage industry initiatives aimed at ensuring the welfare of farmed fish.

6.13 The Commission says that it will also address the need for veterinary medicines in this sector, and encourage the supply of high quality and sustainable feed-stuff for farmed fish. In the latter case, it notes the current heavy reliance on fish meal and oils, and says that this could raise concerns about both economic and environmental sustainability. It will therefore seek to increase the availability of necessary additives to fish feed, and, in connection with its proposal for a revised animal by-product Regulation, ensure that aquatic animals can be given feed originating from other aquatic animals, provided this is not from the same species.

### *Ensuring consumer health protection*

6.14 The Commission says that, in order to guarantee a high level of consumer protection, measures must be taken to ensure food quality and safety, involving a solid and scientifically-based identification of the risks. It says that it will:

- continue to address the need to ensure that aquatic food products are safe, whether produced within the Community or imported;
- maintain the legislative measures in order to reflect new knowledge;

- continue to base its action on science and the precautionary principle.

### ***Improving the sector's image and governance***

6.15 The Commission says that European aquaculture should benefit from an improved framework for governance, involving better implementation of Community legislation, a reduction in the administrative burden, proper stakeholder participation, and adequate monitoring of the sector.

### **The Government's view**

6.16 In his Explanatory Memorandum of 5 May 2009, the Minister for the Natural and Marine Environment, Wildlife and Rural Affairs at the Department for Environment, Food and Rural Affairs (Mr Huw Irranca-Davies) says that the UK welcomes the Communication, and notes that overall it is positive and supportive of the development of the aquaculture sector. It agrees that aquaculture has a major role to play in the supply of fish and shellfish to the world's population, and that the continued growth in world seafood consumption predicted by FAO cannot be met by fish from the wild.

6.17 The Minister adds that the UK agrees that the aquaculture industry must be encouraged to develop, but says that it is important to underline that the sector remains to a large extent within the remit of national competence and to resist any calls for significant state aid or intervention. He notes that the Communication invites and encourages Member States to take initiatives in a number of areas, and supports this under the principle of subsidiarity. However, he adds that, although the UK can see the benefit of cooperation, particularly in the area of research (where it welcomes the Community's increased contribution to, and coordination of, European research and technological development), it does not want to see a highly subsidised regime introduced for aquaculture.

### **Conclusion**

**6.18 This Communication addresses the means by which European aquaculture can be encouraged to increase its production of fish, shellfish and crustaceans, and so help to bridge the gap between the demand for these products and the supplies available from the wild. For that reason, we think it right to draw it to the attention of the House, but, as the document does not appear to us to raise any issues requiring further consideration, we are clearing it.**

## 7 Development Assistance and Governance

(a) (27791) 12572/06 COM(06) 421 + ADDs 1–3	Commission Communication: <i>Governance in the European Consensus on Development — Towards a harmonised approach within the European Union</i> Commission Staff Working Documents
(b) (26227) 16041/04 COM(04) 804	Draft Council Decision concluding consultations with Guinea under Article 96 of the Cotonou Agreement
(c) (29544) 7499/08 COM(08) 138	Draft Council Decision amending Decision 2005/321/EC concluding the consultation procedure with the Republic of Guinea under Article 96 of the Cotonou Agreement
(d) (30446) 6543/09 COM(09) 76	Commission Communication on the opening of consultations with Guinea under Article 96 of the Cotonou Agreement

<i>Legal base</i>	(a) — (b)-(c) Articles 8, 9 and 96 Cotonou Agreement; QMV (d) —
<i>Department</i>	Foreign and Commonwealth Office
<i>Basis of consideration</i>	Minister's letter of 6 May 2009
<i>Previous Committee Report</i>	(a) HC 16–v (2007–08), chapter 9 (5 December 2007), HC 34–xxxvii (2005–06), chapter 39 (11 October 2006) (b) HC 34–xiv (2005–06), chapter 18 (11 January 2006) (a) — (d) HC 19–x (2008–09), chapters 4, 7 and 8 (11 March 2009)
<i>Discussed in Council</i>	(a) 16 October 2006 General Affairs and External Relations Council (b) and (c) 31 January 2005 and 14 April 2008 General Affairs and External Relations Councils (d) 16 March 2009 General Affairs and External Relations Council
<i>Committee's assessment</i>	Politically important
<i>Committee's decision</i>	Cleared (reported to the House on 11 January 2006, 11 October 2006 and 11 March 2009); further information requested and provided

## Background

7.1 As the Commission noted in its introduction to this Communication, poverty reduction and the Millennium Development Goals (MDGs)<sup>17</sup> will not be achieved without decisive progress in the areas of economic, social, environmental and political governance; with the European Consensus on Development setting out the EU's approach and contribution, "identifying good governance, democracy and respect for human rights as integral to the process of sustainable development and as major objectives of EU development policy".

7.2 Accordingly, the Communication proposed that the Community and Member States agree principles and actions for EU dialogue and cooperation with developing countries on governance, with the objective of gradually developing "a coherent common approach to promoting all aspects of democratic governance".

7.3 The document is summarised fully in our previous Reports.<sup>18</sup> In brief, the first section describes what the Commission means by governance, why governance is important for the achievement of the MDGs and how the Commission believes EU development cooperation can be used to improve governance in developing countries.

7.4 The second section proposed a "Governance Initiative" for the 78 ACP countries which would be used to allocate €3 billion of funds from the 10th EDF. €2.7 billion of this amount, called the "Governance Incentive Tranche", or GIT, was to be linked to the EC's Country Strategy Papers for EDF 10 (which sets the framework for EC development assistance to the ACP countries). The remaining €300 million would target regional support, with a particular focus on the African Union (AU) and the APRM.<sup>19</sup>

7.5 The Conclusions consisted of four proposed principles to guide EU work on governance — that improving governance is a means to achieving the MDGs and that a broad approach to governance is needed based on dialogue and country ownership — and complementary actions based on regular dialogue between the EU and the partner country about governance issues and financial support for governance-related activities via the Governance Initiative. A "Governance Profile" mechanism would help the Commission assess the quality of governance in each ACP country and provide the basis for dialogue with the government to identify benchmarks and targets for improvements in governance, and thus help determine the allocation of the €2.7 billion under the GIT.

7.6 In his Explanatory Memorandum of 5 October 2006, the then Parliamentary Under-Secretary of State at the Department for International Development (Mr Gareth Thomas) commented fully on the Communication.<sup>20</sup> He said that the UK was committed to

---

17 UN millennium development goals to be achieved by 2015 — the eradication of extreme poverty and hunger, achievement of universal primary education, promotion of gender equality and female empowerment, reduction of child mortality, improvement of maternal health, combat of HIV/Aids, malaria and other diseases, environmental sustainability and a global partnership for development.

18 See headnote.

19 Under the auspices of the African Union, prominent Africans are nominated by member countries and appointed by their respective Heads of State to the APRM (African Peer Review Mechanism) review panel, to promote policies, standards and practices in favour of political stability, economic growth, sustainable development, human rights and regional integration.

20 See headnote: HC 34–xxxvii (2005–06), chapter 39 (11 October 2006).

supporting good governance as stated in a recent White Paper “Making Governance Work for the Poor”. He welcomed the policy shift away from unilateral EC analysis and programming and towards a common European understanding of governance trends and reform priorities, which recognised that it was neither realistic nor desirable to impose standardised approaches. He supported the emphasis on poverty reduction as the overriding objective of EU development policy, with good governance as a key complementary objective, and also welcomed the use of the EDF 10 programming process to encourage improved governance in ACP countries.

7.7 The Committee likewise agreed that governance, broadly defined, was central to development; and that the approach proposed in the Communication appeared to be soundly-based. We cleared the Communication, but asked the Minister to write in Spring 2007, when the Governance Profile exercise to which he referred had been completed and presented to the Council, with his observations thereon. For reasons that were not entirely clear, the Minister did not write to us until 12 September 2007, and then his letter was not received by us until two months later, on 27 November 2007.

7.8 He reported that the Conclusions agreed in October 2006<sup>21</sup> fully reflected his aspirations, including highlighting the importance of ensuring the programming of the GIT took account of differing country circumstances and a requirement for the Commission to undertake a joint review with Member States of the process and to provide the Council with a report in 2008.

7.9 We looked forward to hearing more from the Minister when the review had been completed, with his further observations thereon.<sup>22</sup>

### The Minister’s letter of 27 February 2009

7.10 In his letter, the Parliamentary Secretary at Department for International Development (Mr Ivan Lewis) explained that in March 2008 the Communication had commissioned an independent review of the GIT supported by a Joint Commission/Member States reference group, including the UK, which was received in November 2008 and whose findings and conclusions were set out in the Commission Staff Working Paper “Supporting Democratic Governance through the Governance Initiative: A Review and the Way Forward” sent to the Council of Ministers in January 2009 (and attached to the Minister’s letter).<sup>23</sup>

7.11 The Minister was “pleased to report” a “comprehensive and insightful” review, whose “findings and conclusions form an excellent basis for our dialogue and cooperation with the Commission on how the Governance Incentive can be further improved to support democratic governance” The review “clearly emphasises the UK view that ultimately improvements in governance are driven by partner countries’ own commitment to reform”, which point was, the Minister said, “again reiterated by the Commission and

21 Set out on pages 10–14 of the full General Affairs and External Relations Council Conclusions of 16–17 October 2006; see [http://www.consilium.europa.eu/ueDocs/cms\\_Data/docs/pressData/en/gena/91351.pdf](http://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressData/en/gena/91351.pdf)

22 See headnote: HC16–v (2007–08), chapter 9 (5 December 2007).

23 Also available at <http://register.consilium.europa.eu/pdf/en/09/st05/st05504.en09.pdf>

Member States at the EU Development Ministers’ Informal Meeting in Prague on 29–30 January 2009 which my colleague Gareth Thomas attended.”

7.12 The Minister fully supported the findings, conclusions and recommendations (which are summarised in our previous Report) and said that he would “work with the Commission to ensure that the Governance Initiative process further develops its contribution to a comprehensive approach to aid effectiveness, donor coordination and harmonisation of Member States’ policies, strategies and programmes to support democratic governance.” He agreed that “the tools available, particularly the Governance Profile, offer an opportunity to move beyond “information sharing” and engage in joint analysis and response in areas of governance, within donor-wide coordinating mechanisms where these exist.” He went on to say that, as noted by the Commission, “there are already some constructive working relationships across the EU at expert level.”; the UK “regularly shares its expert knowledge and experience with the EC on political and governance analyses at both central and country level”, and would continue to:

- work jointly with the EC to fine-tune existing tools such as the GP, prepare guidelines on methodology and process of preparing GPs at the country levels for EC Delegations and discuss ways of integrating governance within the 10th EDF methodology for the MTR;
- discuss with the EC the option of expanding joint work to regions other than the ACP countries; and
- work closely with the Commission on the impact assessment of the Governance Initiative and the lessons learnt from the implementation of the existing European Neighbourhood Partnership Governance Facility.<sup>24</sup>

## Our assessment

7.13 We noted that the importance of the link between development and governance was illustrated by the Commission’s experience under the Cotonou Agreement (of which the EDF is the financing vehicle), which we considered in the context of Guinea in the same Report. There, despite the Minister’s Explanatory Memorandum of 4 March 2009 and letter of 9 March 2009, we found it difficult to see that an intensive exercise in linking development and governance — particularly in the enhanced political dialogue process embodied in Article 96 of the Agreement — had yet to bear significant fruit. We noted that the Cotonou Agreement is clear: respect for human rights, democratic principles and the rule of law are essential elements of the partnership, with the Commission characterising the revision of the political components in 2005 as “strengthening the political dimension by placing greater emphasis on effective dialogue and results”; against the yardstick set out in those last four words, we found difficult to find much persuasive evidence that the Article 96 process had, to use the Minister’s words, led to the Cotonou provisions being taken seriously — after over 5 years of Article 96 engagement, Guinea seemed to be no

---

24 See [http://ec.europa.eu/world/enp/faq\\_en.htm](http://ec.europa.eu/world/enp/faq_en.htm) for details of the European Neighbourhood Policy, including the European Neighbourhood Partnership Governance Facility, which will provide additional EC support, on top of the EC funding amounts already allocated, for those countries who have made most progress in implementing the agreed reform agenda set out in their ENP Action Plan.

nearer than it was then to a functioning democratic and law-based society; instead, all that it appeared to have done thus far was indeed to demonstrate, as the Minister for Europe put it, “that ultimately improvements in governance are driven by partner countries’ own commitment to reform”.

7.14 We also noted there our disappointment that the Minister for Europe seemed uninterested in whether or not the 2010 review of the Cotonou Agreement would address the effectiveness of this much-trumpeted and resource-intensive component of the 2005 revision, and accordingly asked her to write to us either now, or when it was available, about the proposed process and timetable for the 2010 revision, and to explain why she had not pressed for a proper assessment of the effectiveness of Article 96 process, and how it might be modified, if it was not part of that process and timetable.

7.15 We also hoped that her DFID counterpart would take a more proactive stance with regard to the related Mid-Term Review of the 10<sup>th</sup> EDF, and the Governance Incentive. As he had indicated, this exercise was still very much a work-in-progress. Nonetheless, as he had also indicated, the Review pointed up the potential of the GIT process to inform EU political dialogue on key governance issues, including the assessment of government commitments and the incorporation of the results of this exercise into political dialogue — which dialogue was, as we noted, central to the Cotonou Agreement. We looked to him to ensure that these issues were covered, and subsequent further developments reported on, when he or any colleague or successor submitted an Explanatory Memorandum on the 10<sup>th</sup> EDF Mid-Term Review.<sup>25</sup>

### The Minister’s letter of 23 March 2009

7.16 The Minister of State at the Department for International Development (Mr Gareth Thomas) wrote on 23 March 2009 to inform the Committee of Member States’ adoption of the negotiating directives for the Commission to use with the ACP states on the second revision of the Cotonou Agreement and the letter from the Commission to the ACP outlining Europe’s priorities for the negotiations at the GAERC on 23rd February. He said that, from the EU’s perspective, the overall aims of the revision would be to ensure that it was fully up to date with the main advances in development policy and to further improve the implementation of the Agreement. Areas to be discussed include regional integration; further harmonisation of European Development Fund (EDF) procedures with those applying to the EC’s other development instruments; and the timing of future revisions of the Partnership.

7.17 In its response, the Committee recalled this earlier correspondence with his Ministerial colleagues, and noted that his letter made no mention of any of this either. Now that the revision process was under way, we asked him let it the Committee know if a review of the effectiveness of the Article 96 process was to be included in it; and if not, why not.

---

<sup>25</sup> See headnote: (27791) 12572/06; (26227) 16041/04 and (29544) 7499/08; and (30446) 6543/09 : HC 19–x (2008–09), chapters 4, 7 and 8 (11 March 2009).

## The Minister of Europe's letter of 6 May 2009

7.18 In her letter of 6 May 2009, the Minister for Europe at the Foreign and Commonwealth Office (Caroline Flint) says that she is replying on behalf of her colleague at the Department for International Development (Mr Gareth Thomas) and as Minister for Europe. She says that, as explained in her March letter, “we share your concern about making the Article 96 processes as effective as possible in facilitating sustained democratic development. We have been working to that end.”. She continues as follows:

“As part of the scheduled 2010 revision process there will be a review of Annex VII, which was added in 2005 and provides further rules and procedures for political dialogue under Article 96. We did not press for a wider review, as we believe that the 2005 revisions to Article 96 are positive and provide the opportunity for a more effective political dialogue. As there have been only two cases of Article 96 consultations being completed since the 2005 revisions (in Mauritania (2005) and Fiji (2007)) we judge it too early to comprehensively assess the impact of the revision, and to be seeking further changes. We feel that the potential of the revisions has not yet been fully realised, and the key is working to improve the effectiveness of the implementation of Article 96 (and Article 8).

“The review negotiations will commence at the African Caribbean Pacific-European Council Joint Council of Ministers on 28–29 May, and are expected to continue until February 2010. The Commission will lead the negotiations on behalf of EU. I can reassure you that we will be paying close attention to the negotiations and will look for opportunities that these present to improve the effectiveness of implementation of Article 96. As Gareth Thomas stated in his letter of 23 March 2009, he will submit for scrutiny the Council Decision, at the conclusion of negotiations. We will continue to seek improvements in the effectiveness of implementation, through our engagement with on-going, individual cases of Article 96.”

## Conclusion

7.19 **Though it might be argued that developments in Fiji might not be seen as advertisements for the effectiveness of the Article 96 process, we are content to draw these exchanges to a close for the time being, and look to the Ministers' further contributions on individual cases and, at the conclusion of negotiations, when submitting the Council Decision for scrutiny.**

7.20 **In the meantime we are reporting this latest information to the House, given the widespread interest in development and governance issues, and also forwarding this chapter of our Report to the International Development Committee, so that they may be aware of these exchanges.**

## 8 EU Enlargement: Romania and Bulgaria

(a) (30437) 6405/09 COM(09) 69	Commission Interim Report on progress in Bulgaria under the Co-operation and Verification Regime
(b) (30438) 6407/09 COM(09) 70	Commission Interim Report on progress in Romania under the Co-operation and Verification Regime

<i>Legal base</i>	—
<i>Department</i>	Foreign and Commonwealth Office
<i>Basis of consideration</i>	Minister’s letter of 12 May 2009
<i>Previous Committee Report</i>	HC 19–xiv (2008–09), chapter 6 (22 April 2009) and HC 19–xii (2008–09), chapter 3 (25 March 2009); also see (29876) 12177/08 and (29877) 12182/08 HC 16–xxix (2007–08), chapter 2 (10 September 2008); (29431) 6150/08 and (29432) 6161/08 HC 16–xiii (2007–08), chapter 15 (27 February 2008); (28754) 11491/07 and (28768) 11489/07 HC 41–xxxii (2006–07), chapter 11 (25 July 2007) and (27865) 13347/06: HC 34–xxxviii (2005–06) chapter 3 (18 October 2006)
<i>Discussed in Council</i>	23 February 2009 General Affairs and External Relations Council
<i>Committee’s assessment</i>	Politically important
<i>Committee’s decision</i>	Cleared

### Background

8.1 The accession negotiations with *Romania* and *Bulgaria* were concluded in December 2004 and a Treaty of Accession was signed on 25 April 2005. The UK ratified the Treaty on 5 April 2006.

8.2 The Commission’s October 2005 and May 2006 monitoring reports identified a number of areas where further improvements were needed in order to meet all membership requirements, and all of which went to the heart of a properly functioning governance system based on the effective implementation of laws by an accountable, independent and effective judiciary and bureaucracy. The Accession Treaty allowed for a delay until 2008, but only if the Commission recommended that either country was “manifestly unprepared” for membership. The Commission’s final verdict was that both countries would be in a position to take on the responsibilities of membership by 2007.

8.3 There were, however, still significant shortcomings, particularly on JHA issues (for details, see our previous Reports). So, various post-accession measures were put in place,

the most crucial being the Mechanism on Cooperation and Verification — a process whereby, having set benchmarks on JHA issues, the Commission works closely with both governments on steps to meet them, and reports to the European Parliament and the Council, with the sanction of non-recognition of judicial decisions under mutual recognition arrangements if progress was insufficient.<sup>26</sup> Accession on 1 January 2007 was now essentially a *fait accompli*; however, given the range of outstanding issues and their implications for actual and aspiring candidates, the Commission’s final verdict was debated in the European Standing Committee on 15 January 2007.<sup>27</sup>

8.4 Romania’s benchmarks are:

- Benchmark 1 — Reform of judicial process
- Benchmark 2 — Establishment of an integrity agency
- Benchmark 3 — Investigation of high level corruption
- Benchmark 4 — Corruption, in particular within local government

8.5 Bulgaria’s benchmarks are:

- Benchmark 1 — Independence/ accountability of judicial system
- Benchmark 2 — Transparency/efficiency of judicial process
- Benchmark 3 — Reform of the judiciary
- Benchmark 4 — High level corruption
- Benchmark 5 — Corruption at borders and in local government
- Benchmark 6 — Organised crime

### The Commission 2009 Interim Reports

8.6 The Commission monitors progress and writes reports every 6 months: interim reports at the start of the year and main reports at mid-year. These are the latest interim reports for both countries. Both are described as a technical update on significant developments during the 6 months prior to 15 January 2009; not an assessment of progress achieved, but “limited to measures that have either been completed or where their finalisation can be expected”.

8.7 Both are summarised in detail in our recent Reports, together with the history of the Committee’s consideration and assessment of the process thus far.

8.8 The *Bulgaria* “Outlook” concludes thus:

---

26 Commission Decision 2006/929/EC of 13 December 2006 establishing a mechanism for cooperation and verification of progress in Bulgaria and Romania to address specific benchmarks in the areas of judicial reform and the fight against corruption and organised crime (OJ No. L 354, 14.12.06, p. 56 and 58; see <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2006:354:0056:0057:EN:PDF> and <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2006:354:0058:0060:EN:PDF>).

27 *Stg Co Deb*, European Standing Committee, 15 January 2007, cols. 3–28.

“The next assessment of progress by the Commission in summer 2009 will show the extent to which Bulgaria has been able to address the shortcomings identified by the Commission in the reform of the judiciary and to produce convincing and tangible results in the fight against corruption and organised crime. In order to demonstrate systemic and irreversible change, Bulgaria needs to show that it has put in place an autonomously functioning, stable judiciary which is able to detect and sanction conflicts of interests, corruption and organized crime and preserve the rule of law. This means in particular adopting the remaining laws needed to complete the legal system and showing through concrete cases of indictments, trials and convictions regarding high-level corruption and organised crime that the legal system is capable of implementing the laws in an independent and efficient way.”

8.9 The *Romania* “Outlook” concludes thus:

“The next assessment of progress by the Commission in summer 2009 will show to which extent Romania has been able to successfully address the shortcomings identified in the reform of the judiciary and to produce convincing and tangible results in the fight against corruption.

“It will be crucial for Romania to achieve significant, irreversible progress by then. Romania must demonstrate the existence of an autonomously functioning, stable judiciary which is able to detect and sanction corruption and preserve the rule of law. This means in particular adopting the remaining laws needed to modernise the legal system and showing through an expeditious treatment of high-level corruption cases that the legal system is capable of implementing the laws in an independent and efficient way.”

8.10 In a brief Explanatory Memorandum of 18 March 2009 the Minister for Europe at the Foreign and Commonwealth Office (Caroline Flint) supported the Commission’s proposal to continue with the Cooperation and Verification Mechanism, saying that “a rigorous, transparent and objective monitoring mechanism” was “essential to support reform in Romania and Bulgaria, as well as ensuring the integrity of EU enlargement policy” and “that EU support — not sanctions — is the best way to drive forward reforms.”

## Our assessment

8.11 We noted that, while there had been some institutional progress, there was still a lack of results, particularly with regard to successful prosecutions of high level corruption cases. Notwithstanding that these reports were said by the Commission to be technical and not assessments of progress, there was a sense of continuing, and understandable, disappointment running through them, which we shared. The “Outlook” sections in particular showed just how much doubt continued to remain about the commitment of the authorities in both countries to get to grips with issues that had been plaguing them since before accession. Previously, the spotlight was on Bulgaria; now, it seemed, it was Romania that was going backwards, and that, disturbingly, parliament remained part of the problem.

8.12 We noted similar hints in the Council Conclusions, which called upon both countries “to intensify their efforts in the coming months by taking all necessary steps without delay, in particular with regard to areas highlighted in the conclusions of the Interim reports, in

order to consolidate progress already made and calls upon them to achieve substantial and lasting results.”<sup>28</sup>

8.13 Against this background, we found it puzzling that the Minister had so little to say (a mere 64 words of comment), all of which was about the process rather than what was causing it to continue to falter. We were again left wondering how this process was, as the Minister put it, “ensuring the integrity of EU enlargement policy”. We asked the Minister to tell us more about what she thought was continuing to hold back real progress in both countries.

8.14 All in all, we felt that it might be argued that this process — which, as we have said before, seems to have been undermined at the outset by the participation of the parties concerned and, by virtue of beginning after accession, to be devoid of any effective sanctions — was introduced too late in the proceedings. The main lesson, we said, was that this must not be the case when the readiness of Croatia, and others, came to be judged. As both these Reports said, what was needed — before accession, not after — was an “autonomously functioning, stable judiciary which is able to detect and sanction conflicts of interests, corruption and organized crime and preserve the rule of law”, with “concrete cases of indictments, trials and convictions regarding high-level corruption and organised crime” demonstrating that “the legal system is capable of implementing the laws in an independent and efficient way.” We asked if the Minister agreed that this should be demonstrably so in other candidate countries before accession takes place.

8.15 We also asked the Minister to explain why these Reports were adopted so peremptorily, with no opportunity for proper scrutiny and to undertake to ensure that the full monitoring Reports are deposited in good time for proper scrutiny prior to their consideration by the Council.

8.16 In the meantime, we retained the documents under scrutiny.<sup>29</sup>

### **The Minister’s letter of 6 April 2009**

8.17 The Minister said that she agreed with the Committee’s overall assessment and shared its view of the underlying sense of disappointment reflected in the reports. Romania and Bulgaria both had to make significant progress before they met the requirements of CVM and “in order to maximise the benefits of EU membership.”

8.18 With regard to the barriers to progress, the Minister said that although some progress was being made in both countries, it was being held back by “institutional inertia, political point scoring, resistance to change, lack of experience and lack of will.” In Bulgaria, the influence of organised crime was an additional complication. The only way to tackle these was “to continue to work with Bulgaria and Romania, provide honest and direct advice and to work closely with EU partners and the Commission through the CVM.”

8.19 With regard to the circumstances in which the use of sanctions — or safeguards, as they are referred to in the CVM — would be considered, the Minister said that these

---

28 Available at [http://www.consilium.europa.eu/uedocs/cms\\_data/docs/pressdata/en/gena/106332.pdf](http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/gena/106332.pdf).

29 See headnote: HC 19–xii (2008–09), chapter 3 (25 March 2009).

intended as a last resort and were “a blunt tool”; she believed that “the regular Commission reports under the CVM and diplomatic pressure for improvement, not least from the UK, are useful levers.”

8.20 With regard to “lessons learned from the experience of Bulgarian and Romanian accession and in particular how those lessons are being applied to Croatia”, the Minister noted that a new chapter covering judicial reform, fundamental rights and anti-corruption had been introduced in the accession negotiations, and that “I agree with the Committee that we need to tackle the issues around judicial and public administration reform early on in the process.”

8.21 Finally, the Minister asked the Committee to “rest assured that the full monitoring Reports will be deposited with the Committee as soon as we have a published, final, version.”

### **Our further assessment**

8.22 We agreed with the Minister that both Bulgaria and Romania “have a significant amount of progress to make before they meet the requirements of CVM.” But, in our view, this progress needed to be made not just in order for them “to maximise the benefits of EU membership”, but also for the rest of the EU not to find itself with the benefits of enlargement being undermined.

8.23 We noted the Minister’s view that the CVM safeguard is “a blunt tool”. This reinforced our view that if both parties — the EU and the candidate state — were to benefit fully from accession, it was essential for the issues that continue not to be addressed effectively by Bulgaria and Romania to be addressed, and not early on in the process (as the Minister put it), but (as we had put it, and with which we invited the Minister to agree, but which she seemed reluctant to endorse) before accession took place — the experience with the CVM process having shown that leaving any aspect of judicial reform, fundamental rights and anti-corruption until after accession was an invitation to the same “institutional inertia, political point scoring, resistance to change, lack of experience and lack of will” that, as she said, continues to blight Bulgaria and Romania and thus to short-change all concerned.

8.24 We also noted that the Minister still did not explain why these Reports were adopted so peremptorily, with no opportunity for proper scrutiny; nor were we at all assured by what she said regarding the main Reports in the summer. Given the overall context, we believed that the House had the right to consider these Reports, and if necessary to have them debated, prior to the adoption of any Conclusions by the Council, and accordingly asked the Minister to assure us that she would ensure that they were deposited in accordance with this request.

8.25 In the meantime, we continued to retain the documents under scrutiny.<sup>30</sup>

---

<sup>30</sup> See headnote: HC 19–xvi (2008–09), chapter 6 (22 April 2009).

## The Minister's letter of 12 May 2009

8.26 The Minister says that she agrees with the Committee that “it is important for long term confidence in the EU enlargement process that post accession monitoring measures introduced for Romania and Bulgaria are effective and result in the successful implementation of reforms required”, and says that “the importance that the Bulgarian and Romanian governments attach to the CVM demonstrates that it is still an important and credible driver for reform in both countries.” She continues as follows:

“I would like to reassure the Committee that I support the assertion that any country that wishes to join the EU must meet clear standards on issues such as judicial reform and independence, respect for fundamental rights and tackling corruption. The Committee will be aware that the EU has moved from an accession process based on target dates to a conditions based approach. The UK is a strong supporter of enlargement based on robust but fair conditionality. We will look closely at these issues as part of the chapter on the judiciary and fundamental freedoms which is a new part of the accession negotiations. We will insist that benchmarks are set in key areas to give us confidence that critical issues will be addressed before accession takes place.

“I can assure you that I take the Government's obligations in enabling the Committee to carry out its scrutiny role very seriously. The Interim Reports from the Commission to the European Parliament and the Council on progress in Romania and Bulgaria under the cooperation and verification mechanism are non-binding, non-legislative documents, but are of general interest to the House. For this reason I was happy to deposit the reports with the Committee and to listen to your views on the issues they raise. I have made it clear to my officials that the delay in providing the Explanatory Memorandum in this case was unacceptable. The next monitoring reports will be deposited in the libraries of both Houses as soon as we have final, published versions and an explanatory memorandum produced to accompany them.”

## Conclusion

8.27 **On the basis of the evidence thus far, we find it difficult to agree that “the CVM demonstrates that it is still an important and credible driver for reform in both countries.”**

8.28 **We are also puzzled when the Minister says that “any country that wishes to join the EU must meet clear standards on issues such as judicial reform and independence, respect for fundamental rights and tackling corruption”; this is not the issue; that, rather, is what those standards are. In our view, the Commission has set them out clearly in its latest Reports on Bulgaria and Romania. The Minister still seems reluctant to agree that it is these standards that Croatia and others should have to meet before accession. The ambiguity is compounded when she says that she “will insist that benchmarks are set in key areas to give us confidence that critical issues will be addressed before accession takes place”; given that the negotiations are well under way and the Enlargement Commissioner is talking of accession by the year's end, we would have thought that the benchmarks in question would have been set long ago.**

8.29 With regard to the depositing of the next Reports, this is not a matter of choice, as the Minister seems to imply, but a requirement under Standing Order No. 143. We are glad that she acknowledges that the delay in providing the Explanatory Memorandum in this case was unacceptable. We again note our view that the House has the right to consider these Reports, and if necessary to have them debated, prior to the adoption of any Conclusions by the Council, and again ask the Minister to ensure that they are deposited, with her Explanatory Memorandum, accordingly.

8.30 We shall visit Croatia next month to make our own assessment of the situation there. In the meantime, we now clear the documents.

## 9 Competition: the insurance sector

(30526) 8291/09 + ADD 1 COM(09) 138	Commission Report on the functioning of Commission Regulation (EC) No. 358/2003 on the application of Article 81(3) of the Treaty to certain categories of agreements, decisions and concerted practices in the insurance sector
--	--

<i>Legal base</i>	—
<i>Document originated</i>	24 March 2009
<i>Deposited in Parliament</i>	3 April 2009
<i>Department</i>	HM Treasury
<i>Basis of consideration</i>	EM of 6 May 2009
<i>Previous Committee Report</i>	None
<i>To be discussed in Council</i>	None planned
<i>Committee's assessment</i>	Politically important
<i>Committee's decision</i>	Clear

### Background

9.1 A Block Exemption may exempt a sector from the provisions of Article 81 EC prohibiting, “as incompatible with the common market: agreements between undertakings, decisions by associations of undertakings and concerted practices, which may affect trade between Member States and which have as their objective or effect the prevention, restriction or distortion of competition within the common market.” Commission Regulation (EC) No 358/2003 governs a Block Exemption for certain categories of agreements, decisions and concerted practices in the insurance sector. This Block Exemption is due to expire on 31 March 2010.

### The document

9.2 In this document the Commission summarises the preliminary results of its consultation on the functioning of the insurance sector Block Exemption and sets out a

tentative policy on renewing it in 2010. In doing so the Commission considers three key questions:

- whether the business risks or other issues in the insurance sector make it special in a way that leads to an enhanced need for cooperation among insurers;
- if so, whether this cooperation requires a legal instrument to protect or facilitate it; and
- if so whether the present Block Exemption, partial renewal, amended renewal or guidance would be more appropriate.

The Commission has examined these questions in respect of four categories of agreement:

- joint calculations, tables and studies, for example, calculations of the average cost of covering a specific risk in the past or mortality tables;
- Standard Policy Conditions, that is, joint establishment and distribution of non-binding standard policy conditions;
- pooling operations for the co-insurance and co-reinsurance of certain risks, for example, nuclear, terrorism and environmental risks; and
- technical specifications and rules for security devices, for example, burglar alarms or sprinkler systems.

9.3 The Commission's preliminary view is that the two forms of cooperation specific to the insurance sector, joint calculations, tables and studies and pools, should continue to be facilitated by a Block Exemption. For the two other forms of cooperation the possibility of non-renewal is raised, on the grounds that the benefits of cooperation can be achieved by industry participants without the need for a sector-specific protection under a Block Exemption.

9.4 The industry and stakeholders will make final representations to the Commission at a public event on 2 June 2009, after which the Commission will make a decision on whether or not to renew any parts of the Block Exemption for the insurance sector.

## The Government's view

9.5 The Economic Secretary to the Treasury (Ian Pearson) says that:

- on balance the Government welcomes the Commission's report, which seeks to protect forms of agreement between insurers that foster beneficial consumer outcomes and promote competition;
- it supports renewal of the Block Exemption in respect of joint calculations, tables and studies and pools; and;
- it favours, subject to the results of further analysis by the Commission, total renewal of the Block Exemption in these cases in order to minimise uncertainty and legal costs for the industry that would be associated with change in the rules.

9.6 The Minister continues that similar considerations arise in respect of changing the regulatory basis for Standard Policy Conditions and security devices. He says that in the case of the former:

- the Government agrees that there are many benefits associated with Standard Policy Conditions and, indeed, as the Commission points out, the UK regulator has sought to promote increased contract certainty based on Standard Policy Conditions in some market sectors;
- Standard Policy Conditions are particularly important to the functioning of subscription insurance, where a single large risk is underwritten by a number of insurers on a wholesale basis;
- Standard Policy Conditions promote competition by allowing new entrants or smaller companies to take, as a starting point, policy wordings that have been found appropriate to the conditions of that market;
- although the Government accepts that some cooperation would be likely to remain even if the Block Exemption were not renewed, it is concerned that there may be a significant risk of less or non-cooperation on Standard Policy Conditions if the relevant provision is not renewed; and
- the Government, therefore, would seek either the total renewal of the Block Exemption in respect of Standard Policy Conditions or equivalently clear guidelines or regulations permitting their continued use.

9.7 The Minister tells us that the case in respect of security devices is more nuanced, saying that:

- the Commission argues, first, that insurance sector agreements about standards for security devices may lead to some manufacturers and installers being excluded from the market, in particular impacting the free movement of goods and services between Member States — the Government believes there is insufficient evidence to judge this issue, as yet, and awaits the results of further study by the Commission;
- the Commission argues, secondly, that the need for agreements on security devices is reduced because of the subsequent introduction of Community harmonised standards concerning, for example, fire detection and alarm systems — however, it is questionable that these standards provide “exhaustive and adequate levels of security” in respect to the preservation of property as well as of life;
- the Commission argues, thirdly, that manufacturers and service providers are insufficiently consulted in the setting of standards — the Government’s preliminary view is that this is not the case in the UK, though again it would welcome further evidence gathered by the Commission;
- in general, the Government supports the linking of technical standards for security devices to the pricing of insurance, as providing a financial incentive to take steps tending to reduce harm to consumers; and

- it would tend, therefore, to support total or amended renewal of the Block Exemption or equivalently clear guidelines or regulations in this respect.

## Conclusion

9.8 The changes which the Commission might introduce to this Block Exemption will be important for the insurance sector. So whilst we clear this document we should like the Government to tell us in due course the Commission's final decisions on this matter.

## 10 Bilateral Agreements

(a) (30333) 5146/09 COM(08) 894	Draft Council Regulation establishing a procedure for the negotiation and conclusion of bilateral agreements between Member States and third countries concerning sectoral matters and covering jurisdiction, recognition and enforcement of judgments and decisions in matrimonial matters, parental responsibility and maintenance obligations, and applicable law in matters relating to maintenance obligations.
(b) (30334) 5147/09 COM(08) 893	Draft Regulation establishing a procedure for the negotiation and conclusion of bilateral agreements between Member States and third countries concerning sectoral matters and covering applicable law in contractual and non-contractual obligations.

<i>Legal base</i>	Articles 61, 65 and 67(5) EC Treaty; unanimity; consultation.
<i>Department</i>	Ministry of Justice
<i>Basis of consideration</i>	Minister's letter of 21 April 2009
<i>Previous Committee Report</i>	(a) HC 19–xii (2008–09), chapter 12 (25 March 2009) (b) HC 19–xiii (2008–09), chapter 13 (1 April 2009) HC 19–vii (2008–09), chapter 5 (11 February 2009)
<i>To be discussed in Council</i>	June 2009 JHA Council
<i>Committee's assessment</i>	Legally and politically important
<i>Committee's decision</i>	Cleared on 25 March 2009 (a) and 1 April 2009 (b)

## Background

10.1 The external competence of the Community is its capacity to act separately from its Member States internationally, in particular to negotiate and conclude binding international agreements and to belong to, and participate in, international organisations.

The Community's external competence may be either exclusive or shared. Where the Community has exclusive external competence, Member States have no further power to act internationally in respect of that subject-matter. The European Court of Justice has established that the Community's external competence will normally be exclusive if, inter alia, an agreement falls into an area of law which, internally, is already largely covered by Community rather than national law, or if the effectiveness or purpose of Community's internal rules may be adversely affected or undermined by an international agreement concluded by Member States. The Community's external competence may thus be exclusive in areas of law where it only has shared internal competence.

## The document

10.2 The purpose of these proposals is to establish a procedure to enable Member States in future to negotiate and conclude bilateral agreements with third countries in certain areas of family law with a cross-border dimension (document (a)) and relating to the choice of law concerning non-contractual and contractual obligations (document (b)). Subject to the satisfaction of certain conditions, this procedure would enable the Commission to authorise such negotiations and their conclusion.

10.3 Both subject areas have recently been covered by Community legislation, respectively EC Regulation No. 864/2007 ("Rome II") and EC Regulation No. 593/2008 ("Rome I") regarding applicable law concerning non-contractual and contractual obligations, and, in the field of family law, EC Regulation 2201/2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and matters of parental responsibility as well as EC Regulation 4/2009 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations. The consequence of this Community legislation is, in general terms, to establish far-reaching external Community competence in these areas, which may be exclusive at least in some areas. In principle this means that Member States may be prevented from entering into bilateral agreements which fall within the scope of this legislation. Particular concerns were also raised by some Member States during the negotiations on Rome II that the consequent extension of external competence in this area might prove too restrictive in some circumstances, for example in the context of cross-border infrastructure projects involving third countries, such as airports or tunnels, where it might be desirable to put in place special choice of law regimes which departed from the terms of the relevant Community legislation. The proposed regulations would limit the scope of the Community's exclusive competence and ensure that Member States may continue to negotiate bilateral agreements with third countries in areas of law where the Community has in recent years largely 'occupied the legislative field.'

10.4 When we originally looked at these proposals we broadly shared the Government's general support for the proposed measures but expressed some concern about the imprecise description of the Commission's powers to authorise Member States to exercise their competence to conclude bilateral agreements. The Government subsequently secured amendments of the relevant provisions, and on this basis we cleared both documents from scrutiny in March and April of this year. We asked the Minister to keep us informed of any important developments during the final stage of negotiations.

## The Minister's Letter

10.5 The Minister (Lord Bach) has now written with further information and in his letter of 21 April 2009 informs us that, as previously advised, the Government notified the Council of its decision to opt in to both proposals on 8 April. The Minister further comments as follows:

### ***“EU PROPOSALS TO FACILITATE MEMBER STATE BILATERALS WITH THIRD COUNTRIES***

- a) Proposal for a Council Regulation establishing a procedure for the negotiation and conclusion of bilateral agreements between Member States and third countries concerning sectoral matters and covering jurisdiction, recognition and enforcement of judgments and decisions in matrimonial matters, parental responsibility and maintenance obligations, and applicable law in matters relating to maintenance obligations.*
- b) Proposal for a Regulation of the European Parliament and of the Council establishing a procedure for the negotiation and conclusion of bilateral agreements between Member States and third countries concerning sectoral matters and covering applicable law in contractual and non-contractual obligations.*

“I am writing in response to the Committee’s reports of 25 March and 1 April 2009. I am grateful that you have cleared these proposals from scrutiny. I thought it appropriate to update you on the progress of negotiations. I therefore enclose the latest versions of the texts of these proposals which were agreed by COREPER on 7 April 2009. These will now form the basis for negotiations with the European Parliament. This will be with a view to securing a first reading agreement between the Council and the European Parliament. There is a good prospect that there will be such an agreement and that, as envisaged by the Czech Presidency, both proposals will be adopted at the June meeting of the JHA Council.

“The Government notified the President of the Council of the United Kingdom’s opt in to both these proposals on 8th April. You will note from Recital 17 of the civil law proposal and Recital 16 of the family law proposal have now been made explicit to reflect the fact that the UK’s Protocol on Title IV measures applies to both these measures.

“Turning to the points raised in your Committee’s reports, I believe you will welcome the final combined result of Articles 4, 5 and 7 which should ensure that, where the Commission has authorised a Member State to enter into negotiations on a bilateral agreement with a third country, it will also be required to authorise the conclusion of that agreement, provided that the conditions attached to the original authorisation have been fulfilled. This is a significant safeguard for the Member States and should generally avoid the possibility of the unfortunate outcome whereby an initial authorisation is given by the Commission only for the subsequent authorisation on conclusion to be refused.

“I believe you will also welcome the clarification in Article 1(1) (second paragraph) that nothing in the proposal will affect the respective competencies of the Community and the Member States. This should ensure that nothing in either proposal will result in any extension of the Community’s external competence.

“Article 1(2) of the proposal on family law restricts the scope of that Regulation not only to matters falling within the scope of Regulation 2201/2003 and Regulation 4/2009, but also to matters falling within the Community’s exclusive competence. The effect of this is to make it clear that, as far as the UK is concerned, the Regulation does not apply to bilateral agreements covering choice of law in the area of maintenance. This is because there is not, and will not be, any such Community competence in that area in relation to the UK. This clarification is welcome.”

## Conclusion

**10.6 We thank the Minister for his detailed update. We welcome the amendments to the original text of the proposal. We ask the Minister to keep us informed of any further important developments as these proposals follow their course through the legislative process.**

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

### Department for Environment, Food and Rural Affairs

(30555)  
8368/09  
+ ADDs 1-3  
COM(09) 156

Commission Report in accordance with article 18.3 of the Water Framework Directive 2000/60/EC on programmes for monitoring of water status.

### Department for International Development

(29886)  
12092/08  
+ ADD1  
COM(08) 439

Draft Council Decision concluding the stepping stone Economic Partnership Agreement between the European Community and its Member States and Côte d'Ivoire.

(30625)  
8629/09  
COM(09) 157

Draft Council Decision amending Commission decision 2008/938/EC on the list of the beneficiary countries which qualify for the special incentive arrangement for sustainable development and good governance, provided for in Council Regulation (EC) No 732/2008 applying a scheme of generalised tariff preferences for the period from 1 January 2009 to 31 December 2011.

### HM Treasury

(30558)  
9033/09  
COM(09) 178

Commission Communication on the introduction of the euro in Slovakia.

(30561)  
9045/09  
COM(09) 179

Commission Report in accordance with Article 8 of Council Directive 2003/49/EC on a common system of taxation applicable to interest and royalty payments made between associated companies of different Member States.

# Formal minutes

---

**Wednesday 13 May 2009**

Members present:

Michael Connarty, in the Chair

Mr Adrian Bailey  
Mr David S Borrow  
Mr William Cash  
Jim Dobbin

Keith Hill  
Kelvin Hopkins  
Angus Robertson  
Mr Anthony Steen

## **1. Scrutiny of Documents**

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

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

Paragraphs 1.1 to 5.18 read and agreed to.

Paragraph 5.19 read, amended and agreed to.

Paragraphs 6.1 to 11 read and agreed to.

*Resolved*, That the Report, be the Nineteenth Report of the Committee to the House.

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

[Adjourned till Wednesday 3 June at 9.30 am.]

## 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](http://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*)