



House of Commons
European Scrutiny Committee

**Twenty-second Report
of Session 2008–09**

**Documents considered by the Committee on 17 June 2009,
including the following recommendations for debate:**

Waste electrical and electronic equipment

Preliminary Draft Budget 2010

Report, together with formal minutes

*Ordered by The House of Commons
to be printed 17 June 2009*

Notes

Numbering of documents

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

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

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

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

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

Abbreviations used in the headnotes and footnotes

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

Euros

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

Further information

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

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

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Contents

Report			<i>Page</i>
Documents for debate			
1	BERR	(30283) Waste electrical and electronic equipment	3
2	HMT	(30692) Preliminary Draft Budget 2010	7
		Annex 1	16
		Annex 2: Glossary	18
		Annex 3: 2010 Preliminary Draft Budget documents	20
Documents not cleared			
3	HO	(30103) Critical Infrastructure Warning Network	21
Documents cleared			
4	DECC	(30232) Safety of nuclear installations	25
		Annex 1	29
5	DEFRA	(30271) Petrol vapour recovery at filling stations	31
6	DFID	(30666) EC development assistance and non-state actors	34
		Annex 1	39
7	FCO	(30686) CFSP: EU support for the Democratic Republic of Congo	41
8	HMT	(30613) Taxation	47
9	MOD	(30653) European Defence Agency activity in 2009	50
Documents not raising questions of sufficient legal or political importance to warrant a substantive report to the House			
10		List of documents	59
Formal minutes			61
Standing order and membership			62

1 Waste electrical and electronic equipment

(30283) Draft Directive on waste electrical and electronic equipment
 17367/08
 + ADDs 1–2
 COM(08) 810

<i>Legal base</i>	Article 175EC; co-decision; QMV
<i>Document originated</i>	3 December 2008
<i>Deposited in Parliament</i>	18 December 2008
<i>Department</i>	Business, Enterprise and Regulatory Reform
<i>Basis of consideration</i>	EM of 15 January 2009 and Minister's letter of 3 June 2009
<i>Previous Committee Report</i>	None, but see footnote 5
<i>To be discussed in Council</i>	See para 1.9 below
<i>Committee's assessment</i>	Politically important
<i>Committee's decision</i>	For debate in European Committee C

Background

1.1 Waste from electrical and electronic equipment (WEEE) was identified in the Community's Fifth Environmental Action Programme¹ as one of the target areas for prevention, recovery and safe disposal because such equipment presents a number of problems. In particular, its components tend to include various hazardous materials;² a large proportion is landfilled, incinerated or recovered without any pre-treatment: and the decreasing life-span of much of the equipment has led to a rapid growth of WEEE, compared with municipal waste in general. This led the Community to adopt in 2002, after considerable discussion (dealt with at some length by our predecessors), two separate, but related measures. One (Directive 2002/95/EC)³ sought to restrict the use of certain of these hazardous substances in electrical and electronic equipment, whilst the other (Directive 2002/96/EC)⁴ established procedures to reduce the amount of resultant waste and to increase the level of recycling and recovery.

1.2 The Commission has now brought forward two further proposals, which would recast each of these measures. We have recently reported⁵ on the proposal relating to the level of hazardous substances in electrical and electronic equipment, the current document being concerned with the changes proposed to Directive 2002/96/EC.

1 OJ No. C 138, 17.5.93.

2 Such as heavy metals; halogenated substances (CFCs); polychlorinated biphenyls (PCBs); polyvinyl chloride (PVC); brominated flame retardants; and asbestos and arsenic.

3 OJ No. L 37, 13.2.03, p.24.

4 OJ No. L 37, 13.2.03, p.19.

5 (30284) 17333/08: see HC 19–xix (2008–09), chapter 2 (10 June 2009).

The current document

1.3 In order to reduce the amount of hazardous waste from electrical equipment,⁶ and to encourage its recycling and recovery, Directive 2002/96/EC requires producers to take *financial responsibility* for the waste management of their products (thereby creating an economic incentive to adapt product design to the prerequisites of sound waste management); to ensure the *separate collection* of WEEE through appropriate systems; to set up systems for the *improved treatment and reuse/recycling* of WEEE; and to provide *adequate information* to consumers about the systems and their role in it.

1.4 More specifically:

- Member States have to ensure that systems are set up so that final holders and distributors can return waste from private households free of charge;
- Member States must aim to achieve by 31 December 2005 an annual collection target from households of 4 kg per head, with a compulsory target being set in due course;
- producers are required to set up treatment systems of a specified standard using authorised recyclers and treatment operators;
- reuse, recycling and recovery targets, ranging from 70%-80%, for certain categories of electrical waste have to be achieved by 31 December 2005;
- producers are required to meet, within five years of the Directive coming into force, the costs of collecting electrical waste from central collection points, and the treatment, recovery and environmentally-sound disposal of end-of-life equipment from households;
- Member States are required to ensure that the public is informed about collection systems and their role in contributing to the recovery of WEEE; and
- producers are required to provide information to treatment facilities and recyclers to identify the components and materials and the location of dangerous substances within the equipment.

1.5 However, the Commission says that application of the present Directive has given rise to a number of major problems, notably a lack of clarity in the products covered by it; the fact that less than half the quantity collected is treated appropriately; the fact that the flat rate 4kg per inhabitant collection target for private households does not reflect Member States' individual circumstances; the lack of any detailed enforcement requirements; and varying producer registration requirements across Member States. Consequently, although the current proposal is seeking essentially to recast the Directive, and retains many of the existing provisions, it would make a number of changes. Thus:

⁶ Defined for this purpose as large and small household appliances; IT and telecommunications equipment; consumer and lighting equipment; electrical and electronic goods; toys; certain medical equipment systems; monitoring and control instruments; and automatic dispensers.

- the minimum scope of WEEE would be defined in the Restriction of Hazardous Substances Directive rather than in the WEEE Directive itself;
- the collection rates for WEEE would in future be expressed as a minimum of 65% of sales (by average weight) of electrical and electronic equipment placed on the Member State's market in the two preceding years:⁷ the new target (which the Commission would re-examine no later than December 2012) would be a combination of WEEE from private households, non-household sources and items identified as suitable for reuse, and would have to be achieved annually from 2016;
- the current obligations on producers to finance the collection of WEEE disposed of via the established network of facilities obligations would be extended to the collection of WEEE from private households;
- the targets for the recovery, reuse or recycled targets for each of category of equipment covered by the Directive would have to be increased by 5 percentage points by 2011, and would include the re-use of whole appliances and medical devices;
- the registration requirements would be changed to ensure that all Member States' registers of producers are harmonised to allow exchanges of information between them, including the quantities of electrical and electronic equipment placed on the market;
- minimum monitoring requirements would be introduced for the shipment of WEEE to distinguish between used electrical and electronic equipment (ie items suitable for reuse) and WEEE (ie items which require treatment and environmentally sound disposal), and the requirements would include testing and appropriate markings on the equipment;

1.6 The Commission considers that the re-cast will improve the efficiency of the WEEE Directive across Member States, notably by

- stimulating proper treatment of all WEEE arising outside the domestic waste stream;
- generating additional benefits from innovation and exports, with greater investment in recycling technologies in an expanding export market, as well as reductions in costs and new markets for treated materials;
- increasing employment in treatment sector across Europe high tech jobs and lower skilled sectors.

It has, however, acknowledged that the financial obligations of producers would increase as higher levels of WEEE are collected and treated under the new Directive, but it believes that, as a result of harmonisation between Member States' registers of producers, associated

⁷ For example if a 100 tonnes is placed on the market in 2010 the member state must collect, treat and reprocess 65 tonnes in 2012.

costs would be reduced, with SMEs operating across more than one Member State enjoying the biggest proportional benefit.

The Government's view

1.7 In his Explanatory Memorandum of 15 January 2009, the Economic and Business Minister at the Department for Business, Enterprise and Regulatory Reform (Mr Ian Pearson) said that the Government supports the underlying aims of Directive 2002/96/EC to reduce the environmental impact of WEEE, though he commented that the proposed change in collection rates would represent a major and significant change from the current requirement on Member State to collect a minimum of 4kgs, of separately collected WEEE from private households, per head of population. He also noted that stakeholders have called for more consistency in the implementation of the Directive across Member States, but have raised concerns over the possible cost of developing a practical solution.

1.8 The Minister said that a stakeholder consultation exercise would be conducted in the UK during 2009, and the results used to inform the UK's negotiation position. He also said that an Impact Assessment would be prepared and forwarded with a supplementary Explanatory Memorandum as soon as possible, and we therefore decided to await this before considering the proposal further.

Minister's letter of 3 June 2009

1.9 We have now received from the Minister a letter of 3 June 2009, enclosing the promised Impact Assessment. He says that the Working Group discussions have begun, but are unlikely to progress beyond a first examination of the text under the Czech Republic's Presidency. However, he expects the Swedish Presidency to progress the portfolio in the second half of the year. In the meantime, he says that the initial discussions seem to indicate that, whilst other Member States support the principles behind the recast, there are some general concerns on its interpretation and the practicalities of implementation. These include the extension of producer responsibility to finance all costs of collection; changes in the definition of "producer"; minimum targets for collection by member states; and the harmonisation of national registers of producers.

1.10 So far as the UK is concerned, he expects the main benefits from the proposal to be a reduction in carbon dioxide emissions from increases in the separate collection, treatment, recycling and recovery of WEEE, but considers that the proposed separate collection target for WEEE may be ambitious in relation to the current situation within the UK. He also says that there are issues in relation to the proposals on producer financing (in that these appear in effect to require producers as a group to finance the operations of those who may not be complying with the terms of the existing Directive), and how they compare, in terms of efficiency and effectiveness, with more effective monitoring and enforcement to achieve the greater separate collection and recycling of WEEE in the future. More specifically, he suggests that the annualised cost of the proposals, over and above the implementation of the Directive 2002/06/EC as it currently stands, would be some £37 million, whereas the corresponding benefits would be only around £11 million.

Conclusion

1.11 As we have noted, the proposals which led to the adoption of Directive 2002/06/EC were the subject of considerable discussion and debate, and, although the current document is presented as a re-cast of that measure, it is clear that it too gives rise to a number of difficult issues. These include the apparent disparity between the anticipated costs and benefits within the UK; the practicality of achieving the separate collection targets proposed for WEEE; and the justification for placing an additional financial burden on producers. Consequently, although the Minister has said that he will keep us informed of developments, we believe that, for the reason outlined above, the proposals raise a number of issues which should be considered further, and we are therefore recommending them for debate in European Committee C.

2 Preliminary Draft Budget 2010

(30692)	Preliminary Draft General Budget of the European Communities for the financial year 2010
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<i>Legal base</i>	Article 272 EC; QMV; the special role of the European Parliament in relation to the adoption of the Budget is set out in Article 272
<i>Department</i>	HM Treasury
<i>Basis of consideration</i>	EM of 11 June 2009
<i>Previous Committee Report</i>	None
<i>To be discussed in Council</i>	10 July 2009
<i>Committee's assessment</i>	Politically important
<i>Committee's decision</i>	For debate in European Committee

Background

2.1 The Commission's Preliminary Draft Budget (PDB) is the first stage in the Community's *annual budgetary procedure*. The 2010 PDB will form the basis for negotiations between the two parts of the Budgetary Authority — the Council and the European Parliament — to agree the 2010 Budget which is expected to be adopted towards the end of December 2009.

2.2 The PDB sets out the Commission's proposals for Community expenditure in 2010, together with bids for the other Community institutions, such as the European Parliament. On the basis of the PDB, the Budget Council will establish a Draft Budget on 10 July 2009 to be forwarded to the European Parliament for its first reading some time in October 2009. The Draft Budget is expected to have its Council second reading in November 2009.

and, after conciliation if necessary, its European Parliament second reading in mid-December 2009, prior to final adoption.

2.3 Although the official texts are not yet deposited, the Economic Secretary to the Treasury (Ian Pearson) has submitted a helpful Explanatory Memorandum on the PDB. In order to provide an opportunity for the House to consider the PDB as early as possible, we have relied heavily upon that Explanatory Memorandum. As in previous years, we are annexing to this chapter tables derived from the Explanatory Memorandum.⁸ We also annex a glossary of terms used in relation to the Community's budget provided to us by the Minister with his Explanatory Memorandum — a term in italics the first time it appears in this chapter will be found in Annex 2.

The document

2.4 Although the Budget Council and the European Parliament set the budget for the following year, each year's PDB is constrained by the *Financial Perspective*, which forms part of the *Inter-Institutional Agreement* of 2006 between the European Parliament, the Commission and the Council. The Financial Perspective for the years 2007–13 sets out annual expenditure ceilings for five broad expenditure categories and a sixth temporary one related to the accession of Bulgaria and Romania. This year's PDB is the fourth under the current Financial Perspective.

2.5 The PDB is presented in the *Activity-Based Budgeting* format. It consists of a General Statement of Revenue and the draft estimates of required appropriations for the nine separate Community institutions (European Parliament, Council, Commission, Court of Justice, Court of Auditors, Economic and Social Committee, Committee of the Regions, European Ombudsman, European Data Protection Supervisor). In addition, the Commission publishes a number of Working Documents alongside the PDB, including a document containing the *Activity Statements* and a document containing *Financial Statements*.

2.6 The activity statements present specific objectives, planned outputs, and performance measures at the level of individual budget lines as well as higher-level activity areas, in line with activity-based budgeting. Negotiations on the 2010 budget will be conducted on the basis of activity-based budgeting documentation. The PDB also presents, for the first time, a Budget Memorandum, which provides an overview of the main achievements which have been or will be achieved by the Budget. The budget memorandum is organised around the four priority areas of the Lisbon Strategy⁹ and is based on information from activity statements.¹⁰

2.7 The European Council of 20 March 2009 agreed an additional €5,000 million (£4,365 million) package to support energy and broadband infrastructure projects as part of the wider European Economic Recovery Plan.¹¹ Agreement included financing €2,600 million

8 In the tables and in the following paragraphs € figures are converted at a 31 May 2009 rate of €1= £0.8729 rounded to the nearest million.

9 The priority areas are investing more in knowledge and innovation, unlocking business potential, especially of SMEs, increasing employment opportunities for priority categories and developing a Community energy policy.

10 A list of all the PDB documents is at Annex 3.

11 (30213) 16097/08: see HC 19-i (2008–09), chapter 4 (10 December 2008) and HC Deb, 20 January 2009, cols.626–653.

(£2,270 million) of *commitment appropriations* in 2009. Financing the remaining €2,400 million (£2,095 million) to be committed in 2010 will be discussed and decided on in the context of the 2010 Budget negotiations. The 2009 Budget therefore includes commitment and *payment appropriations* for the European Economic Recovery Plan, while the commitment appropriations for 2010 are not yet entered in the PDB. This is acknowledged by the Commission in the presentation of the PDB and the comparisons made with the 2009 Budget.

Overview and summary of the figures

2.8 The Commission's Annual Policy Strategy for 2010¹² highlighted the effect of the economic crisis on citizens and businesses and stressed the importance of Community action towards building the conditions for recovery. Consequently, the main focus of the 2010 PDB is the role of the Budget in relation to the reactivation of economic activity in the Community and it is described by the Commission as being “an instrument for economic recovery”.¹³

2.9 For commitment appropriations the 2010 PDB proposes a total of €138,564 million (£120,953 million). This is an increase of 1.5% over 2009 and leaves a margin of €1,754 million (£1,531 million) below the Financial Perspective ceiling. For payment appropriations the 2010 PDB proposes a total of €122,322 million (£106,775 million). This is an increase of 5.3% compared with 2009 and leaves a margin of €12,162 million (£10,616 million) below the Financial Perspective ceiling. Payment appropriations proposed represent 1.04% of Community Gross National Income compared to the 1.24% ceiling in the *Own Resources Decision* about the financing of Community expenditure.

2.10 *Compulsory expenditure* makes up €45,248 million (£39,497 million) of total commitment appropriations. *Non-compulsory expenditure* makes up €93,316 million (£81,456 million) of total commitment appropriations. The figures for compulsory expenditure payment appropriations are €45,152 million (£39,413 million). For non-compulsory expenditure payment appropriations the figures are €77,170 million (£67,362 million). There is overall increase over 2009 in compulsory expenditure of 5.7% for commitment appropriations and 5.5% for payment appropriations, and for non-compulsory expenditure an overall decrease of 0.4% for commitment appropriations and an increase of 5.2% for payment appropriations.

The individual expenditure headings

Heading 1: Sustainable growth

2.11 Overall, proposed expenditure for this heading is €62,152 million (£54,252 million) for commitment appropriations and €47,365 million (£41,345 million) for payment appropriations, leaving a margin of €130 million (£113 million) under the Financial Perspective ceiling for commitment appropriations.

12 (30460) 6852/09: see HC 19–xiii (2008–09), chapter 9 (1 April 2009).

13 Document 1, Expenditure analysis by multiannual financial framework headings, p3.

Sub-Heading 1a (Competitiveness for Growth and Employment)

2.12 The Commission proposes €12,769 million (£11,146 million) for commitment appropriations and €10,982 million (£9,586 million) for payment appropriations. Compared with the 2009 Budget this represents decreases of €1,005 million (£877 million), or -7.3%, in commitment appropriations and €124 million (£108 million), or -1.1%, in payment appropriations.

2.13 The change shown in commitment appropriation levels is in part accounted for by inclusion in the 2009 Budget of €2,000 million (£1,746 million) for energy projects to aid economic recovery (as part of the European Economic Recovery Plan) and because European Economic Recovery Plan commitment appropriations are not yet factored into the 2010 PDB. Financing of the remaining European Economic Recovery Plan commitment appropriations for 2010 will be decided towards the end of 2009 as part of the wider 2010 budget negotiation. If the European Economic Recovery Plan is excluded commitment appropriations increase by 8.4% and payment appropriations decrease by 6.3%, compared with 2009.

2.14 The reduction in payment appropriations is largely accounted for by:

- phasing out of the 6th Framework Programme;
- 7th Framework Programme — a €479 million (£418 million) or 6.9% decrease;
- Galileo — a €306 million (£267 million) or 40.2% decrease;
- Competitiveness and Innovation Framework Programme — a €117 million (£102 million) or 24.2% decrease.

Sub-Heading 1b (Cohesion for Growth and Employment)

2.15 The Commission proposes commitment appropriations of €49,382 million (£43,106 million) and payment appropriations of €36,382 million (£31,758 million). These represent increases of €955 million (£834 million), or 2.0%, in commitment appropriations and €1,419 million (£1,239 million) in payment appropriations, or 4.1%, relative to the 2009 Budget. The proposed increase in commitment appropriations is largely due to a €894 million (£780 million), or 9.6%, increase in proposed expenditure from the Cohesion Fund.

Heading 2 (Preservation and Management of Natural Resources)

2.16 The Commission proposes commitment appropriations of €59,004 million (£51,505 million) and payment appropriations of €58,075 million (£50,694 million). These represent respective increases of €2,282 million (£1,992 million), or 4.0%, and €5,509 million (£4,809 million), or 10.5%, above 2009 levels. This leaves a margin of €1,109 million (£968 million) under the Financial Perspective ceiling for commitment appropriations.

2.17 The increases in commitment appropriations are largely accounted for by a €2,618 million (£2,285 million) or 6.4% increase in market related expenditure and direct aids. The Commission attributes this increase largely to the phasing-in of direct aids to the new Member States and an increase in market related expenditure. The increases in payment

appropriations are largely accounted for by an increase of €3,203 million (£2,796 million) or 31.3% in rural development and an increase of €2,547 million (£2,247 million) or 6.2% in market related expenditure and direct aids. Again the PDB does not include commitment appropriations for the European Economic Recovery Plan, which will be decided on in the course of negotiations.

Heading 3 (Citizenship, Freedom, Security and Justice)

2.18 The Commission proposes €1,629 million (£1,422 million) for commitment appropriations and €1,360 million (£1,187 million) for payment appropriations. This represents increases in commitment appropriations of €103 million (£90 million), or 6.7%, and in payment appropriations of €52 million (£45 million) or 3.9%, relative to 2009 levels, and leaves a margin of €64 million (£56 million) under the Financial Perspective ceiling for commitment appropriations.

Sub-Heading 3a (Freedom, Security and Justice)

2.19 The Commission proposes commitment appropriations of €980 million (£855 million) and payment appropriations of €720 million (£628 million). These represent increases to commitment appropriations of €116 million (£101 million), or 13.5%, and to payment appropriations of €103 million (£90 million), or 16.6%, relative to 2009 levels. This leaves a margin below the Financial Perspective ceiling of €45 million (£39 million) for commitment appropriations.

2.20 The increases in commitment and payment appropriations include:

- “Solidarity and management of migration flows” — a €30 million (£26 million), or 6.3%, increase in commitment appropriations and a €44 million (£38 million), or 14.8%, increase in payment appropriations; and
- “Decentralised agencies” — a €95 million (£83million), or 68.4%, increase in commitment appropriations and a €69 million (£60 million), or 49.8%, increase in payment appropriations. This increase is largely due to the allocation of €80 million (£70 million) of non-differentiated expenditure to fund EUROPOL, as 2010 is the first year that this is to be financed from the Budget.

Sub-Heading 3b (Citizenship)

2.21 The Commission proposes commitment appropriations of €649 million (£567 million) and payment appropriations of €640 million (£599 million). These represent overall decreases of €13 million (£11 million), or -2%, for commitment appropriations, and €51 million (£45 million), or -7.4%, for payment appropriations, relative to 2009 levels. This leaves a margin below the Financial Perspective ceiling for commitment appropriations of €19 million (£17 million).

2.22 The decrease in commitment and payment appropriations is accounted for largely by the absence of specific allocated resources for the European Union Solidarity Fund, which as a contingency instrument is provisioned as needs arise. In addition, for “other actions and programmes” there is a reduction of €8 million (£7 million) or 32.7% in commitment

appropriations and a decrease of €11 million (£10 million) or 12.9% in payment appropriations and a reduction of €15 million (£13 million) for payments under “public health and consumer protection programme”.

Heading 4 (The EU as a Global Partner)

2.23 The Commission proposes commitment appropriations of €7,921 million (£6,914 million) and payment appropriations of €7,665 million (£6,691 million). These represent decreases in commitment appropriations of €183 million (£160 million), or -2.3%, and in payment appropriations of €660 million (£576 million), or -7.9%, relative to 2009 levels and leaves a margin of €221 million (£193 million) below the Financial Perspective ceiling for commitment appropriations.

2.24 The reduction in commitment appropriations is largely accounted for by the inclusion in the 2009 Budget of appropriations for the Food Facility and by a €333 million (£291 million) or -59.7% reduction in “Other actions and programmes — Development and relations with ACP States”. In addition, decreases of €67 million (£58 million) for the “European Neighbourhood and Partnership Instrument” and €57 million (£50 million) for the “Instrument for pre-accession assistance — Enlargement” contribute to the overall fall.

2.25 The significant reduction in payment appropriations is largely accounted for through a €516 million (£450 million) or -22.4% decrease to the “Instrument for Pre-Accession”. Other decreases, of €103 million (£90 million) or 18.6% for “Other actions and programmes — Development and relations with ACP States” and of €87 million (£76 million) for the “European Neighbourhood and Partnership Instrument” also contribute to the overall fall.

Heading 5 (Administration)

2.26 The Commission proposes commitment and payment appropriations of €7,858 million (£6,859 million), representing an increase of €163 million (£142 million), or 2.1% in both commitment and payment appropriations, above 2009 levels. This leaves a margin for commitment appropriations of €230 million (£201 million) below the Financial Perspective ceiling.

2.27 The increase in commitment and payment appropriations is accounted for by a €58 million (£51 million), or 5.1%, increase in pensions over all the institutions, a €68 million (£59 million) or 2.4% increase in the budgets of “other institutions” and a €32 million (£28 million) or 0.9% increase in commitment and payment appropriations for the Commission. In addition, the Commission attributes an increase in the budget of the European Schools of €6 million (£5 million) to enlarged registers.

Heading 6 (Compensation)

2.28 The PDB has no allocation for temporary compensation measures for new Member States — the last year for these was 2009. This represents a reduction to the overall Budget of €209 million (£182 million) for both commitment and payment appropriations.

The Government's view

2.29 The Minister says that as a net contributor to the Budget it is in the UK's interests to control its growth, whilst working to enhance efficiency in the use of Community resources. He continues that the Government will work with other Member States to maintain budget discipline and subject all areas of spending to rigorous scrutiny. However the Minister adds that it should be noted that for multiannual programmes agreed under co-decision procedure, including in relation to agriculture and structural funds, the Budgetary Authority is not able to agree significant changes to the levels of expenditure established in the financial envelopes in the relevant legislation.

2.30 The Minister then sets out the overall negotiating stance, telling us that the Government's primary aim in the forthcoming negotiations will be to respect agreed and established budgetary principles. It will, in particular, wish to ensure that:

- spending delivers genuine value for money;
- global appropriations for payments are based on realistic implementation forecasts — to prevent the emergence of a large budget surplus; and
- Financial Perspective ceilings are respected by ensuring adequate margins to absorb additional pressures in relation to the European Economic Recovery Plan and unforeseen contingencies.

He continues that it is of concern that the Commission has presented a PDB which has insufficient margins to accommodate known and anticipated further expenditure requirements, including the remaining €2,400 million (£2,095 million) part of the European Economic Recovery Plan package to be financed in 2010 and several expected external action requirements in Palestine, Kosovo and other areas. The Government will seek to address the Commission's unrealistic budgeting and will argue for a clear resolution to financing of the European Economic Recovery Plan and other expected expenditure needs, that maintains budget discipline.

2.31 The Minister then gives an outline of the Government's initial intended approach towards each heading or sub-heading of the PDB follows. First, in relation to Heading 1a (Competitiveness for Growth and Employment) he says that the Government:

- remains fully committed to the Lisbon Strategy and supports much of the spending under this sub-heading, such as that on research and development, where Community spending can add real value;
- will continue to press for further justification on some of the levels of payment appropriations proposed and suggest appropriate reductions to reflect anticipated implementation levels and absorption capacity;
- will seek to agree a larger margin under the commitment appropriations ceiling to help accommodate the needs of financing the remaining portion of the European Economic Recovery Plan €5bn package to be committed in 2010.

2.32 On Heading 1b (Cohesion for Growth and Employment) the Minister tells us, with regard to the Structural and Cohesion Funds, where an increase of 4.1% has been proposed

for payment appropriations, the Government will seek to achieve realistic levels of payment appropriations, that take into account genuine implementation capacity.

2.33 Turning to Heading 2 (Preservation and Management of Natural resources) the Minister continues that the Government:

- considers that interventions in agricultural markets and direct aids represent poor value for money for Community taxpayers;
- intends to question the Commission's proposed increases in these areas, particularly in light of absorption capacity; and
- intends to scrutinise the remaining increases closely, although it is recognised that much of the increase in direct payments has already been agreed, as is the case for direct payments related to the phasing in of the new Member States.

2.34 In relation to Heading 3 (Citizenship, Freedom, Security and Justice) the Minister says that the Government:

- is supportive of appropriate Community expenditure in relation to shared challenges relating to migration, health, crime and terrorism;
- will be, however, looking for appropriate reductions to the commitment and payment appropriation levels proposed to ensure that the margin under the Financial Perspective ceiling is sufficient to meet any unforeseen future expenditures and that payment appropriation levels more accurately reflect absorption capacity; and
- will scrutinise closely the amounts proposed for EUROPOL.

2.35 As for Heading 4 (The EU as a Global Player) the Minister tells us that the Government:

- supports appropriate expenditure under this heading believing that Community external actions can add value to Member States' independent efforts to support development, prosperity and stability in third countries and to address regional and global challenges;
- will continue to look carefully at payment appropriations absorption capacity and priorities under this heading to ensure that financing proposals are realistic; and
- will press for a sufficient margin to be maintained under the Financial Perspective ceiling to meet possible future contingencies and the expected further expenditure requirements for Kosovo, Palestine and Georgia, as highlighted in the PDB.

2.36 Finally, on Heading 5 (Administration), the Minister says that the Government:

- will argue strongly for enhanced efficiency and value for money from the administration expenditure of Community institutions;

- although it welcomes the reduction in the proposed increase compared to previous years, it intends to scrutinise this increase closely and question whether or not it might be reduced further; and
- intends to work with like-minded Member States to closely scrutinise and propose reductions to the allocations for Community agencies across all headings.

2.37 Turning from the detailed comment the Minister concludes his comments by telling us that:

- the UK contribution to the 2010 PDB is expected to be 14.1% pre-abatement, 10.7% post-abatement;
- the actual net financial cost to the UK of the 2010 Budget will depend not only on the size of the Budget finally adopted, but also on the balance between different spending programmes within it; and
- this determines the level of UK receipts and subsequently affects the size of the UK's abatement in the following year.

Conclusion

2.38 As always the Community budget has significant financial and policy implications and the UK has a substantial interest and role in scrutinising the Preliminary Draft Budget (PDB), not least because of the large sums involved and the UK's position as a large net contributor. As the Minister says, it is in the UK's interest to restrict budget growth and ensure efficient use of resources. As is customary, we recommend that the PDB be debated in European Committee. The debate should take place before the Budget Council on 10 July 2009.

2.39 As in previous years, we have found it necessary to report to the House before the official texts have been deposited. We have therefore relied heavily upon the Explanatory Memorandum from the Minister. But we understand the main official texts will be available in time for the debate.

2.40 In the debate Members may wish to examine particularly the Government's objectives for the forthcoming budget negotiations, as outlined by the Minister, the consequences for other policies of the commitment to expenditure for the European Economic Recovery Plan and the continuing issue of absorption and implementation capacity and its relationship to budgetary surpluses.

ANNEX 1

Table 1a: Summary of 2010 PDB Proposals – EUR million

Heading	Budget 2009		PDB 2010		Difference 2010/2009		% Difference 2010/2009	
	CA(1)	PA(2)	CA	PA	CA	PA	CA	PA
1. Sustainable Growth	62,202	46,070	62,152	47,365	-50	1,295	-0.1%	2.8%
1a. Competitiveness for Growth and Employment	13,775	11,106	12,769	10,982	-1,005	-124	-7.3%	-1.1%
1b. Cohesion for Growth and Employment	48,427	34,963	49,382	36,382	955	1,419	2.0%	4.1%
2. Preservation and Management of Natural Resources	56,721	52,566	59,004	58,075	2,282	5,509	4.0%	10.5%
of which: market related expenditure and direct payments	41,127	41,080	43,745	43,626	2,618	2,547	6.4%	6.2%
3. Citizenship, Freedom, Security and Justice	1,527	1,308	1,629	1,360	103	52	6.7%	3.9%
3a. Freedom, Security and Justice	864	617	980	720	116	103	13.5%	16.6%
3b. Citizenship	663	691	649	640	-13	-51	-2.0%	-7.4%
4. European Union as a Global Partner	8,104	8,324	7,921	7,665	-183	-660	-2.3%	-7.9%
5. Administration	7,695	7,695	7,858	7,858	163	163	2.1%	2.1%
6. Compensation	209	209	—	—	-209	-209	—	—
TOTAL (3)	136,458	116,172	138,564	122,322	2,106	6,150	1.5%	5.3%
Margin			1,754	12,162				
Compulsory expenditure	42,799	42,784	45,248	45,152	2,448	2,368	5.7%	5.5%
Non-compulsory expenditure	93,658	73,388	93,316	77,170	-342	3,782	-0.4%	5.2%
Appropriations as % of GNI	1.18%	1.00%	1.18%	1.04%				

Notes

(1) CA = commitment appropriations

(2) PA = payment appropriations

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

Table 1b: Summary of 2010 PDB Proposals – GBP million

Heading	Budget 2009		PDB 2010		Difference 2010/2009		% Difference 2010/2009	
	CA(1)	PA(2)	CA	PA	CA	PA	CA	PA
1. Sustainable Growth	54,296	40,215	54,252	41,345	-44	1130	-0.1%	2.8%
1a. Competitiveness for Growth and Employment	12,024	9,694	11,146	9,586	-877	-108	-7.3%	-1.1%
1b. Cohesion for Growth and Employment	42,272	30,519	43,106	31,758	834	1,239	2.0%	4.1%
2. Preservation and Management of Natural Resources of which: market related expenditure and direct payments	49,512	45,885	51,505	50,694	1,992	4,809	4.0%	10.5%
	35,900	35,859	38,185	38,081	2,285	2,223	6.4%	6.2%
3. Citizenship, Freedom, Security and Justice	1,333	1,142	1,422	1,187	90	45	6.7%	3.9%
3a. Freedom, Security and Justice	754	539	855	628	101	90	13.5%	16.6%
3b. Citizenship	579	603	567	559	-11	-45	-2.0%	-7.4%
4. European Union as a Global Partner	7,074	7,266	6,914	6,691	-160	-576	-2.3%	-7.9%
5. Administration	6,717	6,717	6,859	6,859	142	142	2.1%	2.1%
6. Compensation	182	182	—	—	-182	-182	—	—
TOTAL (3)	119,114	101,407	120,953	106,775	1,838	5,368	1.5%	5.3%
Margin			1,531	10,616				
Compulsory expenditure	37,359	37,346	39,496	39,413	2,137	2,067	5.7%	5.5%
Non-compulsory expenditure	81,754	64,060	81,456	67,362	-299	3,301	-0.4%	5.2%
Appropriations as % of GNI	1.18%	1.00%	1.18%	1.04%				

Notes

(1) CA = commitment appropriations

(2) PA = payment appropriations

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

Annex 2: Glossary

Abatement

The UK's VAT-based contributions are abated according to a formula set out in the Own Resources Decision. Broadly this is equivalent to 66% of the difference between what the UK contributes to the EC Budget and the receipts which it gets, subject to the following points:

- the abatement applies only in respect of spending within the EU. Expenditure outside the EU (mainly aid) is excluded;
- the UK's contribution is calculated as if the budget were entirely financed by VAT;
- the abatement is deducted from the UK's VAT contribution a year in arrears.

Activity-Based Budgeting (ABB)

ABB was introduced in 2002 to improve decision-making by ensuring budget allocations more closely reflect pre-defined political priorities and objectives. Similar to Public Service Agreements in the UK, ABB requires the EC Budget to be based on a clear justification for intervention and an evaluation of past performance. It also requires SMART (Specific, Measurable, Achievable, Realistic and Time-bound) objectives and future performance targets that focus on delivering value for money for the EU taxpayer.

Activity Statements

The presentation of performance information for each area of activity of the European Union, providing the main elements justifying the level of resources requested by the Commission in the PDB. The statement includes details of the resources allocated to the activity, as well as associated objectives, indicators, outputs and outcomes.

The annual budget procedure

The Community's financial year runs from 1 January to 31 December. The rules governing decisions on the EC Budget are set out in Article 272 of the EC Treaty and in the Inter-Institutional Agreement. The timetable is as follows:

- establishment of the preliminary draft Budget by the Commission, normally in May;
- establishment of the draft Budget by the Council in late July;
- first reading by the Parliament in late October;
- second reading by the Council in mid-November; and
- second reading by the Parliament and adoption of the Budget in mid-December.

Commitment and Payment Appropriations

The budget distinguishes between appropriations for commitments and appropriations for payments. Commitment appropriations are the total cost of legal obligations that can be entered into during the current financial year, for activities that, in turn, will lead to payments in the current and future years. Payment appropriations are the amounts of money that are available to be spent during the year arising from commitments in the budget for the current or preceding years. Unused payment appropriations may, in exceptional circumstances, be carried forward into the following year.

Compulsory and Non-Compulsory expenditure

EC expenditure is regarded as either “compulsory” or “non-compulsory”. Compulsory expenditure is expenditure necessarily resulting from the Treaty or from acts adopted in accordance with the Treaty. It mainly includes agricultural guarantee expenditure, including stock depreciation. The Council has the final say in fixing its total.

The European Parliament has the final say in determining the amount and pattern of non-compulsory expenditure. The growth of this expenditure is governed by the “maximum rate of increase”. Article 272(9) of the EC Treaty provides a formula for determining this rate, unless the budgetary authority agrees an alternative figure. Under the Inter-Institutional Agreement the Council and Parliament agree to accept maximum rates implied by the Financial Perspective ceilings.

Financial Perspective

The Financial Perspective (FP) forms the framework for Community expenditure over a period of several years. The FP for 2007–2013 sets expenditure ceilings for six distinct expenditure headings (Sustainable Growth, Preservation and Management of Natural Resources, Citizenship, Freedom, Security and Justice, The European Union as a Global Partner, Administration, and Compensation), as well as global ceilings for commitments and payments. The Budgetary Authority (Council and European Parliament) is bound by these ceilings in the annual budget negotiations.

Financial Statement

The presentation of financial data including balance sheets, revenue and cash flow statements, or any supporting statement that is intended to communicate an entity’s financial position at a point in time and its results of operations for a period then ended.

Flexibility Instrument

The Flexibility Instrument was established under paragraph 24 of the 1999 Inter-Institutional Agreement, which allows for expenditure in any given budget year of up to €200 million above the FP ceilings established for one or more budget headings. Any portion of the Flexibility Instrument unused at the end of one year may be carried over for up to two subsequent years, but the Flexibility Instrument should not as a rule be used to cover the same needs two years running. The Flexibility Instrument is intended for extraordinary expenditure and may only be used after all possibilities for reallocating existing appropriations have been exhausted. Both arms of the Budgetary Authority must agree to a mobilisation of the Flexibility Instrument following a proposal from the Commission.

Inter-Institutional Agreement

The Inter-Institutional Agreement (IIA) is a politically and legally binding agreement that clarifies the EC’s budgetary procedure. Under the Treaty, the Council and the European Parliament have joint responsibility for deciding the EC Budget on the basis of proposals from the Commission. The IIA sets out the way in which the three institutions will exercise their responsibilities in accordance with the Treaty, and their respect for the revenue ceilings laid down in the Own Resources Decision.

Own Resources Decision

The existing arrangements for financing the EC Budget are set out in the Communities' Own Resources Decision (ORD). The current ORD was agreed in September 2000, entered into UK law in 2001 and took effect in 2002. It sets an own resources ceiling on the amount the Communities can raise from Member States in any one year. The ceiling is currently fixed at 1.24% of EU GNI for payments and 1.31% for commitments. As the Communities are not allowed to save or borrow, revenue must equal expenditure. Budget payments are therefore limited by the amount of Own Resources that can be called up from Member States.

The ORD lays down four sources of Community revenue, or “own resources”:

- Customs duties including those on agricultural products;
- Sugar levies;
- Contributions based on VAT; and
- GNI-based contributions.

Annex 3: 2010 Preliminary Draft Budget documents

SECTION 1 — Main documents of the Preliminary Draft Budget

- Document I (Expenditure analysis by Financial Framework headings)
- Document II (Expenditure analysis by Policy Area)
- Document IV (Figures by budget line)
- Document V (Financial Programming 2009–2013)

SECTION II — Working Documents related to the PDB

- Part I: Activity Statements of operational expenditure
- Part II: Commission Human Resources and administrative expenditure
- Part III: Bodies set up by the Communities and having legal personality
- Part IV: Application of the IIA as regards legal basis (PP/PA)
- Part V: Payment schedules
- Part VI: Budget implementation
- Part VII: General statement of revenue

SECTION III — 2010 Draft estimates for the institutions:

- Council
- European Court of Auditors
- European Economic and Social Committee
- Court of Justice
- Committee of the Regions
- European Ombudsman
- European Data Protection Supervisor

3 Critical Infrastructure Warning Network

(30103) 15041/08 + ADDs 1–2 COM(08) 676	Draft Council Decision on a Critical Infrastructure Warning Network (CIWIN)
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<i>Legal base</i>	Article 308 EC, Article 203 EAEC; consultation; unanimity
<i>Department</i>	Home Office
<i>Basis of consideration</i>	Minister’s letter of 7 May 2009
<i>Previous Committee Report</i>	HC 19–xiv (2008–09) chapter 8 (22 April 2009); HC 19–iii (2008–09) chapter 8 (14 January 2009), See also (28183) 16932/06 and (28184) 16933/06: HC 41–xv (2006–07), chapter 2 (21 March 2007); (27421) 7766/06 and (27542) 9586/1/06 REV1: HC 34–xxxiv (2005–06), chapter 14 (5 July 2006); (27052) 14910/05: HC 34–xxviii (2005–06), chapter 16 (10 May 2006), HC 34–xiv (2005–06), chapter 8 (11 January 2006); and (26072) 13979/04: HC 38–v (2004–05), chapter 5 (26 January 2005)
<i>To be discussed in Council</i>	No date set
<i>Committee’s assessment</i>	Legally and politically important
<i>Committee’s decision</i>	Not cleared; further information requested

Background

3.1 The draft Council Decision seeks to establish a Critical Infrastructure Warning Network (CIWIN). The CIWIN network is an electronic forum that would assist Member States through the exchange of information on shared threats, vulnerabilities and appropriate measures and strategies to mitigate risks related to the protection of critical infrastructure in their respective territories. Participation in and use of CIWIN is open to all Member States. Such participation is, however, conditional on the signature of a Memorandum of Understanding on the technical and security requirements applying to CIWIN and information on the sites connected to CIWIN.

3.2 When we last reported on this draft Council Decision on 22 April 2009, we noted the Parliamentary Under-Secretary of State at the Home Office’s (Admiral the Lord West of Spithead) assurance that the guidelines to be drafted by the Commission on the terms of use of CIWIN would amount to no more than a user manual and would not unduly enhance the Commission’s influence over CIWIN. But we were still not satisfied that a proposal that addressed terrorism and national security should be based on the EC Treaty. We were also concerned that using Article 308 of the EC Treaty as the legal base would increase the scope for this Article being employed in the future for areas which did not fall within “one of the objectives of the Community”, as required by that Article. We urged the

Minister to re-consider the legal base of this proposal. In the meantime we kept the document under scrutiny.

The Minister's letter of 7 May

3.3 The Minister wrote on 7 May in response to our report. In his letter he makes the following comments on the aim and content of the draft Decision:

“The policy background to the proposal is set out in the first paragraph of the Commission’s explanatory memorandum. As explained in that paragraph, the European Council of June 2004 asked the Commission to prepare an overall strategy to protect critical infrastructure. For these purposes, critical infrastructure is understood to mean infrastructure that is essential for the maintenance of health, safety and other vital services. If such infrastructure is put out of action and these services fail this will have a significant impact on the well being of the public covered by the services. [...]

“We consider that the correct description of the aim of both proposals for legal base purposes is the protection of critical infrastructure in order to protect the public served by that infrastructure. This is part of the Community’s more general civil protection objective (see Article 3(1)(u) EC Treaty).

“To achieve this aim, the CIWIN proposal will establish a network enabling Member States to exchange information on threats and best practises to mitigate the risks related to critical infrastructure. ‘Threat’ is defined as meaning ‘any indication, circumstance, or event with the potential to disrupt or destroy critical infrastructure, or any element thereof’. This is not limited to terrorist threats although it is clear that terrorist threats will be the principal focus. CIWIN is a strand of EPCIP, which is an all hazards programme of Critical Infrastructure Protection measures. As the ESC report points out, CIWIN is intended as a ‘tool for the exchange of information [that] would increase *the security of citizens*’ as a consequence of sharing information — this information will cover a range of threats.

3.4 The Minister addresses the legal base:

“Both the aim and content of the CIWIN proposal, as described above, in my view justify the use of Article 308 EC Treaty as the legal base. This is not contradicted by the fact that the proposal focuses in particular on the terrorist threat to critical infrastructure. A Community measure pursuing a Community objective may address terrorist issues insofar as necessary in order to achieve that objective. In this regard I would point out that other Community measures have addressed the threat from terrorism. Within the framework of the Community’s common transport policy, for example, Article 80(2) EC Treaty has been used to adopt measures on civil aviation security (Regulation 2320/2002) and on enhancing ship and port facility security (Regulation 725/2004). Both of these measures pursue the Community’s transport objectives by means of putting in place rules intended to protect against unlawful interference, primarily terrorism. And the European Court of Justice has recently confirmed in *Kadi* (C-415/05 P) that Article 308 EC Treaty may be used in

combination with Articles 60 and 301 EC Treaty to impose financial sanctions on suspected terrorists.

“The Committee refers to the fact that CIWIN will in part be funded by the EC programme entitled ‘Prevention, Preparedness and Consequence Management of Terrorism and other Security Related Risks’. This programme was established by Council Decision 2007/124 on the basis of Article 308 EC Treaty (and the corresponding Article in the Euratom Treaty, Article 203). Article 1 of the Decision says that the programme is being established ‘to contribute to supporting Member States’ efforts to prevent, prepare for, and to protect people and critical infrastructure against risks linked with terrorist attacks and other security related risks’. We do not consider that the use of funds from this programme in any way undermines the conclusion that the CIWIN proposal can properly be adopted on the basis of Article 308 EC Treaty. The use of Community funds from a programme established under Article 308 EC Treaty to fund CIWIN is entirely consistent with the use of Article 308 EC Treaty to establish CIWIN itself.

“The threat posed by terrorism is a factor that needs to be taken into account in a range of EC and EU policy areas. Collectively terrorist related actions taken in these policy areas can be described as the EU’s fight against terrorism. Given the EU’s police and judicial co-operation objective set out in Title VI EU Treaty it is likely that many of the terrorist related actions will be adopted under Title VI EU Treaty legal bases. We do not consider, however, that Title VI EU Treaty will be the appropriate legal base for all such actions — EC Treaty legal bases will have to be used for actions adopted in pursuance of Community objectives, such as the common transport policy or civil protection (as you will know, the European Court of Justice confirmed in the environmental penalties case (C-176/03) that Article 47 EU Treaty requires that if a first pillar legal base is available for adopting legislative provisions it must be used in preference to a third pillar legal base). In accordance with Article 3 EU Treaty, the single institutional framework that serves the Union should ensure the consistency of the actions taken in these areas in so far as they relate to terrorism.

“I agree that a misuse of Article 308 could set an unwelcome precedent. In this case however, for the reasons set out above I am content that Article 308 is the appropriate legal base.”

Conclusion

3.5 We are grateful to the Minister for his response to our last Report. It clarifies both the policy and the legal context in which he places the draft proposal. In essence the Minister says that the correct description of the aim of the proposal for the purpose of legal base is “the protection of critical infrastructure in order to protect the public served by that infrastructure”, which falls within the Community’s civil protection objective. This is so, even though the “principal focus” of the proposal is protection from terrorist threats.

3.6 He helpfully directs our attention to two other Community instruments that address the threat of terrorism — Regulation (EC/2320/2002) on establishing common rules in the field of civil aviation security and Regulation (EC/725/2004) on enhancing

ship and port facility security — both of which have the common transport policy as their legal base. We are grateful for this reference. We note, however, that both contain a recital safeguarding Member State competence in the field of national security and measures which might be taken on the basis of Title VI TEU — police and judicial cooperation in criminal matters. For example, recital 5 of the Regulation on shipping security provides:

“Without prejudice to the rules of the Member States in the field of national security and measures which might be taken on the basis of Title VI of the Treaty on European Union, the security objective described in recital 2 should be achieved by adopting appropriate measures in the field of maritime transport policy...”

3.7 We see the force of the Minister’s arguments on legal base, and take note of the precedents to which he refers. In our view the overall aim of the proposal — to protect critical infrastructure principally from terrorist threats — is nonetheless one which overlaps with national security and counter-terrorism measures that could be taken by Member States under Title VI EU. As such it is similar to the Regulations on shipping and aviation security cited by the Minister. It would be logical, therefore, if a similar recital safeguarding Member State competence in the field of national security and Title VI EU were to be incorporated in this proposal. It would also go some way to addressing our concern that the extent of the Community’s competence in this sensitive field be properly delineated.

3.8 We look forward to the Minister’s response to our suggestion. In the meantime we keep the document under scrutiny.

4 Safety of nuclear installations

(30232) 16537/08 + ADDs 1–2 COM(08) 790	Draft Council Directive (Euratom) setting up a Community framework for nuclear safety
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<i>Legal base</i>	Articles 31 and 32 Euratom; consultation; QMV
<i>Department</i>	Energy and Climate Change
<i>Basis of consideration</i>	Minister’s letter of 15 June 2009
<i>Previous Committee Report</i>	HC 19–iii (2008–09), chapter 4 (14 January 2009)
<i>To be discussed in Council</i>	June 2009
<i>Committee’s assessment</i>	Legally and politically important
<i>Committee’s decision</i>	Cleared

Background

4.1 In January 2003, the Commission produced a legislative proposal¹⁴ on the safety of nuclear installations. This was based on the Nuclear Safety Convention (NSC) of the International Atomic Energy Agency (IAEA), and addressed three aspects of nuclear safety — the setting of minimum standards, independent verification of the actions of Member States. It was to be backed up by a verification system operated by the Commission, in addition to which Member States would have to submit an annual report to the Commission on the measures taken to implement the Directive.

4.2 In their Report of 10 July 2003, our predecessors noted that the Government had a number of concerns, relating to the Commission’s competence; to the proposed legal base; to the way in which certain of the obligations imposed by the proposal would apply in the UK; and to subsidiarity. It also doubted whether any further legislative action was justified, but said that the possibility of a non-binding instrument had found favour with a number of Member States, including the UK.

4.3 After various inconclusive discussions had taken place in Brussels, our predecessors were told that Council Conclusions were being drawn up which were likely to reaffirm the importance attached to nuclear safety, but to restrict, for the time being, the Commission’s ability to come back with further legislative proposals in this area. Despite this, the Commission produced in September 2004 a further legislative proposal,¹⁵ which it said took into account the views expressed by the European Parliament and the discussions within the Council.

4.4 However, as our predecessors noted in their Report of 20 October 2004, the Government believed that the new proposal “completely ignored” the Council’s

14 (24577) 8990/03: see HC 63–xxix (2002–03), chapter 8 (10 July 2003), HC 42–iii (2003–04), chapter 3 (17 December 2003). HC 42–xxiii (2003–04), chapter 4 (16 June 2004) and HC 19–iii (2008–09), chapter 4 (14 January 2009).

15 (25951) 12386/04: see HC 42–xxxiii (2003–04), chapter 7 (20 October 2004) and HC 19–iii (2008–09), chapter 4 (14 January 2009).

conclusions, and still appeared to give the Commission scope to interfere with national regulatory decisions, and to cover areas where existing arrangements were well established. The Government also continued to have serious doubts whether the proposal would add any value, and was concerned that, since the Commission would have to rely on experts from the Member States, this would undermine work within the IAEA to raise nuclear safety standards world-wide.

4.5 Although a significant number of Member States remained opposed to Community legislation in this field, our predecessors nevertheless felt that it would be prudent — as with the proposal put forward in January 2003 — to hold this latest document under scrutiny, whilst awaiting further information.

4.6 More recently, the Commission put forward in November 2008 a new proposal, setting up a Community framework for nuclear safety. In doing so, it pointed out that, since nuclear energy is the Community's main low-carbon energy source and provides a stable and reliable supply, a number of Member States had shown a renewed interest in it. It therefore suggested that this was an appropriate time to withdraw its earlier proposals, and to replace them with this new proposal, which it says would incorporate within Community law internationally endorsed nuclear safety principles, thus providing legal certainty, and ensuring an additional guarantee for the public in the Community at large. The proposal also builds upon the technical work of the Western European Nuclear Regulators Association (WENRA), and would enshrine in Community legislation the principles of the NSC and the safety work carried out by the IAEA.

4.7 The Commission added that its basic aim was to establish a common set of nuclear safety principles which are regulated at Community level, and based on the proposition that only strong and independent regulators can ensure the continued safe operation of nuclear power plants within the Community. More specifically, the proposal would provide that:

- Member States must establish an independent and properly resourced regulatory body to grant licences to those designing, locating, constructing, maintaining, operating and decommissioning nuclear installations, and to monitor their operation;
- the prime responsibility for the safety of a nuclear installation rests with the holder of the operating licence;
- Member States (and national regulatory bodies) should inform the public about the results of nuclear surveillance activities;
- Member States must respect the safety fundamentals laid down by the IAEA; and
- in the case of new nuclear reactors, must aim to develop additional requirements, in line with the safety levels developed by WENRA.

4.8 As we noted in our Report of 14 January 2009, the Government believed that much of the proposal reflected safety requirements and principles already agreed at international level, and developed by WENRA. It did not therefore expect that significant legislative action would be needed in the UK to implement it, and nor did it consider that it gave rise

to any subsidiarity issues. However, it added that it was looking closely at the policy implications, recognising that, having blocked a proposal over a number of years, there was now a need to engage closely in the negotiating process.

4.9 In clearing the earlier proposals which had been withdrawn by the Commission, we noted that the current proposal would apparently not make any significant change to the current nuclear safety arrangements within the UK, but nevertheless raised issues about the Community's competence in this area. We therefore said that we would like to know the extent to which earlier UK concerns over a possible extension of Community competence have been removed, and the changes which have been made to the earlier proposals which had led the Government to conclude that the current document did not raise any subsidiarity issues. In the meantime, we proposed to hold the document under scrutiny.

Minister's letter of 15 June 2009

4.10 We have now received from the Minister State at the Department of Energy and Climate Change (Lord Hunt) a letter of 15 June 2009, which seeks to address these points. As regards the issue of *Community competence*, his comments on a relevant judgement by the European Court of Justice¹⁶ and a subsequent opinion by the Council Legal Service are attached at Annex 1. He says that the Government believes that, having regard to that opinion, the judgment supports the view that there is sufficient competence and legal basis for a Directive along the lines of the current proposal. The Government thinks there is a good argument that the provisions of the proposal amount to a legislative and regulatory framework in the field of the safety of nuclear installations for which the Court has confirmed the Community has legislative competence.

4.11 It also considers that the proposal, as it currently stands, does not exceed the limits of the Community's competence as discussed above, its view being that the provisions in the Directive seek to set out a general framework and high level principles in relation to the safety of nuclear installations whilst leaving flexibility for Member States as to how to implement the requirements laid down. In addition, it appears that the purpose of the draft Directive is to protect workers and the general public against the dangers arising from ionising radiations from nuclear installations, and does not include detailed provisions on decommissioning funds of the kind included in the 2003 proposal.

4.12 As regards *subsidiarity*, the Government also believes that the current proposal differs significantly from the 2003 and 2004 proposals. In particular, it seeks to set out a general framework and high level principles while leaving flexibility for Member States to decide how to achieve the requirements that are laid down in the Directive; to build on and reinforce the role of national regulators; and to build on and reinforce principles in the Convention and the IAEA Safety Fundamentals. It also recognises the importance of transparency and expertise in this field.

4.13 On this basis, the Government believes that the current proposal has the potential to add value to the existing regime for the regulation of nuclear safety. It points out that nuclear safety has clear cross-border implications, and that the UK has a strong interest in

16 Case C-29/99 Commission v. Council

ensuring a high level of safety in the nuclear installations of other Member States. In particular, the proposal will impose enforceable obligations on Member States in relation to nuclear safety. By contrast, compliance with the principles laid down in the CNS and the Safety Fundamentals is essentially voluntary and based on peer pressure. Furthermore, the proposal contains some provisions, for example on transparency and emphasising the need for the continuous improvement of safety and safety regulation which are not present in the Convention.

4.14 As regards the changes made to the previous proposals, the Minister also notes that:

- the current proposal does not contain the detailed and prescriptive requirements in relation to the availability of financial resources for the costs of decommissioning, or the more general requirement in relation to financial resources which would have obliged Member States to take the appropriate steps to ensure that adequate financial resources are available from the regulatory body and the operators to support the safety of nuclear installations throughout their life;
- although Member States would be required to ensure that the competent regulatory authority has the financial resources necessary to fulfil its regulatory functions and that the national legislative and regulatory framework in place requires licence holders to demonstrate adequate financial resources to fulfil the licence holder's other obligations, the Government believes that it gives them flexibility as to how they implement these obligations;
- the current proposal does not contain provisions requiring safety verification at Community level, Member States being required at least every ten years to carry out self assessments of their national legislative and regulatory framework and competent regulatory authorities, and to invite an international peer review of particular aspects of the national framework and/or regulatory authority;
- Member States will be subject to the obligation to report on the implementation of the Directive, but there is no obligation to report on the safety of nuclear installations generally. It is intended that these reporting requirements should coordinate with the review and reporting cycles under the Convention.

4.15 Lastly, the Minister comments that the current proposal now contains certain provisions which are not present in the Convention (although the Government considers they are consistent with it), notably on 'information to the public'. It believes that transparency in the field of nuclear safety is important as public scrutiny of nuclear safety and that this should strengthen the regulation of nuclear safety; it should also help to build public confidence in this area.

4.16 The Minister concludes by saying that the Government now believes that the proposal is consistent with UK policy and legislation, has an appropriate legal base, and does not exceed the limits of the Community's competence.

Conclusion

4.17 **We are grateful to the Minister for this information, and we are now clearing the proposal.**

Annex 1

COMPETENCE

Case C-29/99

The European Court of Justice (the Court) has considered the competence of the European Atomic Energy Community (“the Community”) in the field of nuclear safety in case C-29/99 *Commission v Council*.

This case concerned the extent to which the Community had competence in the areas covered by particular provisions of the IAEA Convention on Nuclear Safety (“the Convention”). The Court largely confirmed the Commission’s position that the declaration of Community competence attached to the Convention infringed Community law in that it did not refer to all the competencies of Community in the fields covered by the Convention.

As the Convention is concerned with the safety of nuclear installations, case C-29/99 is very relevant to questions of competence and legal base in relation to the current proposal. In particular, the proposal addresses a number of areas covered by the Convention and reviewed by the Court in case C-29/99.

The Court said that the relevant provisions, as regards the safety of nuclear installations, are those concerned with health and safety in Title II, Chapter 3 of the Treaty establishing the European Atomic Energy Community (“the Treaty”). The Court interpreted these provisions in the light of the objective in the preamble to the Treaty to “create the conditions of safety necessary to eliminate hazards to the life and health of the public” and the objective in Article 2(b) to “establish uniform safety standards to protect the health of workers and of the general public and ensure that they are applied”.

The Court noted that such protection cannot be achieved without controlling the sources of harmful radiation, and that, in order to give practical effect to the provisions in Title II, Chapter 3 of the Treaty, it has interpreted these provisions broadly on several occasions. Further, it stated that: “it is not appropriate, in order to define the Community’s competences, to draw an artificial distinction between the protection of the health of the general public and the safety of sources of ionising radiation”. However, the Court noted that “the Community’s activities in the field of health protection must observe the competences of the Member States defined in inter alia Title I, Chapter 3”.

Council Legal Service Opinion

In the light of the judgment in this case, the Council Legal Service gave an opinion on the issues of competence and legal basis in relation to the Commission’s 2003 proposal.

This expressed the view that the Court’s judgment in case C-29/99 confirms the competence of the Community to adopt legislation in the field of safety of nuclear installations. However, this competence is not without limits. In the opinion of the Council Legal Service, it follows from the judgment that the purpose of the legislation must be to give effect to the provisions of the Treaty on the health and safety of workers and the general public. In addition, Community legislation adopted on the basis of Articles 30 to 32

cannot be so detailed as to leave no scope for implementation by Member States whose competencies under Article 33 of the Treaty have to be observed.

The Council Legal Service considered that the ruling of the Court in relation to Article 7 of the Convention (which confers a requirement for a legislative and regulatory framework) confirmed that there is sufficient competence and legal base for the Community to legislate in the field of the safety of nuclear installations. In relation to Article 7, the Court said: “Even though the Euratom Treaty does not grant Community competence to authorise the construction or operation of nuclear installations, under Article 30 to 32 of the Euratom Treaty, the Community possesses legislative competence to establish, for the purposes of health protection, an authorisation system which must be applied by the Member States . Such a legislative act constitutes a measure supplementing the basic standards referred to in that Article”.

The Council Legal Service concluded that the provisions of the 2003 proposed Directive constituted a legislative and regulatory framework of the kind referred to in Article 7 of the Convention. Therefore, as the Court had found that the Community possesses legislative competence based on Articles 30 to 32 in relation to Article 7, it could be concluded that there was sufficient competence for the Directive, and that it could be validly adopted on the basis of Articles 31 and 32 (Article 30 was not a separate legal basis).

There was one exception to this in that the Council Legal Service considered Article 11(2) of the proposed Directive together with the Annex, which sought to impose detailed requirements in relation to the availability of financial resources for the costs of decommissioning, exceeded the limits of the Community’s competence in this area. In the view of the Council Legal Service, Article 11(2) and the Annex failed to satisfy both the requirement that the purpose of the legislation must be give effect to the provisions of the Treaty on the health and safety of workers and the general public, and the requirement that the legislation must not be so detailed as to leave no scope for implementation by Member States.

5 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
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<i>Legal base</i>	Article 175EC; co-decision; QMV
<i>Department</i>	Environment, Food and Rural Affairs
<i>Basis of consideration</i>	Minister's letter of 5 June 2009
<i>Previous Committee Report</i>	HC 19–xvii (2008–09), chapter 2 (13 May 2009)
<i>To be discussed in Council</i>	See para 5.8 below
<i>Committee's assessment</i>	Politically important
<i>Committee's decision</i>	Cleared

Background

5.1 Because emissions of volatile organic compounds from petrol contribute to air quality problems, the Community 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's Thematic Strategy on Air Pollution 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 (VOC). 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.

5.2 The Commission accordingly put forward in December 2008 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 system¹⁷ if its annual throughput is more than 500m³ (though, in the case of such stations situated under permanent living quarters or working areas, this requirement would apply irrespective of throughput);
- that any existing service station with a throughput greater than 500m³ 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 3000m³ is fitted with such a system no later than 31 December 2020.

5.3 As we noted in our Report of 13 May 2009, most petrol stations in the UK comply with Directive 94/63/EC, and from 2010 many will also be required under domestic regulations to implement provisions akin to those in this proposal, although the trigger thresholds are

¹⁷ 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.

slightly different. Thus, the UK regulations will have an upper threshold of 3500m³ (rather than the 3000m³ now proposed), whilst the 500m³ threshold would apply only to new service stations (and not to existing ones undergoing major refurbishment).

5.4 The Government described these thresholds as being the principal issue for the UK, and said that it 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.

5.5 We subsequently received from the Minister for Sustainable Development, Climate Change Adaptation and Air Quality at the Department for Environment, Food and Rural Affairs (Lord Hunt) a supplementary Explanatory Memorandum of 30 April 2009, in which he said that the negotiations were proceeding very rapidly, with the aim of securing a first reading agreement at the beginning of May 2009. He anticipated that there would be pressure either to reduce the deadline by which existing petrol stations must fit the new equipment, or to lower the 3000 m³ threshold, adding that the former course would be preferable from a UK point of view.

5.6 In view of the timetable, the Minister also enclosed a draft report by the consultants who had been preparing the UK Impact Assessment, and drew attention to their conclusion that the typical capital costs of installing Stage II controls was around £30,000 for a new service station with a throughput between 3000m³ and 3500m³, or as part of major refurbishment of such a station; that the capital costs would increase to around £130,000 if the upgrade is undertaken outside the scheduled refurbishment cycle (although this would vary according to how much the scheduled refurbishment was brought forward); and that the comparative costs per tonne of VOC abated would be £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.

5.7 We said that we were grateful for this information, and recognised that, to the extent the original Commission proposal reflected the approach in the UK regulations due to come into force next year, it did not involve any major questions of principle. It nevertheless gave rise to a number of unresolved issues, and we were concerned that a decision might be rushed through simply in order to reach a first reading agreement. In particular, we said that we had found it difficult to form a clear view of how the proposal may have evolved during discussions in Brussels, in that there had been suggestions that its scope might be widened by reducing the 3000m³ and 500m³ thresholds: also, although the consultants' report provided a plethora of information, we were unclear whether, on the assumptions contained in it, the quantified benefits would be outweighed by the costs. In view of this, we said that we were reporting the document to the House, but that, before we could consider clearing it, we thought it right to await further clarification from the Government of the latest contents and the overall cost-benefit balance.

Minister's letter of 5 June 2009

5.8 We have now received from the Minister a letter of 5 June 2009, enclosing text of the final compromise submitted to COREPER on 22 April, and voted upon at the European Parliament's Plenary Session on 5 May, which the Council is expected to adopt in the autumn. This would retain the 3000m³ threshold at which any existing service station would have to be fitted with a Stage II vapour recovery system, whilst bringing forward the operative date forward from 2020 to 2018, and it would also retain the 500m³ threshold for new stations or those undergoing major refurbishment (though these requirements would now apply to stations situated under permanent living quarters or working areas only where the throughput is greater than 100m³).

5.9 The Minister's letter also summarises the likely costs and benefits of the proposal, as compared with application of existing UK legislation. He suggests that the annualised costs would be between £4.0 and 7.4 million (or £2.7 million to 5.5 million, if the value of recovered fuel is deducted). However, the benefits — which would arise from reductions in the health impact and climate change effects of VOC emissions — would depend upon whether the health impact is calculated under the methodology adopted within the UK by the Inter-departmental Group on Costs and Benefits (IGCB) or using that adopted by the Commission under the Clean Air for Europe (CAFE) programme: thus, in the former case, the annualised benefits would be between £0.7 and 1.1 million, whereas in the latter they would be between £5.1 and 7.8 million.

Conclusion

5.10 **We are grateful to the Minister for this information, from which it would appear that, as compared with the approach under comparable UK regulations which are due to come into effect shortly, the proposal could give rise to either a relatively small net benefit or net cost, depending upon which of the two benefit estimates is used. Having said that, we note that there is no longer any likelihood of major changes to the threshold levels at which the proposal would have effect, and, as we noted in our earlier Report, it does not give rise to any major points of principle. In view of this, we do not believe it requires any further consideration, and we are therefore clearing it.**

6 EC development assistance and non-state actors

(30666) 10415/09 —	Special Report No. 4/2009: <i>The Commission's management of Non-State Actors' involvement in EC Development Cooperation together with the Commission's replies</i>
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<i>Legal base</i>	Article 248 EC; —
<i>Deposited in Parliament</i>	1 June 2009
<i>Department</i>	International Development
<i>Basis of consideration</i>	EM of 9 June 2009
<i>Previous Committee Report</i>	None; but see (27251) 5835/06 and (26778) 11734/05: HC 34–xx (2005–06), chapters 5 and 15 (1 March 2006)
<i>To be discussed in Council</i>	To be determined
<i>Committee's assessment</i>	Politically important
<i>Committee's decision</i>	Cleared

Background

6.1 As part of the 2007–2013 Financial Perspective, all External Actions spending was rationalized and simplified under one heading (Heading 4) and implemented under seven new Financial Regulations, or Instruments. Three support EU external policies directly: a *Pre-Accession Instrument (IPA)* for candidate and potential candidate countries covering institution-building, cooperation, rural development and human resources development; a *European Neighbourhood and Partnership Instrument (ENPI)* for all countries covered by the European Neighbourhood policy, to enhance political security, economic and cultural cooperation and to offer participation in EU activities; and a *Development Cooperation and Economic Cooperation Instrument (DCECI)* to support developing countries in reaching the UN Millennium Development Goals. They are complemented by *three horizontal Instruments*, principally to respond to crisis situations until normal cooperation can resume — a new *Instrument for Stability* and the existing, essentially unchanged *Humanitarian Aid* and *Macro Financial Assistance* Instruments — and a new *European Instrument for Democracy and Human Rights*. They were cleared from scrutiny on 10 November 2005, following a debate in the European Standing Committee.¹⁸

6.2 On 1 March 2006, the then Committee considered and cleared Commission Communication 11734/05, on External Actions through Thematic Programmes under the Future Financial Perspectives 2007–2013. Though geographical programmes would remain the principal framework for Community cooperation with third countries Thematic programmes, the Commission said that complementary thematic programmes would provide “a distinct added value”.¹⁹

18 See <http://www.publications.parliament.uk/pa/cm200506/cmstand/euro/st051110/51110s01.htm> for the official record of the debate.

19 (26778) 11734/05: HC 34–xx (2005–06), chapter 15 (1 March 2006): see headnote.

6.3 At that same meeting, the then Committee also considered six associated Communications, each of which dealt with a proposed Thematic Programme. One was a *Thematic Programme on Non-state Actors and Local Authorities in Development*.²⁰ At that time, the then Parliamentary Under-Secretary of State at the Department for International Development (Mr Gareth Thomas) said that the EC’s development policy, “the European Consensus on Development”,²¹ recognised that ownership of strategies by partner countries and broad participation of all segments of society was the key to successful development programmes; broad dialogue between institutions and citizens was deemed to provide valuable input to policies centred on the Millennium Development Goals and help to promote good governance, democratisation and respect for human rights. This thematic programme was, he said, based on the outcome of a broad public consultation and would support stakeholders’ “right of initiative” (i.e., putting forward proposals rather than bidding against pre-determined EC programmes), when geographical programmes were not appropriate. He described the “overarching objective of the programme” as “to contribute towards the eradication of poverty through supporting non-state actors and local authorities and their role in the development process.” Interventions would “seek to strengthen participatory development, support capacity development processes at country or regional level, and promote mutual understanding processes.” He summarised the main elements of the programme as follows:

- all civil society organisations and local authorities, from the EU and partner countries would, in principle, be eligible for funding;
- the bulk of the financial allocations would support projects in developing countries;
- the programme would pay appropriate attention to projects which promote awareness raising and development education within the EU and accession countries; and
- activities which facilitated coordination between stakeholders’ networks would also be eligible for funding.

Funding was open to a range of civil society organisations, both European and from developing countries. Specific priorities for action and more detail on the specific scope of the programme would be set out in a multi-annual programming document.²²

The Court of Auditors’ Special Report

6.4 In addition to its primary duty to examine the accounts of all revenue and expenditure of the Community, the Court of Auditors may also, at any time, submit observations, particularly in the form of special reports, on specific questions.

6.5 The starting point of this Special Report No 4/2009 is, the Court of Auditors says, is:

20 (27251) 5835/06: HC 34–xx (2005–06), chapters 5 (1 March 2006): see headnote.

21 Also debated in the European Committee, on 17 November 2005; see <http://www.publications.parliament.uk/pa/cm200506/cmstand/euro/st051117/51117s01.htm> for the official record of the debate.

22 For full information on the general development framework within which EU development policy operates, see http://europa.eu/legislation_summaries/development/general_development_framework/index_en.htm

“The EU’s approach to development cooperation, reflecting the evolving international consensus, has undergone a series of changes over the last decade, both at the policy level and as regards funding. EC policy now involves, to varying degrees, a range of partners whose characteristics and roles have progressively developed. The Commission works increasingly in partnership with a large range of bodies including, or representing, non-state actors.”

6.6 The Court of Auditors further says that:

“The term ‘non-state actors’ (NSAs), as used in this report, covers all aspects of society that do not form part of the private sector or the state, including non-governmental organisations (NGOs).²³ The Cotonou Agreement with the ACP group of states, and EU legislation, provide for such non-state actors to play multiple roles in development cooperation, notably participating in policy dialogue as well as implementing projects. Support for capacity development is envisaged to help NSAs to fulfil these roles.”

6.7 In terms of expenditure, the Court of Auditors notes that the EU funds directly attributed to NSAs in 2007 were approximately €915 million, or 10 % of the total aid to developing countries.

6.8 The Court of Auditors considered three questions: whether the Commission

- (i) adequately ensures that NSAs are involved effectively in development cooperation;
- (ii) has efficient management systems in place to ensure that NSA activities are relevant and likely to produce results; and
- (iii) adequately ensures the provision of capacity development to NSAs.

6.9 On (i), the Court of Auditors found that involvement of NSAs has been limited, falling short of the sustained and structured dialogue envisaged by EU legislation. With few exceptions, whilst there had usually been *ad hoc* consultation in developing EC Country Strategy Papers and the new thematic programme for NSAs, this had rarely been systematic or sufficiently deep.

6.10 On (ii), they found that the Commission’s systems usually ensure that NSA projects are relevant and likely to produce results. But the Call for Proposals procedure does not always assure timely completion of project design; there are inconsistencies in application of procedures; and there is insufficient monitoring. The short project duration (up to 5 years) also limits sustainability.

23 The Court further explains in a footnote: “In the Cotonou Agreement the definition of non-state actors also includes the private sector. This report, however, takes the usage of the Development Cooperation Instrument (DCI — Regulation (EC) No 1905/2006 of the European Parliament and of the Council of 18 December 2006 establishing a financing instrument for development cooperation (OJ No. L 378, 27.12.06, p. 41)), which excludes profit-making bodies. Article 24(2) of the DCI gives a fuller list of types of organisation. Although there is evident wide agreement on the typical characteristics of NGOs, there is no uniform definition (the United Nations and the World Bank both publish working definitions), and none was needed in order to carry out this audit since it is more useful to apply the broader concept of NSAs in development (equivalent to civil society as a whole).”

6.11 On (iii), Delegations in most Africa, Caribbean and Pacific (ACP) countries have developed capacity building programmes, which are implemented in cooperation with partner governments. But this is not the case in Asian and Latin American countries.

6.12 The Court of Auditors' recommendations are that the Commission should:

- strengthen and provide more guidance on its procedures for involving NSAs in the development cooperation process;
- continue measures already in train to improve the Call for Proposals procedure;
- enhance the targeting of monitoring and support by Delegations;
- ensure sufficient guidance for both Delegation and NSA staff on performance indicators;
- improve sustainability, by considering using a mix of instruments (and not only projects) when working with NSAs;
- develop a strategy for capacity development of NSAs in ALA countries and reconsider the disparity in approach as between ACP and ALA countries;
- examine additional ways of delivering the capacity-development policy aims such as use of partnership agreements, multi-donor funding, and cascading grants in order to better reach grass-roots organisations.

The Commission's response

6.13 In its response, the Commission says that it has recognised many of these points and that progress still needs to be made on systematising the consultation process; but also that the “evolving context rightly recalled by the Court should however be considered in all its aspects.” It notes that there has been “tremendous changes in the number and quality of NSAs — international and local — present in the development playing field”, and that there is no agreed definition of the term non governmental organisations, notwithstanding which “a very significant increase in interaction between Commission Delegations and local NSAs has occurred since the de-concentration of the relevant programmes and, especially, the management by Delegations of local Calls for Proposals.” Other factors which influence NSA involvement in the development cooperation process include partner governments' priorities and ownership.

6.14 The selection procedures applied by the Commission aim to identify the proposals that would maximise the overall effectiveness of the programme through considering, in addition to the criteria mentioned by the Court, the feasibility and cost-efficiency of the proposed actions as well as the financial and operational capacity of the applicant and partners. The Call for Proposals mechanism results in wide publication, transparency, clear guidelines and consistent interpretation of procedures and financial rules. The Commission will continue with the simplification of Calls for Proposal, shortening the procedure and promoting implementation at local level. The Commission believes that the control system in place ensures sound financial and contractual monitoring.

6.15 A number of the *ex-post* evaluations and monitoring exercises conducted by the Commission look also at the sustainability of these actions at project level, and significant work has been initiated to bring forward in a more systematic manner the inter-action with NSAs.

6.16 A significant number of projects and programmes in Asia and Central Asia, which are or will be implemented through non-governmental organisations, have been adopted in 2007 and 2008; while their primary objective is to contribute to poverty eradication, improvement of access to social services and improvement of governance and rule of law, they support NSAs in pursuance of these goals.

6.17 The Commission is also strengthening the involvement of NSAs by:

- better knowledge management and better dissemination of knowledge;
- launching pilot mapping studies designed, if possible, in close cooperation with government;
- improving predictability and transparency related to the consultation process.

6.18 Delegation and NSA staff will continue to be trained, including on the use of performance indicators. A mix of instruments is being considered in view of the regulatory framework created by the various Financial Regulations. Capacity development should preferably be channelled through geographic programmes, as the principle of alignment of aid requires that partner country governments define strategies, sectors and themes within this context. The Commission will continue to promote the involvement of NSAs. “More and more interaction is structurally organised between different instruments and programmes to allow a better complementarity with activities supported by the bilateral, thematic and regional contexts.” In addition, the Commission participates actively in the donors coordination mechanisms. “The Commission is of the opinion that other channels such as the extension of the sub-granting must be considered.”

The Government’s view

6.19 In his Explanatory Memorandum of 9 June 2009, the Parliamentary Secretary at the Department for International Development (Mr Michael Foster) says that he supports the report’s overall analysis and recommendations, notes the Commission’s progress to date and welcomes its recognition of the need to improve and regularise its engagement with NSAs. He continues as follows:

“The UK’s top priority is to support efforts to improve the use of performance indicators by Delegations and NSAs, ensuring these are meaningful and realistic given the capacity constraints, but always pushing for better demonstration of development results.

“The UK’s second priority is to support the Commission to move to a mix of instruments, not restricted to projects. In line with our own Partnership Programme

Arrangement (PPA) model and Accra agreements on aid effectiveness, there should be consideration of Europe-wide PPA type arrangements with trusted partners.”²⁴

Conclusion

6.20 Given the starting points —“to contribute towards the eradication of poverty through supporting non-state actors and local authorities and their role in the development process” via interventions that would “seek to strengthen participatory development, support capacity development processes at country or regional level, and promote mutual understanding processes” — this Thematic Programme would appear to have got off to a reasonable start. It is the very nature of the Court of Auditors’ Special Reports that they will find areas that would benefit from improvement; it is early days, and the Commission would appear to have responded appropriately.

6.21 We accordingly now clear the document, which we are reporting to the House because of the widespread interest in development issues, particularly in the African, Caribbean and Pacific countries.

Annex 1

DFID Partnership Programme Arrangements

According to its website, the Department for International Development (DFID) works with many partners, including civil society organisations (CSOs), and supports CSOs via, *inter alia*, the Partnership Programme Arrangements (PPAs). It says that PPAs were:

- established in 2000 to improve funding arrangements with 10 large UK-based CSOs;
- now provide “unrestricted funding to civil society organisations (CSOs) with which DFID has a significant working relationship, a common ethos and vision and a strong match in priority areas”;
- include both UK and non-UK organisations; and
- involve funding of some £90m a year, “linked to a set of strategic level indicators — which the organisation is accountable for delivering over the 3–6 year time frame.”

24 See <http://www.dfid.gov.uk/Working-with-DFID/Funding-Schemes/Funding-for-not-for-profit-organisations/PPAs/> for full information on DFID’s Partnership Programme Arrangements and <http://www.dfid.gov.uk/Global-Issues/Working-to-make-Global-Aid-more-effective/The-Paris-Declaration-on-Aid-Effectiveness-and-Accra-Agenda-for-Action/> for full information on the Paris Declaration and the Accra High Level Forum. Brief outlines are at the Annex to this chapter of our report.

The Paris Declaration on Aid Effectiveness and Accra High Level Forum on Aid Effectiveness

According to the DFID website, the Paris Declaration on Aid Effectiveness is an historic agreement to improve the quality of aid; signed in Paris in 2005 by more than 100 donors, developing countries and NGOs, the declaration's commitments and targets reflect the lessons donors and partner countries have learnt about how to make aid more effective in reducing poverty, and outline five inter-related principles:

1. *Ownership*: Developing countries must exercise leadership over development policies and strategies and co-ordinate development assistance. This is important because the overwhelming evidence is that aid works when countries set their agenda and fails when donors try to impose their own.
2. *Alignment*: Donors must base their support on the recipient country's national development strategies, institutions and procedures. This is important because donors often set up parallel project management teams which bypass government systems. This can drain governments of their best staff, leading to a vicious cycle of weak capacity. Evidence shows that working to strengthen, rather than bypass government systems, is the key to effective and sustained capacity building.
3. *Harmonisation*: Donors need to improve the co-ordination of their actions and adopt simple and transparent procedures for providing aid. This is important because there are now over 50 bilateral donors and 230 international organisations, funds and programmes. If donors don't co-ordinate, then government ministers and staff are dragged away from essential business to respond to different donor requirements. For example, in Cambodia, the government has to deal with over 400 donor visits each year — more than one a day.
4. *Managing for results*: Aid should be managed in ways that focus on desired results and use information to improve decision-making. It is important to make sure aid has maximum impact and that recipient governments, parliaments and civil society know where money is being spent and what it is achieving. Investing in a developing country's own statistical systems is more helpful than establishing separate donor reporting systems, as shown by St Vincent, a tiny island of 117,000 people, where the government was asked by different donors to monitor over 190 indicators on HIV and AIDS.
5. *Mutual accountability*: Donors and partners should be answerable to one another and to their citizens for development results. This is important because the relationship between donors and partner countries is inherently unequal. There is strong evidence that truly mutually accountable relationships between donors and partners can lead to improvements in donor behaviour.

The Paris Declaration commits donors and partners to make comprehensive and practical changes in these areas. A set of quantified targets, monitored every two years, is used to assess progress and hold donors and partners accountable for achieving results.

At the Third High Level Forum on Aid Effectiveness in Accra in September 2008, donors and developing countries endorsed the Accra Agenda for Action. This contains “new

ambitious undertakings by donors and developing countries to speed up the process of fulfilling the Paris Declaration’s pledges.”

7 CFSP: EU support for the Democratic Republic of Congo

(30686) 10358/09	Council Joint Action amending and extending Council Joint Action 2007/406/CFSP on the European Union mission to provide advice and assistance for security sector reform in the Democratic Republic of the Congo (EUSEC RD Congo)
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<i>Legal base</i>	Articles 14 EU; unanimity
<i>Department</i>	Foreign and Commonwealth Office
<i>Basis of consideration</i>	Minister’s letter of 11 June 2009 and EM and 11 June 2009
<i>Previous Committee Report</i>	None; but see (30667) — HC 19–xviii (2008–09), chapter 21 (3 June 2009); also see (29722) — and (29734) — : HC 41 xxvii (2007–08), chapters 6 and 14 (18 June 2008), and (28650)(28651) —: HC 41 xxiii (2006–07), chapter 19 (6 June 2007)
<i>To be discussed in Council</i>	25 June 2009 Environment Council
<i>Committee’s assessment</i>	Politically important
<i>Committee’s decision</i>	Cleared, but further information requested

Background

7.1 The original police mission in the Democratic Republic of Congo (EUPOL Kinshasa) was launched in April 2005 to support the development of the Integrated Police Unit and play a key role in the protection of the transitional government, crowd control and public disorder leading up to the elections in 2006.

7.2 Its mandate was extended and amended in April 2006 to allow a temporary reinforcement to cover the elections that were successfully held in September 2006, and allowed the formation, in 2007, of a government which adopted a programme prioritising reform in the police, the armed forces, and the judiciary.

7.3 Against this background, the EU indicated in September 2006 that it was prepared to undertake, in close cooperation with the UN, the co-ordination of international efforts in security sector reform in order to support the Congolese authorities in this area. Following two fact-finding missions in October 2006 and March 2007, two Joint Actions were agreed by the Council on 12 June 2007, which aimed:

- to establish a police mission leading on Security Sector Reform and its justice interface in the Democratic Republic of Congo (EUPOL Democratic Republic of Congo);
- to allow, via a new and revised mandate, to build on the substantial progress already made during the previous two years and continue to contribute to the integration of the different armed factions in the DRC, and assist Congolese efforts to restructure and reconstruct the army, to be known as EUSEC RD Congo.²⁵

7.4 With respect to the new and revised mandate for the EUSEC (DRC) mission, the then Minister for Europe (Mr Geoffrey Hoon) said that the mission, in close cooperation with other international actors, in particular the UN, would provide support to the reform of the security sector in the Democratic Republic of Congo by:

- offering advice and assistance to the Congolese authorities in their work on the restructuring and reconstruction of the Congolese army, especially through:
 - contributing to the development of different national policies and concepts, including work on horizontal aspects encompassing all areas included in security sector reform in the Democratic Republic of Congo.
- offering support to the committees and authorities involved in this work as well as contributing to the agreement of the priorities and needs of the Congolese;
- completing the technical assistance project assisting in the modernisation of the Democratic Republic of Congo Ministry of Defence chain of payments, in order to complete the work set out in the general concept for this project;
- identifying and contributing to various projects that the European Union and its Member States decide to support in the area of security sector reform; and
- taking an overview of specific projects financed or initiated by Member States within the framework of the mission objectives, and in co-ordination with the Commission.

7.5 The mandate would expire on 30 June 2008.

7.6 By way of background, the then Minister said that since the elections in 2006, international efforts at army reform were helping to persuade militia groups to disarm and integrate into the army, and thus help to increase stability in the Democratic Republic of Congo and the region. Further reforms were necessary to create a truly national and republican army to encourage the remaining militias, many formed along ethnic lines, to do likewise. Reforms were also needed to help the Democratic Republic of Congo and its neighbours deal with foreign rebel groups, based in the Democratic Republic of Congo, causing regional instability. Member of the security sector perpetrated a large proportion of violent crimes in the Democratic Republic of Congo, including rape and human rights violations. Reforming the army was vital in reducing corruption within its high command and for promoting the rule of law. The chain of payments project also contributed to this effort: as he put it, “soldiers who are paid are less likely to resort to crime to feed themselves and their families”. He concluded by noting that the two missions would work closely

²⁵ See (28650) (28651) —: HC 41 xxiii (2006–07), chapter 19 (6 June 2007) for our consideration of that Joint Action.

together, and that the EU would “consider the possibility of integrating the two missions next year”.

7.7 Funding for Common Costs would be met from the Common Foreign and Security Policy budget. The Minister explained that a financial statement had not yet been prepared but the cost was estimated to be €5 million for EUPOL DRC and €10 million for EUSEC DRC; with the UK currently contributing 17% towards the CFSP budget, the cost to the UK would thus be approximately £580,000 and £1,160,000 respectively. In addition, the UK was currently contributing three personnel, funded by the Whitehall Peacekeeping Budget (a call on the Treasury’s central contingency reserve).

7.8 The then Minister noted that the UK currently contributed three personnel to the current EUSEC DRC mission, funded by the Whitehall Peacekeeping Budget (which is a call on the Treasury’s central contingency reserve).

7.9 We cleared the Joint Actions, and reported these latest EU endeavours to support the new, democratically-elected authorities in view of the interest in the House in both Common Foreign and Security Policy and in the region.²⁶

7.10 In his Explanatory Memorandum of 4 June 2008, his successor, the then Minister for Europe at the Foreign and Commonwealth Office (Mr Jim Murphy) explained that, following the renewal of the official invitation from the Government of the DRC, the mandate of the mission would be extended for a further 12 months from 1 July 2008 and amended to include the following new tasks:

- contributing to the organisation of the Congolese Rapid Reaction Force, including through the provision of expertise in relation to the selection, instruction and training of staff, through a needs assessment of infrastructure and equipment, and by facilitating the support of European Union Member States. The mission will also assist in the progressive deployment of a Rapid Reaction Force as part of national army reform.
- supporting the Human Resources dimension in the Congolese Armed Forces by providing two advisers to assist in the programming and implementation of a Human Resources policy.
- supporting the European Union Special Representative to the Great Lakes on the pacification process in Eastern DRC, by assisting in the implementation of the Goma peace accords²⁷ and the Nairobi Communiqué.²⁸

7.11 The Minister went on to say that the mission would also continue to support security sector reform as set out in the previous Joint Action, and to explain why the Government

26 (28650)(28651) —: HC 41 xxiii (2006–07), chapter 19 (6 June 2007): see headnote.

27 A peace agreement signed between the government and the various armed groups active in eastern Democratic Republic of Congo (DRC), including the faction led by dissident general Laurent Nkunda, on 23 January 2008.

28 On 9 November 2007, representatives of the Governments of the DRC and Rwanda met in Nairobi and signed a communique pledging “a common approach to address the threat posed to our common security and stability by the ex-FAR/Interahamwe.” Facilitated by the United Nations and witnessed by the United States and the European Union, it was hoped that this accord would pave the way for an end to the armed presence of the ex-FAR and Interahamwe in eastern DRC, and to the suffering of those living in North and South Kivu provinces, who had been the most directly and seriously damaged by the violence in the region. See <http://allafrica.com/peaceafrica/resources/view/00011449.pdf> for a full information on this process.

continued fully to support the European Union’s action. He also explained that a financial statement had not yet been prepared but the cost was estimated to be €8.45 million; with the UK currently contributing 17% towards the Common Foreign and Security Policy budget, the cost to the UK would be approximately £1.436 million (plus continuing to contribute three personnel, funded from the Africa Conflict Prevention Pool and the Whitehall Peacekeeping Budget).

7.12 We again reported these latest such endeavours in view of the interest in the House in both Common Foreign and Security Policy and in the region, and cleared the draft Joint Action (along with a similar extension to the EUPOL DRC mandate).²⁹

7.13 On 26 June 2008 the Council adopted Joint Action 2008/406/CFSP amending and extending Joint Action 2007/406/CFSP until 30 June 2009.

The new Joint Action

7.14 This Joint Action extends the mission for a further three months from 1 July to 30 September 2009 in order to assess the conditions for a possible further extension.

7.15 In his Explanatory Memorandum of 11 June 2009, the Parliamentary Under-Secretary of State at the Foreign and Commonwealth Office (Chris Bryant) explains that the extension will be a “no additional cost” extension, making use of outstanding funding from the previous 2008 mandate extension budget of €8.45 million. He continues as follows:

“The future lines of activity for EUSEC will be discussed as part of the mandate renewal process but given the recent changes in leadership, more time is required for further detailed analysis on the needs and priorities of the Congolese in the field of Security Sector Reform. Strategic indicators will be used to assess Congolese political commitment in the medium term. A revised General Concept will be formed including possible mission restructuring and with detailed measures of progress to assist further review of longer term engagement. A three month extension would allow this work to take place and permit a better judgement when considering any further mandate extension.

“Reform of the Security Sector remains one of the central factors in creating a secure environment in DRC, along with stabilising the East. Security Sector Reform will aid the country in the following key areas:

- “Reducing the chance that the DRC will slide back into conflict;
- “Accelerated integration of former National Congress for the Defence of the People (CNDP)³⁰ soldiers and other groups into the army;
- “Improved quality of Congolese governance and control over its territory.

29 (29722) — and (29734) —: HC 41 xxvii (2007–08), chapters 6 and 14 (18 June 2008): see headnote.

30 The National Congress for the Defence of the People (French: *Congrès national pour la défense du peuple*, CNDP) is a political armed militia established by Laurent Nkunda in the Kivu region of the DRC in December 2006. The CNDP was engaged in the Kivu conflict, an armed conflict against the military of the DRC. In January 2009, the CNDP split and Nkunda was arrested by his ostensible-Rwanda backers. The remaining CNDP splinter faction, led by Bosco Ntaganda, is planned to be integrated into the national army.

“EUSEC DRC has delivered crucial army reform projects to help professionalise the Congolese Army in the past 12 months. These include: a Biometric Census project which has registered and identified 130,000 Congolese soldiers; the introduction of a Military ID card system in December 2008; a Chain of Payments project to ensure that soldiers are correctly paid and to reduce the number of fraudulent payments; increased efforts to look after the welfare of the individual Congolese soldier all the way from recruitment to retirement. These projects have played an important role in reducing the levels of corruption and fraud in the Congolese Army as well as increasing the mission’s credibility with the Congolese authorities.

“Following a significant deal between the DRC Government and the CNDP political-military organisation on 23 March 2009, the CNDP has officially ended its armed struggle and is integrating its military forces into the DRC army. This is a potentially pivotal moment in the DRC conflict. EUSEC is well placed to assist the Congolese authorities in advancing towards implementing the March agreement which will help to isolate the former CNDP leader and avert a return to instability.

“The Congolese Defence Minister and Chief of Defence are working in partnership and appear committed to implementing reform. This can be seen by the production of a revised plan for Army reform and a willingness to engage with the international community. The Defence Minister clearly values continued ESDP engagement, and has asked EUSEC to develop proposals for a defence reform steering committee which would include a coordination mechanism. As political will is a key contributor to the success of security sector reform (SSR), this renewed engagement presents a new window of opportunity for SSR in the DRC.

“A key strategic task for EUSEC in the short to medium term will be supporting Congolese implementation of the army reform plan. The Defence Minister has indicated that he sees EUSEC as the primary facilitator in this activity and has asked the mission to develop proposals for a defence reform steering committee.”

The Minister’s letter of 11 June 2009

7.16 On 3 June the Committee cleared a Joint Action amending Joint Action 2007/405/CFSP on the European Union police mission, EUPOL DRC, and extending it until June 2010. In so doing, it noted that, although the extension raised no questions in and of itself, and there was more information on this occasion about activity than there had been a year ago, there was still a paucity of assessment of outcomes, i.e., the extent to which all this activity and expenditure had produced measurable improvements in behaviour and security. In particular, in the critical area of violent crime, sexual violence and human rights violations, the words chosen by the then Minister for Europe (Caroline Flint) were identical to those of her predecessor 12 months earlier: “EUPOL continues to work with the Congolese police in this field and to encourage officers to react to incidents appropriately” — notwithstanding that, a year ago, we had said that we would have liked evidence of how effective the mission’s advice had been, and how Congolese officers attitudes and practices had been changed by the “encouragement” to which the then Minister referred. We therefore asked to the Minister to say something about this, and

about the effectiveness of EUSEC RD Congo, when she submitted an Explanatory Memorandum on the forthcoming mandate extension of the latter.

7.17 The Parliamentary Under-Secretary of State at the Foreign and Commonwealth Office (Chris Bryant) has responded as follows:

“The lack of professionalism, poor discipline and conduct within the security services is directly related to poor terms and conditions of service, lack of proper training, and poor command and control. Human rights training which focuses on awareness raising and similar interventions around SGBV (Sexual and Gender based Violence) training must be accompanied by concrete measures to improve pay, conditions of service, professional training and strengthen systems for ensuring internal discipline and conduct. The latter is part of longer term institution-building, to which EUPOL DRC is a part, to secure behaviour change at an institutional level.

“Such improvements in the attitudes and behaviour of the Congolese National Police are inherently difficult to measure. Changes tend to be incremental, rather than representing a noticeable step change, and the process of reform is fundamentally affected by changes in national leadership. However, there are some positive signs of progress. For example, EUPOL has supported national seminars with some success to build up the awareness of the Congolese National Police to policing in a democratic state such as how police should deal with meetings and public demonstrations. The mission has also succeeded in pushing forward local ownership of Police Reform which is a key step towards changing attitudes and behaviours. The Police Reform Monitoring Committee (CSRP) is now considered both by the Congolese authorities and by international partners as truly owned and run by the Congolese.

“Violent crimes, sexual violence and human rights violations continue to be areas of grave concern in the DRC. For this reason, the Political and Security Committee requested that Council Secretariat ‘examine the options for strengthened ESDP action to combat sexual violence and impunity in the DRC in view of assessing a possible scope of action for EUPOL’. Work in Brussels in [sic] on-going to discuss further measures that the mission can implement. It is likely that the Operational Plan will be adjusted to strengthen the ability of EUPOL DRC to combat sexual violence and impunity.”

Conclusion

7.18 We are grateful to the Minister for what he has to say concerning the achievements of EUSEC DRC, and clear the proposed three month extension.

7.19 The assumption, clearly, is that, when the work to which he refers has been completed, a further mandate extension will be proposed. When the time comes, we shall be particularly interested to know what “Strategic indicators” will be used to assess Congolese political commitment in the medium term — this may, perhaps, be of wider interest, given the time, effort and money devoted to the Article 96 process under the Cotonou Agreement, where lack of political commitment has plainly led to very little progress on the ground in addressing less egregious but nonetheless important

failings regarding commitments to democracy and the rule of law in a number of African, Caribbean and Pacific states (and about which the Committee has been in correspondence with the previous Minister for Europe). We also note that a revised General Concept will include not just possible mission restructuring but also “detailed measures of progress to assist further review of longer term engagement.”

7.20 With respect to EUPOL DRC, we note what the Minister says about the inherent difficulty in measuring improvements in the attitudes and behaviour of the Congolese National Police and their incremental nature. However, it should not be difficult to measure change in a situation in which, still, it seems that a large proportion of violent crime, sexual violence and human rights violations is committed by members of the Congolese police and military: either the number of such violations of human dignity and rights, and the part of the security sector in them, is falling, or it is not. It is thus gratifying to know that the Political and Security Committee has asked the Council Secretariat to “examine the options for strengthened ESDP action to combat sexual violence and impunity in the DRC in view of assessing a possible scope of action for EUPOL”. We should be grateful if, in due course, the Minister would let us know what the outcome of this work is, and how the Operational Plan is to be adjusted.

8 Taxation

(30613) 9281/09 COM(09) 201	Commission Communication: <i>Promoting good governance in tax matters</i>
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<i>Legal base</i>	—
<i>Document originated</i>	28 April 2009
<i>Deposited in Parliament</i>	1 May 2009
<i>Department</i>	HM Treasury
<i>Basis of consideration</i>	EM of 18 May 2009
<i>Previous Committee Report</i>	None
<i>Discussed in Council</i>	9 June 2009
<i>Committee’s assessment</i>	Politically important
<i>Committee’s decision</i>	Cleared

Background

8.1 The Commission says that with the current financial and economic crisis the need for international tax cooperation and common standards has become a regular feature of international discussions.

The document

8.2 In that context the Commission introduces this Communication by suggesting that:

- globalisation, “or the increasing economic integration of markets that is being driven by rapid technological change and policy liberalisation”, has brought great benefit to many countries;
- a downside is, however, that tax havens and insufficiently regulated international financial centres can facilitate or encourage tax fraud and avoidance, affecting the tax sovereignty of other countries and their revenues;
- rejecting globalisation and closing markets because of these negative effects would be counterproductive;
- and a better Community response would be agreements with third countries to include promotion of “good governance in the tax area”.

It continues by recalling OECD, G-20, European Council and ECOFIN Council activity in this area and says that the aim of the Communication is to identify a Community contribution to good governance in the area of direct taxation and that it considers:

- how good governance could be improved within the Community;
- the tools which the Community and Member States may have to promote good governance internationally; and
- the scope for more coordinated action by Member States so as to support, streamline and complement international action taken in other for a, such as the OECD and the UN.

8.3 In the following section, “Elements of good governance in the tax area”, the Commission first discusses existing tax cooperation within the Community:

- recalling that ECOFIN has defined, at its meeting of 14 May 2008, good governance in the tax area as meaning “the principles of transparency, exchange of information and fair tax competition”;³¹
- noting administrative cooperation through the Mutual Assistance, Recovery of Tax Claims and Savings Taxation Directives;
- noting political agreement on limiting harmful tax competition through the “Code of conduct for business taxation”;³²
- saying that state aid policy as applied to fiscal state aids has contributed to removing distortions of competition; and
- saying that these tax initiatives are complemented by company laws and rules that ensure corporate and financial transparency.

31 See http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ecofin/100339.pdf, page 22.

32 See http://ec.europa.eu/taxation_customs/taxation/company_tax/harmful_tax_practices/index_en.htm.

Secondly, in this section the Commission notes, in relation to international tax cooperation discussions, that much Community progress on tax cooperation has been driven by OECD activity in this field, the continuing work of OECD — supported by the G-20 and the Commission’s wish for coordinated action by Member States in taking this work forward in international discussions.

8.4 In the section, “EU international policy on good governance in the tax area”, the Commission:

- recalls, commitments made at Community level, citing ECOFIN and European Council support for incorporating provisions on good governance in the tax area into agreements with third countries; and
- notes application of Savings Taxation Directive type measures to third countries, application of the code of conduct for business taxation to dependent or associated territories of Member States, agreements on these matters with members of the European Economic Area and Switzerland, the relevance of the European Neighbourhood Policy, enlargement and development cooperation policy and ongoing implementation of May 2008 ECOFIN Conclusions on these matters.

8.5 In the section, “How to strengthen the principle of good governance in the tax area within the EU and internationally”, the Commission discusses:

- internal activities, urging Council support for its proposed amendments to the Mutual Assistance, Recovery of Tax Claims and Savings Taxation Directives and continued implementation of the code of conduct for business taxation;
- external activities, seeking appropriate Council political priority for securing agreements with third countries and allowing the Commission greater flexibility in negotiating such agreements;
- the use of development cooperation incentives; and
- international tax policy coordination.

8.6 The Communication concludes with the Commission recapitulating its case for promoting good governance in the tax area and urging Council support for its suggestions. It says that it “intends to pursue constructive dialogue with all stakeholders concerned in connection with the principles and practical implementation of the measures identified in this Communication, and it will review and report on the situation in 2010.”

The Government’s view

8.7 The Financial Secretary to the Treasury (Mr Stephen Timms) says that the Government broadly welcomes the principle of this Communication and is pleased to see the issue of good governance and tax transparency so prominent on the international agenda, that there is read-across between the Community and G-20 agendas, so it will be important to ensure broad consistency of approach, and that the document contains no legislative proposals, but the Government will want to consider the specific implications of individual proposals.

Conclusion

8.8 The question of good governance in relation to taxation policies is important. So, whilst clearing this Communication, we draw it to the attention of the House.

9 European Defence Agency activity in 2009

(30653)	Head of the European Defence Agency's Report to the Council
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<i>Legal base</i>	—
<i>Deposited in Parliament</i>	22 May 2009
<i>Department</i>	Defence
<i>Basis of consideration</i>	EM of 8 June 2009
<i>Previous Committee Report</i>	None; but see (30175) —: (30176) 15442/08: and (30212) — HC 19–ii (2008–09), chapter 10 (17 December 2008)
<i>Discussed in Council</i>	18 May 2009 General Affairs and External Relations Council
<i>Committee's assessment</i>	Politically important
<i>Committee's decision</i>	Cleared

Background

9.1 The European Defence Agency was established under 2004/551/CFSP on 12 July 2004, “to support the Member States and the Council in their effort to improve European defence capabilities in the field of crisis management and to sustain the European Security and Defence Policy as it stands now and develops in the future”.

Functions and Tasks

9.2 It has four functions, covering:

- developing defence capabilities;
- promoting Defence Research and Technology (R&T);
- promoting armaments cooperation;
- creating a competitive European Defence Equipment Market and strengthening the European Defence, Technological and Industrial Base.

9.3 According to its website, these functions all relate to improving Europe’s defence performance, by promoting coherence: “a more integrated approach to capability development will contribute to better-defined future requirements on which collaborations — in armaments or R&T or the operational domain — can be built. More collaboration will, in turn, provide opportunities for industrial restructuring and progress towards the continental-scale demand and market, which industry needs.”

9.4 On this basis, the Agency’s tasks include:

- to work for a more comprehensive and systematic approach to defining and meeting the capability needs of the European Security and Defence Policy (ESDP);
- to promote European defence-relevant R&T, as vital both to a healthy defence technological and industrial base and to defining and satisfying future capability requirements. This will involve pursuing collaborative use of national defence R&T funds, in the context of a European Defence R&T Strategy which identifies priorities;
- to promote European cooperation on defence equipment, both to contribute to defence capabilities and as a catalyst for further restructuring the European defence industry;
- to work, in close cooperation with the Commission, on steps towards an internationally competitive market for defence equipment in Europe.

9.5 The EDA says that its “comparative advantage” should be “its ability to comprehend all these agendas, and relate them so as to realise their synergies. Its special position should allow it to develop uniquely cogent analyses and proposals across the range of its activities.”

Structure

9.6 The EDA is an Agency of the European Union. The EU High Representative, Javier Solana, is Head of the Agency and Chairman of the Steering Board, its decision-making body, which is composed of Defence Ministers of the 26 participating Member States (all EU Member States, except Denmark) and the European Commission. In addition, the Steering Board meets regularly at sub-ministerial levels, such as National Armaments Directors or Capability Directors.

9.7 The Steering Board acts under the Council’s Authority and within the framework of guidelines issued by the Council, and meets twice yearly — in May and November.

Way of working

9.8 The EDA’s website explains:

“the Agency faces outwards. Its main “shareholders” are the Member States participating in the Agency; key stakeholders include the Council and the Commission as well as third parties such as OCCAR (fr. Organisation Conjointe de Coopération en matière d’Armement),³³ LoI (Letter of Intent) and NATO. The

³³ The Organisation Conjointe de Coopération en matière d’Armement was established by an Administrative Arrangement on 12th November 1996 by the Defence Ministers of France, Germany, Italy and the UK. Its aim is to

Agency has a special relationship with Norway (through an “Administrative Arrangement”).”³⁴

9.9 The Committee and its predecessor were fully engaged in the development of the EDA, culminating in a debate in June 2004 in European Scrutiny Committee B.³⁵ There, the then Secretary of State stated that its principal purpose would be to improve Member States’ military capabilities. Unanimity is required for decisions on role, goals and targets; QMV for internal operations. It came into being in 2005.

9.10 The Government agreed that it would deposit the Agency reports to the Council referred to in Article 4 of the EDA Joint Action — its May report on activities during the previous and current year and its November report on current year activity and “draft elements” of the work programme and budgets for the following year — and the Council’s annual guidelines to the Agency that set the framework for its work programme. Also, initiated by the then Secretary of State (Dr John Reid), the Secretary of State writes before and after EDA Steering Board meetings (not only to this Committee but also to the Defence Select Committee). We have thus been kept well-informed of developments during the EDA’s formative years.

9.11 At our meeting on 6 February 2008, we considered the report of November 2007 on that year’s activity and the following years’ budgets and the Council’s guidelines to the Agency that set the framework for its 2008 work programme, along with a Joint Action that embodied the outcome of the first review required by the original Joint Action (carried out by the Head, 3 years after adoption of the Joint Action; proposing no major changes and amendment to authorise two Deputy Chief Executives instead of one — one strategic, one operational; agreed in principle by the steering board, and in the 2008 budget — and a further review in 2010).

9.12 We also considered a Commission Communication (and related draft legislation) on defence procurement, which we recommended for debate in European Committee B. With the EDA entering the next stage of its development, and clear indications that, particularly during the French presidency of the European Union in the second half of this year, the future of European Security and Defence Policy would be put under the microscope, we also recommended that the Head of the Agency’s Report and the guidelines for 2008 be debated at the same time, to enable the House to consider the wider framework, and how the EDA might best contribute.³⁶ That debate took place on 10 March 2008.³⁷

9.13 Our most recent Report dealt with:

— the Head of the Agency’s Report on activities in 2008;

provide more effective and efficient arrangements for the management of certain existing and future collaborative armament programmes. The four founding Nations went on to sign a Treaty, the “OCCAR Convention”, which came into force on the 28th January 2001. Belgium and Spain joined OCCAR in 2003 and 2005 respectively. The Netherlands, Luxembourg and Turkey are also participating in a programme, without being members of the organisation. For further information on OCCAR, see <http://www.occar-ea.org/>.

34 For full background on the EDA and its activities, see <http://www.eda.europa.eu/>.

35 *Stg Co Deb*, European Standing Committee B, 22 June 2004, cols. 3–24.

36 See (28212) and (29268) HC16–xi (2007–08), chapter 1 and (29341–3) HC16–xi (2007–08), chapter 2 (6 February 2008).

37 See <http://www.publications.parliament.uk/pa/cm200708/cmgeneral/euro/080310/80310s01.htm> for the record of this debate.

- guidelines for assessing the report and recommendations about the direction of the EDA in 2009
- the Agency’s budget for 2009

9.14 They concentrated on the EDA’s strategic framework — the Capability Development Plan — and the three endorsed strategies — the European Defence Technological Industrial Base Strategy, the European Defence R&T strategy and the Armaments strategy — all of whose main features in 2008 were covered in the Head of the Agency’s Report. They were well explained and commented upon by the Minister for International Defence and Security (Baroness Ann Taylor) in three separate Explanatory Memorandums, the last of which contained what little information there was on the 2009 budget. Although no official text was available (it being in French), the Minister noted that, once again, only an annual budget had been set and that, at €30 million, it was both 25% less than proposed and €2 million less than funds available for 2008.

9.15 The Committee noted that the Government continued successfully to pursue its pragmatic approach of broad, active participation, “ranging from maintaining a watching brief of progress to active participation where the projects align with our own UK objectives”, of maintaining budgetary discipline and of encouraging the Agency to focus on where it can best add value. The Government had been heavily involved in the CDP and the three main strategies, and the Minister explained why it participated in some programmes (e.g. the creation of an EU-wide forum for Military Airworthiness Authorities, the aim of which was “a joined up approach in respect of common Airworthiness regulations, processes and procedures such that for future collaborative programmes there will be a much reduced cost and time for industry in undertaking development, certification and preservation of airworthiness than has been the case hitherto, when trying to satisfy multiple AW Authorities’ different requirements”; this was “a UK inspired EDA project in which we will continue to take a leading role”) and not in others (e.g., the first Joint Investment Programme on Force Protection due to duplication with ongoing national work and a planned second Joint Investment Programme on Innovative Concepts and Emerging Technologies “as experts don’t judge this subject a priority for UK defence research funding”).³⁸

9.16 As on previous occasions, the Committee reported these developments to the House because of the widespread interest in the development of a European defence industry and strategy and in ESDP generally, and also drew it to the attention of the Defence Select Committee.

Recent Ministerial Correspondence

9.17 In the most recent correspondence, before and after the 18 May 2009 EDA Steering Board Meeting, the agenda item that the Minister highlighted was a prospective *3-Year Financial Framework (2010–2012)*. Against a background of difficulties hitherto among Member States in agreeing a three year financial framework, leaving annual budgets to be agreed each year — last November, the Board agreed a one year budget for 2009 of €30

³⁸ See headnote: (30175) —: (30176) 15442/08: and (30212) — HC 19–ii (2008–09), chapter 10 (17 December 2008).

million — the Minister said that the Agency had now produced an adequate three year work programme, and a proposal for an amendment to the Joint Action to allow the three year financial framework to be set every year on a rolling basis; though all Member States that spoke endorsed the approach in the paper, many also noted that in the current circumstances the Agency needed to exercise financial restraint. The Minister herself said that the EDA could not be exempt from belt-tightening and should not assume that more resources would be available next year than this. Several other Member States argued for financial restraint, others argued that the EDA needed appropriate levels of resources, some insisting that the budget could not be reduced, but only one argued explicitly for an increase. The Chairman of the Steering Board suggested coming back to the subject at an additional board meeting, potentially to be held at the Swedish Defence Ministers' informal in September.

9.18 The Minister also reported briefly on various projects, the most notable of which are also dealt with below.

The Head of the Agency's Report on key activities in 2009

9.19 As before, the report highlights progress made on the Agency's major initiatives, provides details on the implementation of existing policies and developing policy/conceptual work and provides information of specific projects.

9.20 The Head of Agency notes that the EDA has been focussing on the practical implementation of its strategies and policies — “addressing challenging work strands on capabilities, Research and Technology, Armaments Industry and Market issues”. He says that “Good progress has been made across a range of cooperative projects in priority areas — including helicopters' availability, airlift, logistics, protection against biological threats, space, and maritime surveillance”.

9.21 The commendably brief and clear report then examines current and prospective projects, including the implementation of the long term strategies such as the Capability Development Plan, the European Defence R&T Strategy the European Defence Technological Industrial Base and the European Armaments Cooperation (EAC) strategy. The report also provides details of specific projects like the Agency's work on *helicopter availability*, *the European Air Transport Fleet Initiative*, *MUSIS* and *the two R&T Joint Investment Programmes on Force Protection and on Innovative Concept and Emerging Technologies (ICET)*, and information on how the EDA has been enhancing contacts with key stakeholders such as the European Commission, OCCAR and NATO. All in all, the Head of Agency says, the Agency's “added value is demonstrated with the existing cooperative projects/programmes being implemented and new initiatives being generated and launched.”

The Government's view

9.22 In her Explanatory Memorandum of 8 June 2009, the Minister for International Defence and Security (Baroness Taylor) says that no new policy implications arise from this report., and that “the UK will continue to engage positively with the EDA to ensure

that it is an effective tool in helping to improve military capability in Europe.” She comments as follows on :

Strategies

Capability Development Plan (CDP)

“The Capability Development Plan (CDP) is designed to allow the EDA to set a long term vision for European defence capability and capacity needs, thereby informing decisions on industrial, technological and investment issues. It is providing a valuable tool for Member States, stimulating greater efficiency and identifying more cooperative opportunities by defining future requirements in a coherent, transparent and collective way. Of the twelve CDP selected priority areas, nine have been taken forward by the Agency together with the Member States. The Agency, together with relevant EU actors will continue to assist Member States by providing collective priorities for future capability development. The UK strongly supports this work.

European Defence Research and Technology Strategy

“The European Defence Research & Technology Strategy, like the UK Defence Technology Strategy aims to identify key technologies that will need to be developed or maintained within Europe. The UK has taken a leading role in this work, alongside several European partners. Work has been undertaken on implementing the strategy and the UK will continue to work closely with the EDA as this strategy is further embedded.

European Defence Technological and Industrial Base (EDITB)

“Work on the European Defence Technological and Industrial Base (EDTIB) aims to strengthen the EDTIB, by making it more responsive and effective. Progress has been maintained by the Agency, for example work on identifying key industrial capabilities to be preserved or developed in Europe has been tested in the area of Future Air Systems. The UK fully supports this progress and efforts to create a European Defence Equipment Market.

European Armaments Cooperation (EAC) Strategy

“This strategy is still in early production however work has progressed in areas such as education, best practice and standardisation. A number of EDA projects are foreseen as test cases for the application of the Strategy’s Guide on how to conduct programme preparation phases. The UK is actively engaged and will work with the Agency over the coming months on the production of this strategy.

Major Initiatives

Helicopter Availability

“The UK strongly supports any initiative that improves the availability of helicopters for operations. The UK fully supports the work the EDA has done on helicopter training; we have seconded a national expert to the Agency to assist them on this

programme. Work has progressed on launching a helicopter tactics programme in 2010 which aims to dull the gap between competent crew and the high end skills needed to deploy on demanding operations. The EDA will present Member States with concrete proposals on this in [the] autumn. The Agency has also been looking at potential upgrade programmes for specific helicopter types (initially MI, the PUMA in due course) with the intention to generate opportunities for collaborations. The UK supports this initiative and has asked the Agency to keep in close touch with NATO to ensure there is no duplication of the work NATO is conducting on helicopter upgrades. An ad-hoc Category B Project on the “Future Transport Helicopter” has been established, the UK does not plan to participate in this due to our current helicopter arrangements.

European Air Transport Fleet

“The EDA has maintained momentum on the work to establish a European Air Transport Fleet, a key pooling initiative which has been widened from a programme based around a fleet of A400M into a framework for different types of air transport assets. The UK decided not to participate in the original EATF A400M Programme as it was concluded that it would restrict the way we operate our mixed strategic transport fleet. However we will now review our position in light of the broadening of scope.

Network Enabled Capabilities (NEC)

“The EDA has adopted a structured approach to Network Enabled Capabilities (NEC) focusing on the technology, people and information domains with an emphasis on governance. NEC is actively supported by the UK and we are comfortable with the proposals outlined by the Agency to take this forward. We encourage the Agency to maintain close cooperation with NATO and other EU actors engaged in NEC in order to ensure coherence and avoid duplication.

Multinational Space-Based Imaging System (MUSIS) and Space Situational Awareness (SSA)

“The EDA Category B Project Multinational Space-Based Imaging System (MUSIS) aims to develop the second generation of military earth observation satellites, replacing current capabilities in the 2015–2017 timeframe. The UK does not currently participate in this but will continue to monitor the programme to identify potential opportunities for collaboration. Space Situational Awareness (SSA) is a civil European space programme led by the European Space Agency (ESA). Its purpose is to track debris and mitigate against the effects of space weather, to avoid collisions and damage to member states’ satellites. The EDA established a Category B Project in 2009 to determine any defence-specific requirements for SSA. The UK does not participate in this; we recognise that there are data security and governance concerns but believe these could be dealt with in the civil ESA programme. We will continue to observe developments within the EDA Project Team.

Maritime Surveillance

“The UK supports the EDA work on Maritime Surveillance and we are pleased to see that the Common Staff Requirement clearly articulates the focus on support to ESDP operations, while recognising potential civilian applications. We encourage the need for close cooperation within the EU, especially the Commission, and other actors engaged in Maritime Surveillance such as NATO in order to avoid duplication.”

Joint Investment Programmes (JIP) on Force Protection and ICET

“Joint Investment Programmes are an EDA tool for undertaking collaborative research programmes. This EDA JIP on Force Protection was designed to enable EDA Member States to progress research into force protection over three years. The UK decided not to participate due to the overlap with ongoing national activity. The UK does not participate in the second EDA JIP on ICET as this is not of high enough priority for us to warrant participation.

Other Programmes Mentioned

“The UK participates in many of the EDA’s programmes to varying degrees, ranging from maintaining a watching brief of progress to active participation where the projects align with our own UK objectives.”

EDA Relationships with key stakeholders

“The EDA has been enhancing contacts with key stakeholders (including the European Commission, OCCAR, and NATO) when and where appropriate. The UK fully supports better cooperation between the EDA and its key stakeholders.”

9.23 Finally, the Minister notes that this report was submitted to the 18 May 2009 General Affairs & External Relations Council and that the next report to the Council will be in November 2009 detailing the Agency’s activities undertaken in 2009.

Conclusion

9.24 **The Government continues to pursue a pragmatic approach, again describing it as “ranging from maintaining a watching brief of progress to active participation where the projects align with our own UK objectives”.**

9.25 **It is for others to judge the rightness of this approach. That said, now that the Agency is approaching its fifth anniversary, we might have expected the Minister to have said somewhat more on how the Agency’s overall activities are now working out in relation to its goals, and in particular how its relationships are developing in practice with other interested parties so that duplication really is avoided and real value is added. It is perhaps too soon to seek to reach any firm conclusions, but equally premature (as well as being a somewhat limited yardstick) for the Head of Agency to be opining that the Agency’s “added value is demonstrated with the existing cooperative projects/programmes being implemented and new initiatives being generated and launched.” We accordingly hope that, when she presents the next Head of Agency**

Report, she might stand back a little from the canvas and let us have her considered views on these wider issues.

9.26 We again report these developments to the House because of the widespread interest in the development of a European defence industry and strategy, and as before draw this chapter of our Report to the attention of the Defence Committee.

9.27 On this occasion, now that the Agency has begun to get into its stride, we are also drawing this chapter of our Report to the attention of the Public Accounts Committee, so that they may be aware of the state of play.

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

Department of Health

(30655)
10148/09
COM(09) 228

Commission Report Operation of the Early Warning and Response System (EWRS) of the Community Network for the epidemiological surveillance and control of communicable diseases during 2006 and 2007 (Decision 2000/57/EC).

Ministry of Justice

(30640)
9811/09
COM(09) 205

Report on the practical operation of the methodology for a systematic and rigorous monitoring of compliance with the charter of fundamental rights.

(30643)
9780/09
+ ADD 1
COM(09) 212

Commission Communication on Re-use of Public Sector Information - Review of Directive 2003/98/EC.

HM Revenue and Customs

(30619)
9391/09
+ ADD 1
COM(09) 191

Commission Report on the implementation of the EDICOM II programme (2001-2005).

(30671)
10436/09
COM(09) 239

Draft Council Decision on the position to be taken by the Community concerning the proposal to amend the Customs Convention on the International Transport of goods under cover of TIR carnets (TIR Convention 1975).

Department for Transport

(30648)
10118/09
COM(09) 226

Draft Decision of the Council and the representatives of the Governments of the Member States of the European Union, meeting within the Council on the signature and provisional application of the Air Transport Agreement between the United States of America, for the one part, the European Community and its Member States, for the second part, Iceland, for the third part, and the Kingdom of Norway, for the fourth part; and on the signature and provisional application of the Ancillary Agreement between the European Community and its Member States, of the first part, Iceland, on the second part, and the Kingdom of Norway, of the third part, regarding the application of the Air Transport Agreement between the United States of America, of the first part; the European Community and its Member States, of the second part; Iceland, of the third part; and the Kingdom of Norway, of the fourth part.

(30649)
10119/09
COM(09) 229

Draft Decision of the Council and the representatives of the Governments of the Member States of the European Union, meeting within the Council on the conclusion of the of the Air Transport Agreement between the United States of America, for the one part, the European Community and its Member States, for the second part, Iceland, for the third part, and the Kingdom of Norway, for the fourth part; and on the conclusion of the Ancillary Agreement between the European Community and its Member States, of the first part, Iceland, on the second part, and the Kingdom of Norway, of the third part, regarding the application of the Air Transport Agreement between the United States of America, of the first part; the European Community and its Member States, of the second part; Iceland, of the third part; and the Kingdom of Norway, of the fourth part.

Formal minutes

Wednesday 17 June 2009

Members present:

Michael Connarty, in the Chair

Mr Adrian Bailey

Mr William Cash

Mr James Clappison

Jim Dobbin

Keith Hill

Kelvin Hopkins

Richard Younger-Ross

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 10 read and agreed to.

Resolved, That the Report, be the Twenty-second Report of the Committee to the House.

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

[Adjourned till Wednesday 24 June at 2.30pm.]

Standing order and membership

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

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

The expression “European Union document” covers —

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

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

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

Current membership

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