



House of Commons
European Scrutiny Committee

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

Documents considered by the Committee on 8 July 2009,
including the following recommendation for debate:

The EU's Justice and Home Affairs Programme for the next
five years

Report, together with formal minutes

*Ordered by The House of Commons
to be printed 8 July 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 " <i>Legal base</i> ") Treaty establishing the European Community
EM	Explanatory Memorandum (submitted by the Government to the Committee)
EP	European Parliament
EU	(in " <i>Legal base</i> ") Treaty on European Union
GAERC	General Affairs and External Relations Council
JHA	Justice and Home Affairs
OJ	Official Journal of the European Communities
QMV	Qualified majority voting
RIA	Regulatory Impact Assessment
SEM	Supplementary Explanatory Memorandum

Euros

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

Further information

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

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

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1 The EU's Justice and Home Affairs Programme for the next five years

(30701) 11060/09 COM(09) 262	Commission Communication: <i>An area of freedom, security and justice serving the citizen</i>
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<i>Legal base</i>	—
<i>Document originated</i>	10 June 2009
<i>Deposited in Parliament</i>	17 June 2009
<i>Department</i>	Home Office
<i>Basis of consideration</i>	EM of 30 June 2009
<i>Previous Committee Report</i>	None
<i>To be discussed in Council</i>	16–17 July 2009
<i>Committee's assessment</i>	Politically important
<i>Committee's decision</i>	For debate in European Committee B

Background

1.1 Title VI (Articles 29 to 42) of the EU Treaty contains provisions on police and judicial cooperation in criminal matters. Proposals for legislation to achieve the objectives of the Title may be initiated by Member States or the Commission. With one exception,¹ unanimity in the Council is required for the adoption of legislation for which Title VI provides the legal base. The legislation is not subject to co-decision with the European Parliament.

1.2 Title IV (Articles 61 to 69) of the EC Treaty contains provisions on visas, asylum, immigration and other policies relating to the free movement of people, including judicial cooperation in civil matters. Qualified majority voting in the Council and co-decision with the European Parliament is the procedure for the adoption of most legislation under Title IV.

1.3 Article 69 of the EC Treaty provides that measures adopted under Title IV are not to apply to the United Kingdom unless it expressly opts into them.

1.4 In October 1999, the European Council approved a five-year programme of action (“the Tampere Programme”) on justice and home affairs, including asylum and immigration, civil and criminal justice and police and customs cooperation. In 2004, the previous Committee made a Report to the House on a Communication from the Commission assessing progress in implementing the Tampere Programme and proposing priorities for the next five years.² The Communication was debated on the Floor of the House on 13 October 2004.

¹ See Article 34(2)(c) of the EU Treaty.

² (25730) 10249/04: HC 42–xxviii (2003–04), 14 July 2004.

1.5 In November 2004, the European Council agreed a further five-year programme of action on justice and home affairs (“the Hague Programme”).³ In May 2005, the Commission proposed an Action Plan which set out about 250 measures (such as Green Papers, legislation and agreements with third countries) to give effect to the Programme.⁴ It was adopted by the Council in June 2005.

The document

1.6 The Communication is intended to contribute to the Council’s thinking about the contents of the next justice and home affairs programme (JHA). The Programme will run from 2010 until the end of 2014. It is likely to be approved under the Swedish Presidency and to be known as the Stockholm Programme. In parallel with this Communication, the Commission has presented its evaluation of the Hague Programme, on which we report in chapter 11 below.

1.7 The Commission says that the EU needs a new JHA programme that:

“builds on the progress made so far and learns the lessons of the current weaknesses in order to make an ambitious push forward. The new programme should define the priorities for the next five years, take up the challenges of the future and make the benefits of the area of freedom, security and justice more tangible to the ordinary citizen.”⁵

1.8 In the Commission’s view, in future all the action on JHA should be focussed on the citizen and should have four main priorities:

- “Promoting citizens’ rights — a Europe of rights” in which fundamental human rights are protected;
- “Making life easier — a Europe of law and justice”, in which it is easier for people and businesses to gain access to the courts to enforce their rights and resolve disputes;
- “Protecting citizens — a Europe that protects” through a new strategy aimed at improved cooperation for the prevention and detection of serious cross-border crime, including terrorism;
- “Promoting a more integrated society for the citizen — a Europe of solidarity” through the implementation of the European Pact on Immigration and Asylum.

1.9 The Commission says that the success of the new programme will depend on five things: the consistency of JHA policies with each other and with other EU policies; closing the gap between EU policies and legislation, on the one hand, and their implementation by the Member States, on the other; improving the quality of EU legislation; improving the evaluation of policies and legislation; and ensuring that JHA policies are accompanied by the money needed to put them into effect.

3 Hague European Council, 4–5 November 2004, Presidency Conclusions, paragraphs 14 to 20 and Annex I.

4 (26566) 8922/05: HC 34–iv (2005–06), chapter 22 (20 July 2005).

5 Commission Communication, page 5, first paragraph.

1.10 The following are examples of the action the Commission proposes for inclusion in the Stockholm Programme under the heading “*Promoting citizens’ rights*”:

- more enforcement action by the Commission to ensure that Member States correctly transpose and apply the existing EC legislation on, for example, the free movement of persons within the EU, xenophobia, racism and other types of unfair discrimination;
- give greater protection to the most vulnerable people, such as women who are subjected to domestic violence and children;
- develop a new and comprehensive strategy for the protection of personal data, backed where necessary by new legislation and agreements with third countries and international organisations;
- take action to encourage electors to take part in the 2014 elections to the European Parliament by, for example, holding all the elections in the week beginning 9 May; and
- strengthen the existing arrangements for a citizen of a Member State without consular representation in a third country to receive assistance from any other Member State’s consul.

1.11 Under the heading “*Making people’s lives easier: a Europe of law and justice*”, the Commission says that :

“The European judicial area must allow citizens to assert their rights anywhere in the Union by facilitating their access to justice. It must equip economic operators with tools that enable them to benefit fully from the single market, especially at a time of economic crisis.”⁶

1.12 Accordingly, the Commission proposes that the Stockholm Programme should include measures to extend the mutual recognition of judicial decisions:

- so as to permit the abolition of *exequatur*, the procedure for a court in one country to authorise the enforcement of a judgment given by a court in another country; and
- apply mutual recognition to new matters, such as wills, matrimonial property rights, witness protection and disqualification from, for example, being a company director, driving a motor vehicle or practising a profession.

1.13 The Commission says that:

“In criminal matters such as terrorism, organised crime and attacks on the Union’s financial interests, only action at European level can deliver effective results. Further action is therefore needed on the closer alignment of substantive law in relation to certain serious crimes, generally of a cross-border nature, which require common definitions and penalties. Alignment here will help to extend mutual recognition

6 Commission Communication, page 10, fifth paragraph.

and, in some cases, almost completely abolish the grounds for refusal to recognise other Member States' judgments.”⁷

1.14 Access to justice should be made easier by, for example, making more and better use of ICT to provide the public with access to information about the law and the courts and for the authentication of documents.

1.15 The Commission says that the EU should improve its legislation on the protection of victims of crime and offer them more practical support.

1.16 It should also help businesses and the functioning of the single market by, for example, harmonising aspects of contract law and ensuring that court decisions are enforced more effectively. To boost external trade, the EU should make agreements with its main economic partners on the recognition and enforcement of court decisions in civil and commercial matters.

1.17 Under the heading “*A Europe that protects*”, the Commission proposes that the next five-year JHA programme should call for a new strategy to improve the internal security of the EU. The strategy would have three main strands:

- more and better cooperation between law enforcement authorities to prevent and detect cross-border crime; greater use of Europol; and cooperation agreements with third countries;
- improving the administration of justice by, for example, creating “a real European Evidence Warrant to replace all the existing legal instruments. The warrant would be automatically recognised and applicable throughout the Union, thereby encouraging prompt and flexible cooperation between Member States. It would lay down the deadlines for enforcement and limit so far as possible the grounds for rejection”;⁸ and
- better management of the EU’s external borders, which will require strengthening FRONTEX,⁹ developing the European Border Surveillance System, and establishing an electronic system for recording all entries to and exits from the territory of the Member States.

1.18 The Communication goes on to make proposals for action to be included in the Stockholm Programme on human trafficking; the sexual exploitation of children and child pornography; cybercrime; economic crime; and illicit drugs.

1.19 The Commission says that three objectives should be given priority in the EU’s efforts to reduce the threat of terrorism. They are:

- countering the radicalisation of vulnerable people;

7 Commission Communication, page 12, fifth paragraph.

8 Commission Communication, page 17, fourth paragraph.

9 FRONTEX is the European Agency for the management of operational cooperation at the external borders of the Member States.

- greater surveillance of the Internet to prevent and detect its use for terrorist purposes; and
- improving and keeping up-to-date the arrangements to prevent and detect the financing of terrorism.

1.20 Under the heading “*Promoting a more integrated society: a Europe that displays responsibility and solidarity in immigration and asylum matters*”, the Commission calls for the implementation of the European Pact on Immigration and Asylum which was approved by the European Council in October 2008.¹⁰ It also makes proposals for the inclusion in the Stockholm Programme of action advocated in the Commission’s Communications on immigration and asylum in the summer of 2008.¹¹

1.21 For example, the Communication says that:

- the management of migration should be integral to the EU’s policies for dialogue and partnership with third countries;
- the EU should take the action necessary to achieve a better balance between the demand for labour and the supply of workers from within Europe and from abroad who have the required skills;
- an Immigration Code should be adopted to ensure uniform rights for legal immigrants;
- greater efforts should be made by Member States, with the support of the EC, to integrate legal immigrants into their host communities;
- an effective policy on the removal and return of illegal immigrants should be developed;
- over the past decade, the EU has made good progress in creating a common European asylum system and adopted the first phase of legislation for that purpose; the second phase of legislation now needs to be adopted quickly with the aim of establishing, no later than 2012, a single asylum procedure and “a uniform international protection status”;¹²
- by the end of 2014, the EU should agree to the mutual recognition by Member States of each other’s decisions to grant protection to asylum seekers; and
- consideration should be given to the introduction of a voluntary system for people granted asylum by one Member State to be resettled in another.

1.22 The Commission concludes with the hope that, by the end of this year, the European Council will adopt an ambitious JHA Programme based on the Communication. The Commission will then propose an Action Plan to give effect to it.

10 (29937) 12626/08: see HC 16–xxix (2007–08), chapter 17 (10 September 2008).

11 (29765) 11017/08 and (29766) 11022/08: see HC 16–xxix (2007–08), chapters 15 and 16 (10 September 2008).

12 Commission Communication, page 27, fourth full paragraph.

1.23 The Annex to the Communication contains a list of what are, in the Commission’s view, the 50 priority issues.

The Government’s view

1.24 In his Explanatory Memorandum of 30 June 2009, the Home Secretary (Alan Johnson) says that the Government welcomes the Communication and supports the continuation of the JHA programme for a further five years. He comments on most of the Commission’s individual proposals and says that there is much in the Communication with which the Government can agree. For example, the Government:

- supports the Commission’s proposal for an EU-wide policy on fighting serious organised crime;
- agrees that the Stockholm Programme should reflect the priorities set out in the European Migration and Asylum Pact.;
- welcomes the Commission’s emphasis on protecting fundamental human rights;
- supports the proposals for the protection of children and other vulnerable people; and
- welcomes the Commission’s call for better implementation and evaluation of existing EU legislation.

1.25 The Home Secretary says that:

“There should, over the course of the next five years, be an emphasis on practical action and legislative proposals should only be brought forward where there is a [...] realistic chance of agreement and where they will add value.”¹³

1.26 While there is much with which the Government can agree, the Government does not support some of the Commission’s proposals. The Home Secretary says, for example, that:

- The Government does not agree with the Commission’s proposals that, throughout the EU, elections to the European Parliament should be held in the week of 9 May 2014; it wants to retain the flexibility to set the date to reflect national electoral traditions and practical considerations.
- While the Government would support the extension of mutual recognition of judicial decisions, particularly of disqualifications, it believes that “it is essential that the differences in Member States’ justice systems are respected and the Government will seek to ensure that this continues in the coming years”.¹⁴
- “The Government recognises that there may be benefit in the closer alignment of substantive law in relation to some serious crimes, generally of a cross-border nature, but we will want to consider any such proposals very carefully, with a particular focus on subsidiarity considerations. The Government supports efforts

¹³ Explanatory Memorandum, paragraph 21, final sentence.

¹⁴ Explanatory Memorandum, paragraph 24, final sentence.

to ensure that certain, essential elements are covered but does not support common definitions of actual offences or a move away from the principle of mutual recognition.”¹⁵

- The Government does not support the Commission’s statement (quoted in full in paragraph 1.13 above) that in criminal matters such as terrorism, organised crime and attacks on the Union’s financial interests, “only action at European level can deliver effective results”. The Home Secretary comments that there is a role for EU action but most of the operational counter-terrorism work is done bilaterally or multilaterally through informal channels.
- The Government has serious reservations about the Commission’s proposal that, by the end of 2014, there should be mutual recognition of Member States’ decisions to grant asylum. It believes that “refugees should seek and obtain asylum in the first EU country that they reach, rather than being free to move on to another Member State after having their claims accepted by one.”¹⁶

1.27 The Communication will be considered by senior officials from the Member States in July before being discussed by the JHA Council on 21–22 September. There will be detailed negotiations on the contents of the Programme in the autumn before it is put to the JHA Council for approval in November and to the European Council in December.

Conclusion

1.28 **We are grateful to the Home Secretary for his comprehensive and helpful Explanatory Memorandum. In our view, its authorship and length properly reflect the importance of the Commission’s Communication.**

1.29 **We share the Commission’s and Government’s emphasis on the need for practical cooperation between Member States and better implementation and evaluation of existing EU policies and legislation. We have no doubt of the importance of cooperation between Member States, with the assistance of the Commission, on immigration, asylum, cross-border organised crime and terrorism and mutual recognition of judicial decisions. But we understand why the Government has serious reservations about some of the proposals and share its concerns.**

1.30 **Between now and the meeting of the JHA Council in November, there will be intensive negotiations on the contents of the Communication. We ask the Home Secretary to provide us with regular progress reports on the discussions. We also recommend that the Communication be debated in European Committee B in October. We believe this is essential in order to give the House the opportunity for sustained questioning about the proposals and the Government’s views on them. Meanwhile, we shall keep the document under scrutiny.**

15 Explanatory Memorandum, paragraph 26.

16 Explanatory Memorandum, paragraph 56.

2 Energy performance of buildings

(30196) Draft Directive on the energy performance of buildings (recast)
 15929/08
 + ADDs 1–7
 COM(08) 780

<i>Legal base</i>	Article 175(1)EC; co-decision; QMV
<i>Department</i>	Communities and Local Government
<i>Basis of consideration</i>	Minister's letter and SEM of 2 July 2009
<i>Previous Committee Report</i>	HC 19–iv (2008–09), chapter 6 (21 January 2009)
<i>To be discussed in Council</i>	No date set
<i>Committee's assessment</i>	Politically important
<i>Committee's decision</i>	Not cleared; further information awaited

Background

2.1 Directive 2002/91/EC aims to promote the cost-effective improvement of the energy performance of new and existing residential and non-residential buildings, and combines different regulatory and information-based instruments. In particular, it requires Member States to set minimum energy performance requirements, and to ensure that these are met by new buildings, and by existing buildings with a floor area above 1000m² when these undergo major renovation, and it also requires them to establish arrangements for the issue and display of energy performance certificates, and for the inspection of boilers and air conditioning systems of a specified output. It does not, however, fix Community-wide standards, allowing factors such as outdoor climate and individual building traditions to be taken into account by Member States.

2.2 The Commission has noted that the buildings sector is the largest user of energy and carbon dioxide emitter in the Community, and could produce cost-effective savings which would reduce by 11% the Community's energy consumption by 2020, and have a positive impact on climate. This led it to put forward in November 2008 this proposal to re-cast Directive 2002/91/EC. As such, the proposal would retain many of the Directive's existing provisions, but it would also extend its scope, and clarify and strengthen a number of its provisions. Thus, it would:

- extend to all existing buildings, irrespective of floor area, the need to meet specified minimum energy performance requirements when they undergo a major renovation;
- require the methodology used by Member States to calculate energy performance requirements to take into account European standards (instead of simply taking into account standards applied in Member States' legislation);
- extend to all new buildings, irrespective of floor area, the requirement that the feasibility of alternative systems should be considered before construction starts;

- introduce minimum energy performance requirements for systems, such as boilers, water heaters and air conditioning installed in buildings;
- require Member States to increase the number of new and refurbished buildings for which carbon dioxide emissions and primary energy consumption are low or equal to zero, setting targets for the minimum percentages to be achieved by 2020 for residential, non-residential and public buildings, and intermediate targets for 2015;
- introduce more specific requirements on to the content of energy performance certificates, coupled with new requirements governing their issue when buildings are constructed, sold or rented, and where over 250m² is occupied by a public authority;
- reduce from 1000m² to 250m² the area above which such a certificate has to be prominently displayed if a building is occupied by a public authority, and introduce a similar requirement for any building above 250m² which is frequently visited by the public;
- extend the requirement on Member States to establish regular inspections of the boiler heating systems to include all boilers with an output greater than 20kW;
- require reports to be provided regularly to owners or tenants of buildings on inspections of boilers and air conditioning systems, and oblige Member States to ensure that these are carried out independently by accredited experts, and subject to verification.

These changes would have to come into force by the end of 2010 for buildings occupied by public authorities, and by the end of January 2012 for all others.

2.3 The main change, however, would relate to the setting of minimum energy performance requirements by Member States. The Commission says these are at present set in many cases at “far from cost-optimal levels¹⁷”, and it has therefore proposed that they should be gradually aligned with cost-optimal levels calculated in accordance with a methodology to be developed by the Commission by the end of 2010. Initially, the aim would be to move towards these cost-optimal levels, but Member States would be required to achieve those levels by 30 June 2017, and, as from 30 June 2014, they would no longer be able to provide incentives for the construction or renovation of buildings which did not meet them.

2.4 As we noted in our Report of 18 January 2009, the Government says that the majority of the proposals are in line with, or replicate, the measures which the UK has already adopted. However, some — notably the establishment of a comparative methodology for calculating cost-optimal minimum energy performance, and the more extensive requirements for the display of energy performance certificates — would go much further, and it has described as “extremely challenging” the need for measures applying to buildings occupied by the public to be in place by the end of 2010. It also says that some of the

¹⁷ Described as the lowest level of costs during the life-cycle of the building, taking into account investment costs, maintenance and operating costs (including energy) and disposal costs.

definitions in the proposal need to be clarified; that the financial implications, though not yet quantified, are likely to be significant, not least the need to provide an independent control system for energy performance certificates and inspections of heating and air conditioning systems; and that the Government would be able to produce an Impact Assessment once the proposals have been agreed.

2.5 In noting that many of the additional, or amended, provisions now proposed were in line with what is already in place, we nevertheless commented that there were a number of uncertainties, and that we recognised that these made it difficult to produce an Impact Assessment. However, we expressed concern at the suggestion that such an Assessment should only be provided *after* the measure had been adopted, stressing the need for a proper assessment *before* any such agreement, and that we would wish to see before we could consider clearing the proposal. In addition, we felt it sensible to defer any such consideration until we had received more information on the progress of negotiations in Brussels.

Minister's letter and Supplementary Explanatory Memorandum of 2 July 2009

2.6 We have now received from the Parliamentary Under-Secretary of State at the Department for Communities and Local Government (Mr Ian Austin) a letter of 2 July, together with a supplementary Explanatory Memorandum. He says that, subject to the outcome of the consultation exercise about to be undertaken, the Government has taken a view on the proposal. It strongly supports in principle efforts to reduce carbon emissions, and, although it wishes to clarify whether the European standards used to calculate energy performance would be existing ones or new, it is in the main content with the vast majority of what is proposed, not least because the UK has in many such cases already gone further (or is proposing to do so).

2.7 However, the Minister identifies three main areas of concern where he says that issues of subsidiarity or costs may outweigh the benefits, namely:

- the suggestion that there should be a single methodology, developed by the Commission, to calculate cost-optimal levels of energy efficiency: in particular, whilst it is likely that the current UK approach would at least equal (or probably exceed) such levels, this cannot be confirmed until the methodology has been developed by the Commission, and there are also concerns about the desirability of having a single Community-wide methodology, given the wide variations in climatic conditions, types of buildings and construction methods which exist;
- the setting by the Commission of the definition of low and zero carbon properties, which also raises concerns over subsidiarity, and the extent to which it might risk a loss on momentum among those Member States already making progress in this area: the UK is also opposed to there being an obligation on Member States to set targets for the number of buildings meeting this requirement;
- the extension to public buildings larger than 250m² of a requirement to display an energy certificate, where the number of those affected in the UK would rise from 42,000 to 64,000 but would represent only 1.4% of the energy used in the public

sector, and where the Government considers that the focus should be on encouraging the take up of the existing requirement applying to buildings larger than 1000m².

2.8 The Minister has also provided an Impact Assessment, which suggests that there would be a one-off cost of about £2.5 million, as well as annual costs of £8 million arising from the wider display of energy certificates within the public sector. Against this, the average annual monetised benefit would be only £1.3 million, due to the additional energy savings arising from the provision of these certificates (though there would be certain non-monetised benefits arising from an annual reduction of around 12,400 tonnes of carbon dioxide). However, the Assessment notes that there would be further, as yet unquantified, costs in meeting the requirements relating to cost-optimal improvements and arising from a single definition of low and zero carbon buildings (together with the associated targets to increase the number of such buildings).

Conclusion

2.9 **Although the aims of this proposal are straightforward enough, it is a complex document, where much depends upon the detailed provisions. We are therefore grateful to the Minister for this further information, and pleased that the Government has now been able to prepare an Impact Assessment, at least as regards those aspects of the proposal where the Commission's intentions are reasonably clear. We note that the costs and benefits quantified so far would be relatively low, albeit resulting in a small net cost. Having said that, however, we also note that the Government still has a number of outstanding concerns over various aspects of the proposal, including the timetable envisaged by the Commission, and that at least two elements in the proposal — the achievement of cost-optimal levels of energy efficiency, and the projected increase in the number of low and zero carbon buildings — could well raise subsidiarity issues and generate further costs. In view of this, we intend to continue to hold the document under scrutiny, pending further clarification on these points, and the outcome of the Government's consultation exercise within the UK, and we would be glad if the Minister would keep us informed of developments.**

3 Rights of passengers

(30264) 11990/08 + ADDs 1–2 COM(08) 816	Draft Regulation concerning the rights of passengers when travelling by sea and inland waterway and amending Regulation (EC) No. 2006/2004 on cooperation between national authorities responsible for the enforcement of consumer protection laws
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<i>Legal base</i>	Article 71(1) EC; co-decision; QMV
<i>Department</i>	Transport
<i>Basis of consideration</i>	Minister’s letter of 29 June 2009
<i>Previous Committee Report</i>	HC 19–v (2008–09), chapter 4 (28 January 2009)
<i>To be discussed in Council</i>	Not known
<i>Committee’s assessment</i>	Politically important
<i>Committee’s decision</i>	Do not clear; further information requested

Background

3.1 In its 2001 White Paper “European transport policy for 2010: time to decide” the Commission listed one of its objectives as establishing passenger rights in all modes of transport.¹⁸ Legislation has already been enacted for the aviation sector, covering passenger rights generally and the rights of passengers with reduced mobility in two separate Regulations.¹⁹ In December 2008 the Commission presented a draft Regulation, which is still under scrutiny, intended to establish a set of rights for passengers using bus and coach services on both domestic and international routes.²⁰

3.2 In December 2008 the Commission also presented this draft Regulation, intended to establish a set of rights for passengers travelling by sea and inland waterways. The aim of this proposal is to:

- remove potential barriers to disabled people and persons with reduced mobility when travelling by sea and inland waterways, by addressing issues around the lack of accessibility and the provision of assistance for their needs; and
- ensure an enhanced level of consumer protection for commercial maritime and inland waterway passengers who experience delays or disruption to their journeys.

3.3 The draft Regulation has five chapters covering general provisions, assistance for passengers with disabilities or reduced mobility, obligations to be imposed on carriers in the event of interrupted travel, information for passengers and handling of complaints and

18 (22660) 11932/01: see HC 152–xv (2001–02), chapter 2 (30 January 2002) and *Stg Co Debs*, European Standing Committee A, 13 March 2002, cols. 3–28.

19 Regulation (EC) No 261/2004, on “establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights” and Regulation (EC) No 1107/2006, on “concerning the rights of disabled persons and persons with reduced mobility when travelling by air”.

20 (30255) 16933/08 + ADDs 1–2: see HC 19–v (2008–09), chapter 4 (28 January 2009).

enforcement. The design of vessels to make them accessible to disabled people and persons with reduced mobility is not within the scope of this proposal.²¹

3.4 When we considered this proposal, in January 2009, we reported that the Government:

- welcomed the benefits the proposal was designed to offer to disabled people and persons with reduced mobility and passengers in general;
- noting that the proposal was based on the legislation applying to aviation and that this was contained in two separate Regulations, considered that a similar arrangement might be more appropriate for the maritime sector;
- noted that the proposal applied a “one size fits all” approach to a very diverse industry and considered that this was not proportionate; and
- had, consequently, a number of concerns with the proposal which it would raise with other Member States and the Commission during negotiations on the proposal.

We also reported a considerable number of the Government’s more detailed concerns, its preliminary views on the financial implications of the proposal and its intentions on consultation and preparing an impact assessment.

3.5 We concluded that the aim of the draft Regulation was clearly laudable, but that it was equally clear that there was much to be resolved before the proposal could be brought to a conclusion. So before considering the document further we asked to:

- hear about significant progress in the negotiations, particularly in relation to the scope of the proposal for the maritime sector — that is questions related to diverse port and ship size and inland waterways;
- have an account of the outcome of the Government’s consultations on the proposals; and
- see the Government’s impact assessment.

Meanwhile the document remained under scrutiny.

The Minister’s letter

3.6 The Parliamentary Under-Secretary of State, Department for Transport (Paul Clark), writes now partially in response to our earlier report and to tell us also of the European Parliament’s first reading of the proposal. First, the Minister covers one point emerging from the Government’s consultations and the continuing preparation of its own impact assessment. Recalling the Commission’s estimate, in its impact assessment, that 12,300–

21 This is covered by Directive 2003/24/EC, which amends Council Directive 98/18/EC on safety rules and standards for passenger ships engaged on domestic voyages, and includes specific requirements for disabled people and persons with reduced mobility, in particular access to the ship, signs, message relay systems, alarms and additional requirements, designed to ensure mobility on board ship. Accessibility to new ships for international services has been regulated by the International Maritime Organisation’s Recommendation on the Design and Operation of Passenger Ships to Respond to Elderly and Disabled Persons’ Needs, IMO MSC /Circ.735.

24,600 jobs could be created in the maritime industry by this proposal, the Minister says that:

- it is clear from consultations with the UK's maritime industry that the proposal is unlikely to lead to any significant increase in the number of jobs in the UK maritime sector;
- the Commission's estimate, prepared before the recent downturn in the world economies, was based on the premise that enhancing access to the provision of services would result in more people using them, which would lead to greater employment requirements;
- although it is likely that increased access would lead to more passenger activity on some routes in mainland Europe, and thus create new jobs to service that activity, it is by no means clear that many routes in the UK would see any noticeable increase in passenger throughput;
- the busiest routes in the UK already deal with many persons with reduced mobility and have done so effectively and efficiently for many years;
- there might, however, be a few jobs created on the less busy ferry routes because of increasing passenger numbers and the need for ferry operators to provide more assistance to passengers than at present;
- the proposed complaint handling and national enforcement body requirements would also create the need for some extra posts, but overall the total net increase in employment in the UK is unlikely to be more than 100; and
- the precise number would be very difficult to determine and would depend on a range of factors, such as the future economic situation, the outcome of the negotiations, the time it would take for new rules to enter into force and the reaction of ferry operators and their customers to the new rules.

The Minister then comments that:

- the Government is committed, in close cooperation with stakeholders, to ensuring that the proposed Regulation is proportionate and does not create an unnecessarily high administrative and financial burden;
- its aim is to enhance the services which UK citizens can expect when they travel within the Community; and
- if this creates more passenger activity and a consequent increase in the overall level of employment in the maritime sector, the Government would, of course, welcome this.

3.7 More generally on Council consideration of the proposal the Minister tells us that:

- Working Group deliberation began in January 2009, under the Czech Presidency (but with Sweden chairing the discussions);
- although there have been eight meetings so far, progress has been slow;

- there is as yet no consensus on the scope of the Regulation, its territorial applicability, the compensation arrangements for delay and or cancellation and how the Regulation should be supervised and enforced;
- a discussion at the March 2009 Transport Council on the scope and territorial applicability of the proposal did not generate a consensus, but Ministers did accept that there was a need for the proposal; and
- further discussion is to take place under the Swedish Presidency and it is expected that a common position should be possible by the end of the year.

3.8 On the European Parliament's first reading the Minister tells us that:

- it supported the need for new rights for all maritime passengers and stressed the importance that persons with reduced mobility should be treated more favourably;
- whilst welcoming the proposal, it adopted 75 amendments which it considered necessary to refine the text and to minimise some of the burdens to be imposed by the proposal; and
- the Government welcomes many of these amendments, although there are several which it would not support.

3.9 The Minister then gives the Government's views on the key European Parliament amendments, saying of:

- an amendment to authorise Member States to exclude urban and suburban transport services from the scope of the Regulation, that although the European Parliament has acknowledged the desirability of minimising the scope for local transport, its amendment would provide Member States with a major opt out and lacks clarity. At the March 2009 Transport Council Ministers agreed that there was a need to minimise the scope, but there was no consensus on how this should be achieved. The Government is continuing to press in the negotiations for the scope to reflect a satisfactory balance between industry and their customers and it is hopeful that this will be achieved;
- an amendment to delete the definition of RO-PAX (ferries which are principally used and designed to carry cargo), that it is not clear why the European Parliament is seeking this deletion. It may simply be an attempt to tidy up the text, in which case the Government could support the amendment. It, and a number of other Member States, is keen to see the exclusion of such vessels from the scope and it is continuing to press for this;
- amendments to include *force majeure* as a defence which an operator can cite in order to avoid the obligation of paying compensation to a customer, that the ferry industry considers these amendments essential, in order to limit their potential to pay compensation for delays over which they have no control, such as the recent dispute involving French trawler men which stopped traffic at Dover for several days. The Government recognises that if ferry operators are to be liable to pay compensation for delays, then the specific operational factors affecting shipping

need to be taken into account, and that compensation should only be paid when the operator is at fault. It therefore supports the European Parliament's objective on this, but whether there is a need to include a reference to *force majeure* will depend on the progress of the negotiations on the compensatory aspects of the proposal;

- an amendment to provide the carrier with the ability to decline to take onto his vessel a person with reduced mobility on the grounds of safety, operational feasibility, or the dignity of the traveller. The Government welcomes this important clarification which is one of the key concerns of the operators of small passenger craft;
- amendments to amend “assistance animal” to “assistance dog”. The Government welcomes these amendments since it is appropriate that only trained dogs should be included in the Regulation. This is also the view of the disability lobby groups consulted by the Government;
- an amendment about provisions for training of new employees providing that only new employees who have direct contact with passengers should receive disability-related training. The Government welcomes the acknowledgement of the need to minimise the impact on industry of the disability-related training requirements. The amendment goes some way to reducing the overall burden, but there is a need to ensure that the training needs for existing staff are treated in a similar way; and
- an amendment to limit the cost to the carrier of accommodation that must be offered to a passenger delayed overnight to a maximum of twice the price of the ticket paid. The amendment would minimise the burden on ferry operators, and so is welcome to the Government, although it is yet to be persuaded that there is any need for an operator to pay for overnight accommodation to a delayed passenger.

Conclusion

3.10 We are grateful for the Minister's account of where matters stand with the Government's and the Council's consideration of this proposal and also of the European Parliament's first reading. However, we note that there is as yet not much significant progress in the negotiations. So before considering the document again we should like to have a further account of the discussions, once the shape of the possible common position becomes more certain. Additionally we would want to have a fuller account of the outcome of the Government's consultations on the draft Regulation and to see its impact assessment. Meanwhile the document remains under scrutiny.

4 Sexual abuse and exploitation of children and child pornography

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

<i>Legal base</i>	Articles 29, 31(1)(e) and 34(2)(b) EU; consultation; unanimity
<i>Document originated</i>	25 March 2009
<i>Deposited in Parliament</i>	1 April 2009
<i>Department</i>	Justice
<i>Basis of consideration</i>	Minister's letter of 1 June 2009
<i>Previous Committee Report</i>	HC 19–xvii (2008–09), chapter 4 (13 May 2009)
<i>To be discussed in Council</i>	No date set
<i>Committee's assessment</i>	Legally and politically important
<i>Committee's decision</i>	Not cleared; further information awaited

Background: existing regional and international instruments in this field

4.1 At EU level, Council Framework Decision on “combating the sexual exploitation of children and child pornography”²² requires approximation of Member State legislation to criminalise the most serious forms of child sexual exploitation and pornography; to extend domestic jurisdiction extra-territorially for the prosecution of these crimes when committed abroad by an offender who is a national of an EU Member State; and to provide for a minimum of assistance to victims. The Framework Decision came into force in 2006. The proposed draft Framework Decision would repeal and replace the current Framework Decision.

4.2 At Council of Europe level,²³ a Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (the CoE Convention) was opened for signature in October 2007. It has been ratified by two CoE Member States but has not yet entered into force. It will do so once five States, including three CoE Member States, have ratified it.

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

²² 2004/68/JHA.

²³ The Council of Europe comprises 47 Member States, including the 27 Member States of the European Union.

4.4 The Commission considers that the existing Framework Decision needs updating and reinforcing. In its explanatory memorandum of March 2009, the Commission states that “[d]espite a lack of accurate and reliable statistics, studies suggest that a significant minority of children in Europe may be sexually assaulted during their childhood, and research also suggests that this phenomenon is not decreasing over time, rather that certain forms of sexual violence are on the rise”. With reference to the existing Framework Decision, the Commission concludes that “[a]lthough the requirements have generally been put into implementation, the Framework Decision has a number of shortcomings. It approximates legislation only on a limited number of offences, does not address new forms of abuse and exploitation using information technology, does not remove obstacles to prosecuting offences outside national territory, does not meet all the specific needs of child victims, and does not contain adequate measures to prevent offences.”

4.5 The draft proposal for a replacement Framework Decision therefore:

- broadens the scope of crimes covered to include the grooming of children on the Internet, viewing (in addition to downloading) child pornography, and acts preparatory to the commission of a sexual offence against a child, for example making travel plans for sex tourism;
- applies higher levels for maximum penalties, and sets out aggravating offences which increase such levels from 6 to 10 and twelve years;
- pays greater attention to the needs of child victims involved in criminal proceedings and more generally;
- prescribes rules for the investigation and prosecution of cases to increase the chances of convicting sex offenders;
- places an obligation on Member States’ prosecution authorities to assert extra-territorial jurisdiction to prosecute cases where not only the offender but also the victim is a national or a resident of the Member State;
- proposes risk assessment and rehabilitation measures for sex offenders, and exchange of information on sex offenders between Member States;
- requires Member States to take measures to ensure that internet pages containing or disseminating child pornography can be blocked from public access.

Previous scrutiny

4.6 We first reviewed this draft Framework Decision on 13 May.²⁴ We reported on the details of the proposal and concluded that:

- We recognised the importance of reinforcing legislation for preventing this type of crime and prosecuting those who perpetrate it.

²⁴ See headnote.

- The proposed Framework Decision risked marginalising the recent opening for signature of a Council of Europe Convention on the Protection of Children against Sexual Exploitation and Abuse, which the Commission suggested “arguably constitutes the highest international standard for protecting children against sexual abuse and exploitation to date”.
- Articles 11, 12, 14 and 15 contained far-reaching provisions on investigative procedure and the needs of child victims which were overly prescriptive.
- Article 13 obliged Member States to assert extra-territorial jurisdiction on the basis of the nationality of the victim, whereas the UK traditionally asserted extra-territorial jurisdiction on the basis of the nationality of the offender.
- The minimum maximum terms of imprisonment of, respectively, six, ten and 12 years depending on aggravating circumstances might fetter the discretion of the judiciary to decide the sentence on the facts of each particular case.

The Minister’s letter of 1 June 2009

4.7 The Parliamentary Under-Secretary of State at the Ministry of Justice (Lord Bach) wrote on 1 June in response to the Committee’s Report. On the co-existence of this proposal for an EU Framework Decision on combating the sexual abuse of children with the Council of Europe Convention on the same subject, the Minister states:

“The main difference of course with regard to the Convention is that all EU Member States are obliged to give effect to the Framework Decision. In respect of the particular area of the sexual exploitation of children, and the growing misuse of the Internet, which enables transnational sexual abuse of children, we consider that the changes proposed in the Framework Decision reinforce the drive to combat the sexual exploitation of children. We would therefore expect the Framework Decision to further strengthen the international legal framework against the sexual exploitation of children but not detract from the CoE Convention.”

4.8 Regarding Articles 11, 12, 14 and 15 the Minister states that the Government shares the Committee’s concerns that some of these provisions are wide-ranging and prescriptive and believes it is vital that the EU legislation takes account of different national systems. The Government’s concerns lie chiefly in relation to Articles 14 and 15. For example, it thinks that the right of a child victim to legal aid is only appropriate where the child victim is a party to legal proceedings. It is not appropriate in the UK where the victim’s interests are represented by the prosecution. The Government intends to press for that provision to be amended accordingly. It will also seek to amend Article 15(3) so that the child’s right to give evidence without being present in court is subject to judicial discretion. The Minister informs us the Government will be seeking further information from the Commission about the intention behind the detail of some of these articles and, in due course, will advise us which of these provisions the Government intends to challenge.

4.9 The Minister comments that the terms of Article 13 are significantly different to the current Framework Decision, and the Council of Europe Convention, which include greater flexibility for Member States in respect of requirements to establish jurisdiction

over offences taking place outside their territory. The Minister wants the flexibility of the existing instruments to be maintained.

4.10 Turning to Article 7, the Minister states that he shares the Committee's view of the importance of preserving the judiciary's discretion in deciding sentences based on the particular circumstances of each case. But because the Article only prescribes minimum maximum sentences ("at least 6/10/twelve years"), this means the UK can have a higher maximum for the individual offence but not a lower one. As with any other offence in the UK judges have discretion to impose any sentence they think appropriate up to the maximum prescribed by legislation. This provision is therefore no different from any other offence which carries a maximum sentence.

4.11 The Minister concludes his letter by agreeing to keep us regularly updated on the progress of negotiations.

Conclusion

4.12 We are grateful to the Minister for his replies on Articles 11, 12, 14 and 15 and note that the Government will be seeking further information from the Commission "about the intention behind the detail of some of these provisions". We look forward to being informed of which of these provisions it intends to challenge in light of further explanations from the Commission.

4.13 We support the Minister in wishing to maintain flexibility on extra-territorial jurisdiction to prosecute these offences, and note his other responses.

4.14 We would also be grateful to be kept informed of significant developments in the progress of negotiations, and we shall keep the document under scrutiny.

5 Simplification of the Common Fisheries Policy

(30689) 10838/09 COM(09) 261	Commission Communication on the implementation of the Action Plan for simplifying and improving the Common Fisheries Policy
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<i>Legal base</i>	—
<i>Document originated</i>	9 June 2009
<i>Deposited in Parliament</i>	11 June 2009
<i>Department</i>	Environment, Food and Rural Affairs
<i>Basis of consideration</i>	EM of 26 June 2009
<i>Previous Committee Report</i>	None, but see footnotes
<i>To be discussed in Council</i>	No date set
<i>Committee's assessment</i>	Politically important
<i>Committee's decision</i>	Cleared

Background

5.1 Fisheries is among the areas included in the Commission's rolling programme of action²⁵ to simplify Community legislation, and in December 2005 the Commission put forward an Action Plan²⁶ indicating the measures it proposed to take in that sector in the period 2006–2008. This suggested that simplification should benefit both fishermen and those responsible for administering the CFP, and that it should address three categories of legislation — those instruments whose review had already started, notably as a result of the simplification initiative; new legislation to be drawn up in the coming years; and current legislative instruments which needed to be simplified as a matter of priority. More specifically, it proposed that action should be taken in the following areas: total allowable catches (TACs) and quotas and fishing effort, technical measures for protecting juvenile stock, collection and management of data, monitoring, reporting obligations, and fishing outside Community waters.

The current document

5.2 The current document seeks to summarise what has been achieved to date under the Action Plan, and to consider whether any new initiatives are necessary. It does so under the following headings:

Fisheries acquis

The Commission undertook a review of Community legislation to see whether any measures should be removed or codified. It notes that the number of legal acts in this area has increased considerably, and that, as of 1 March 2009, 795 measures were

25 (26982) 13976/05: see HC 34–xiv (2005–06), chapter 9 (11 January 2006).

26 (27102) 15613/05: see HC 34–xv (2005–06), chapter 9 (18 January 2006).

listed in the Directory of Community legislation in force, this increase being due to the need for the more precise classification of some acts; the transposition into Community law of an extensive body of measures adopted by Regional Fisheries Organisations; and a failure to repeal some 60 acts now regarded as obsolete. It says that it has since proposed the repeal of some of the obsolete measures, and that a further reduction will be achieved by proposals to codify a number of other measures, particularly in the event of the Council adopting a new control Regulation (see below).

Main legislative initiatives

The Commission notes that it has:

- introduced several measures in order to clarify the Regulations setting annual TACs and quotas;
- put in place a new working method for preparing annual Council decisions on fishing opportunities, involving enhanced consultation with stakeholders and better coordination with scientific advisers;
- carried out a review of the Control Regulation, which it describes as being at the centre of the simplification exercise for the CFP, involving a proposal²⁷ for a new Regulation, which would be based on an extended use of information and communication technologies and efficient use of databases;
- put forward a proposal²⁸ for a new Technical Conservation Regulation governing the conservation of fisheries resources through technical measures, such as mesh and minimum landing sizes;
- adopted a new Community framework for collecting and using the data needed to carry out the necessary scientific, technical and economic analyses;
- simplified the granting of aid by introducing a new single Community instrument (the European Fisheries Fund), and by reducing the extent to which national measures need to be scrutinised for compliance with state aid rules.

Data management

The Commission says that new rules have been adopted extending the use of information technology for the recording and transmitting of data relating to fishing activities as well as management of authorisations for Community and non-Community vessels (such as the introduction of Electronic Reporting Systems (ERS) and the Fishing Authorisation Permits (FAP)).

27 (30178) 15694/08: see HC 19–xi (2008–09), chapter 2 (18 March 2009).

28 (29738) 10476/08: see HC 19–v (2008–09) chapter 13 (28 January 2009).

Reduction of administrative burdens

The Commission notes that fisheries was one of the priority areas selected as part of the overall drive to reduce administrative burdens within the Community, with particular emphasis being placed on the large number of reporting obligations imposed upon those operating within the sector. It says that the new control system proposed should lead to a reduction of administrative burdens for the fishing industry of up to 30% of the current costs, and that an exemption for vessels of less than 12 metres fishing for periods less than 24 hours from record-keeping requirements, together with the related inspection obligation, has resulted in estimated savings have of around €14 million.

5.3 The Communication concludes by saying that, although many of the commitments listed in the 2006–2008 Action Plan have been met, continuous efforts will be made to simplify and improve the regulatory environment for fishing and its related activities. Priorities will include a reduction in unnecessary reporting obligations placed on businesses as well as regrouping legal provisions into fewer acts to improve clarity and accessibility. Simplification will also be kept in mind when the reformed Common Fisheries Policy is drawn up.

The Government's view

5.4 In his Explanatory Memorandum of 26 June 2009, the Minister for the Natural and Marine Environment, Wildlife and Rural Affairs at the Department for Environment, Food and Rural Affairs (Mr Huw Irranca-Davies) says that the Government welcomes the publication of the Communication, which provides a detailed and comprehensive analysis of the Commission's commitment to simplifying and improving the Common Fisheries Policy. He notes that, since the inception of the Action Plan, simplification proposals have been discussed at official level and with stakeholders, and that these discussions will continue until the Commission has adopted all the areas identified. The Minister adds that, the Government has strongly advocated for the simplification of fisheries legislation in the UK, and has supported the Commission in its programme of improvement to the Common Fisheries Policy. He also says that, in order to show its commitment to this objective, it has ensured that its domestic legislation and guidance for industry are based on the principles of simplification.

Conclusion

5.5 As is evident from the various footnotes, we have at various stages reported to the House on the earlier Action Plan, and on a number of the subsequent individual measures which have been taken. To that extent, the current document does not break new ground, but, as it provides a useful summary of some welcome steps to simplify this important policy area, we think it right to draw it to the attention of the House.

6 Tariff quota for imports of high quality beef

(30703) 11090/09 COM(09) 275	Draft Council Regulation opening an autonomous tariff quota for imports of high quality beef
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<i>Legal base</i>	Article 133EC; QMV
<i>Document originated</i>	11 June 2009
<i>Deposited in Parliament</i>	19 June 2009
<i>Department</i>	Environment, Food and Rural Affairs
<i>Basis of consideration</i>	EM of 1 July 2009
<i>Previous Committee Report</i>	None
<i>To be discussed in Council</i>	July 2009
<i>Committee's assessment</i>	Politically important
<i>Committee's decision</i>	Cleared

Background

6.1 Council Directive 96/22/EC²⁹ effectively bans the use within the Community of hormone growth promoters in food-producing animals, and hence in meat, except for certain specified purposes. Broadly speaking, these restrictions also apply to animal products imported from third countries, and this in turn led to a dispute with the United States and Canada, on which the World Trade Organisation (WTO) Dispute Settlement Body ruled in February 1998 that the steps taken by the Community were in breach of the WTO's rules. The Dispute Settlement Body also authorized the United States to suspend trade concessions to the Community of \$116.8 million.

6.2 This ruling by the WTO was essentially because the Community measures in question had been based on general studies rather than the particular risks thought to arise from the use of growth hormones, and, as a result, the Commission initiated assessments of six such substances. This led to the adoption of Directive 2003/74/EC,³⁰ and, although this in effect maintained the original prohibitions, the Commission says that the reliance on more specific assessments means that the Community now complies with WTO rules. However, it has remained in dispute with the United States, which considers that the Community is still in breach of its WTO obligations, and has therefore maintained its earlier sanctions.

The current proposal

6.3 In view of this, the Community and the United States have been exploring ways of resolving the dispute, and the Commission is now proposing that the Community should open a new tariff-free import quota for 20,000 tonnes of high quality beef which has not been treated with growth hormones. In return, the United States authorities have agreed to

29 OJ No. L 125, 23.5.96, p.3.

30 OJ No. L 262, 14.10.03, p.17.

reduce over the next four years at least some of the sanctions currently in force against Community exports (though these have not applied to the UK, which did not support the original ban).

The Government's view

6.4 In his Explanatory Memorandum of 1 July 2009, the Minister of State at the Department for Environment, Food and Rural Affairs (Mr Jim Fitzpatrick) welcomes the agreement by the United States authorities to reconsider their sanctions against Community exports, and says that the size of the new quota would be minimal in relation to the overall Community beef market. The Government is therefore in favour of the proposal.

Conclusion

6.5 **Although the impact of this measure on the beef market would not in itself warrant a substantive Report, we note that it is part of an overall package aimed at resolving a long-standing trade dispute between the Community and the United States in particular. Consequently, although we are content to clear the proposal, we think it right to draw it to the attention of the House.**

7 EU Special Representative in Afghanistan

(30674)	Council Joint Action 2009/135/CFSP extending the mandate of the European Union Special Representative in Afghanistan to include Pakistan
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<i>Legal base</i>	Articles 14, 18.5, and 23.2; QMV
<i>Department</i>	Foreign and Commonwealth Office
<i>Basis of consideration</i>	Minister's letter of 30 June 2009
<i>Previous Committee Report</i>	HC 19–xix (2008–09), chapter 14 (10 June 2009)
<i>To be discussed in Council</i>	15 June 2009 General Affairs and External Relations Council
<i>Committee's assessment</i>	Politically important
<i>Committee's decision</i>	Cleared (decision reported on 10 June 2009), but further information now provided

Background

7.1 EU Special Representatives (EUSRs) represent the EU in troubled regions and countries and play an active part in promoting the interests and the policies of the EU. The substance of his or her mandate depends on the political context of the deployment. Some

provide, *inter alia*, a political backing to an ESDP operation, others focus on carrying out or contributing to developing an EU policy. All EUSRs carry out their duties under the authority and operational direction of the High Representative (Javier Solana). Each is financed out of the CFSP budget implemented by the Commission. Member States also contribute directly, e.g. via secondment to the EUSR's staff.

7.2 The EUSRs currently in office cover the following regions: Afghanistan, the African Great Lakes Region, the African Union, Bosnia and Herzegovina, Central Asia, Kosovo, the former Yugoslav Republic of Macedonia, the Middle East, Moldova, Sudan, the South Caucasus and, most recently, the Crisis in Georgia. Some EUSRs are resident in their country or region of activity, while others work on a travelling basis from Brussels.³¹

7.3 On 6 February 2009, we cleared Joint Actions extending the mandate, for a further 12 months, of several of the EUSRs, including the EUSR for Afghanistan, Mr Ettore Sequi. His mandate encompasses support to the government of Afghanistan, in particular in the implementation of the EU-Afghanistan Joint Declaration, support to the United Nations in Afghanistan, liaison with regional countries in support of EU policy, supporting the EU's work on human rights and coordination of EU work in Afghanistan. In her accompanying Explanatory Memorandum of 25 January 2009, the then Minister for Europe at the Foreign and Commonwealth Office (Caroline Flint) said:

- the EU and Afghanistan's partnership is defined by the Strasbourg Declaration of 16 November 2005, with the joint commitments in this Declaration being kept under review by periodic meetings between the Afghan government and the EU;
- the EU (specifically, the European Commission and Member States) is a major donor to Afghanistan, having disbursed or pledged \$7.5bn between 2002 and 2011, including over \$5bn of pledges in support of the Afghan National Development Strategy at the Paris conference in June 2008;
- EU Member States provide approximately 16,000 troops to International Security Assistance Force;
- the EU launched its Police Mission to Afghanistan (EUPOL) in June 2007;
- the EU Special Representative would continue to play an important role in focusing the EU effort, and ensuring that it dovetailed with the work of other bilateral and multilateral partners;
- the Afghan government and international partners, particularly the UN, continued to insist upon the need for greater international coordination in Afghanistan;
- in view of the many challenges facing the country this year, particularly the Presidential elections and the difficult security situation in the south and east of the country, the need for effective international engagement was even greater.

31 See http://consilium.europa.eu/cms3_fo/showPage.asp?id=263&lang=EN for full information on the EU Special Representatives

Financial Implications

7.4 The UK currently contributes approximately 17% to the CFSP budget. Information provided by the Minister on budget allocations for 1 March 2009–28 February 2010 for the EUSR to Afghanistan was:

Budget Allocation	Anticipated UK Contribution (€)	Anticipated UK Contribution
€2,850,000 ³²	€484,000	£453,000

The draft Joint Action

7.5 The draft Joint Action that we cleared on 6 February was adopted on 9 February 2009 as Council Joint Action 2009/135/CFSP. The proposal that we considered on 10 June was to amend the mandate set out in this Joint Action to include Pakistan.

7.6 In her Explanatory Memorandum of 3 June 2009, the then Minister for Europe said that the decision to extend EUSR Sequi’s mandate to include Pakistan “reflects the direction of international debate on Afghanistan and broader regional challenges, particularly on Pakistan”, and “also chimes with a message that the UK has been consistently delivering in the EU, that we need to be better equipped to address the regional dimension of policy on Afghanistan, particularly Pakistan.”

7.7 The Minister continued as follows:

“The UK Government supports the extension of the mandate to include Pakistan as we have been pushing the EU to increase its engagement in both Afghanistan and Pakistan and to see the problems in both countries as interlinked. On 29 April, the Prime Minister made a statement to the House outlining the UK’s Afghanistan-Pakistan strategy. This was designed to reinforce and be consistent with the new US strategy, which has similarly refocused its Afghanistan policy to include Pakistan. This followed the 22 January appointment of Richard Holbrooke as US Special Envoy to Afghanistan and Pakistan, and subsequent appointments of various other ‘Af/Pak’ Special Envoys, all of which highlight the international communities [*sic*] focus on the links between instability in both countries.”

7.8 With regard to the Financial Implications, the Minister said that there none “beyond costs already born through the EGC budget (the UK share of the cost of the EUSR for Afghanistan is 17% of €4.05m).”

Our assessment

7.9 We had no wish to hold up this amendment to the EUSR to Afghanistan’s mandate, and accordingly cleared the document, which we reported to the House because of the widespread interest in the subject matter.

32 The Minister said that this compared to an overall budget of €4.05 million (£3.8m) for 2008–9, the bulk of the savings have been made following Italy’s decision to provide gratis close protection for EUSR Sequi (who, prior to this appointment, was the Ambassador of Italy in Afghanistan).

7.10 Our previous report also recalled that, when the Committee cleared the straightforward 12 month extension of the existing mandate in February, the then Minister for Europe said that the budget would be €2,850,000; she now said that the financial implications were “none beyond costs already born through the EGC budget (the UK share of the cost of the EUSR for Afghanistan is 17% of €4.05m).” In February, the then Minister had said that the bulk of the savings had been made following Italy’s decision to provide gratis close protection for EUSR Sequi (who, prior to this appointment, was the Ambassador of Italy in Afghanistan). We wondered whether the explanation was that this was now being funded. We also noted that a great deal else was not made clear; the whole exercise had a rushed air about it. So the Committee asked a number of questions about aspects of her sketchy Explanatory Memorandum that were mentioned, but not explained.

7.11 We also felt bound to say that we were left with the impression that the new “quality assured” scrutiny process, in which senior staff would be providing more support to inexperienced desk officers, about which the then Minister had recently been in correspondence with the Committee, had not got off to a good beginning; and asked for the then Minister’s comments.³³

The Minister’s letter of 30 June 2009

7.12 The Minister for Europe at the Foreign and Commonwealth Office (Baroness Kinnock of Holyhead) responds as follows (the questions posed in our previous Report are in italics; her response is below each question):

Does the Expansion of the EUSR’s mandate have the support of both the governments in question?

“Yes. Both governments recognise that peace and stability in the border areas can only be reached by working closely with each other, and with the support of the international community. We continue to encourage both governments to take forward their shared commitment, both bilaterally and through the EU. The EUSR is an important part of the international community’s relations with Afghanistan and Pakistan.

We should be grateful if the Minister would also let us know what the essentials are of ‘the EU’s comprehensive approach towards cross-border and wider regional cooperation’; of the EU-Pakistan Joint Declaration; and of the Group of Friends of Democratic Pakistan.

“Cross Border and wider regional cooperation

“The EUSR’s extended mandate will complement the European Commission’s growing focus on cross-border and regional cooperation. Since 2004, the European Commission has constructed and fully equipped a Customs Border Post on the border between Afghanistan and Pakistan at Torkham, and spent €61.22 million on the reconstruction of the Kabul-Jalalabad road. The eastern corridor, from Kabul through Jalalabad and Torkham onto Peshawar and beyond, is one of the most

33 HC 19–xix (2008–09), chapter 14 (10 June 2009): see headnote.

important regional trading routes, and is a major component of the improving cross-border cooperation between Afghanistan and Pakistan.

“To build on this work, in concert with the efforts of other international actors, the EC has committed to a programme of assistance on border management and regional trade. Planned projects, amounting to €10–12 million over 4 years, include:

- Promotion of cooperation between state institutions dealing with cross-border issues, such as border policing, customs, environment and natural resources management;
- Support for the establishment of regional and bilateral legal arrangements to manage migration flows;
- Promotion of trade distribution channels through international and regional trade fairs, seminars and workshops;
- Support for relevant chambers of commerce and public / private institutions development;
- Support for Afghan participation in regional initiatives, in particular the Economic Cooperation Organisation (ECO) and the South Asian Association for Regional Cooperation (SAARC).

“EU Pakistan Joint Declaration

“The EU and Pakistan issued a joint statement following the EU-Pakistan Summit on 17 June.

“The EU and Pakistan discussed the strengthening of the EU-Pakistan partnership and agreed on substantial measures to strengthen engagement on development, education, security, counter-terrorism, strengthening democracy, human rights and enhancing trade. The joint statement committed to provide:

- a comprehensive package of trade measures, including an enhanced dedicated trade dialogue, additional capacity building, a commitment to explore the options available under various EU preferential access schemes (notably GSP+) and the prospect of a Free Trade Agreement in the longer term. In the medium term the EU will continue to review trade obstacles including helping Pakistan to meet the EU’s sanitary and phyto-sanitary requirements for fishery and other products;
- additional assistance to the humanitarian crisis. The EU announced at the Summit an increase in their total allocation to 129m Euros, including 72m for humanitarian assistance to be directed towards those displaced by the current conflict;
- a regular Pakistan-EU counter-terrorism dialogue aimed at improving Pakistan’s counter-terrorism capabilities in the field of law enforcement and criminal justice.

“The Friends of Democratic Pakistan (FODP)

“Following a joint UK/US proposal, President Zardari launched The Friends of Democratic Pakistan initiative in the margins of the United Nations General Assembly in New York on 26 September 2008. FODP is a Government of Pakistan (GoP) led initiative.

- The FODP brings together countries with significant interest and influence in Pakistan. The aim is to provide political support, a strategic focus and targeted assistance to the GoP to tackle the major threats they face;
- 18 countries and 6 international organizations including the EU, UN and the World Bank belong to the group;
- The FODP Ministerial meeting in Tokyo on 17 April agreed to establish effective follow up mechanisms for international cooperation and coordination, including Working Groups with interested countries and institutions, in areas of development, security, energy, institution capacity building and trade and finance. The aim will be to carry forward the process of analysis, formulation, evaluation and implementation of proposals in the above areas.
- There are now 7 working groups — i) development, ii) security, iii) institution capacity-building, iv) energy, v) finance, vi) trade and vii) Internally Displaced Persons and reconstruction/stabilisation of Malakand. The last working group was proposed to deal with the current humanitarian crisis and the rebuilding of the affected areas following the military campaign.
- At the first working group meeting on 23 June, the GoP outlined their strategy to bring peace and stability to Malakand. The strategy consists of four elements: good governance, improved service delivery, speedy justice and social equity. The UK is broadly supportive of this approach.
- The UK is also encouraging the GoP to set up a World Bank Trust Fund to facilitate development funding in the border areas including the Federally Administered Territorial Areas (FATA). The Fund would be administered and monitored by the World Bank to ensure transparency but the Government of Pakistan will make spending decisions. A trust fund would attract contributions from a broader group of donors who do not currently contribute because of the difficulty of delivery or monitoring spend.
- The next meeting of the FOPD will be in Istanbul in the first week of September (date to be confirmed). We are also exploring the possibility for the Prime Minister to host a FODP Summit in the margins of the UNGA in late September.

We would like to know if the mandate is to be amended in ways other than extending the geographical scope and via the references cited in the preceding paragraph; and to know who the “various other ‘Af/Pak’ Special Envoys” are, and how the work of the EUSR for Afghanistan/Pakistan will relate to theirs.

“There are currently no plans to amend the EUSR’s mandate beyond extension of the geographical scope.

“The formation of the special envoy group (titles vary, but most national members are ‘Special Representatives for Afghanistan and Pakistan’, such as the UK’s Sir Sherard Cowper-Coles, and institutional members include the United Nations Assistance Mission in Afghanistan, the European Commission and the EUSR) reflects the consensus among the international community that, though very different countries, policies to achieve stability in Afghanistan and Pakistan must be complementary. All those involved in Afghanistan and Pakistan, including the EU, must ensure their assistance to Afghanistan and Pakistan is coherent and coordinated. We support this approach, as set out in April 2009 by the Prime Minister in the UK’s statement of Afghanistan and Pakistan policy. The EUSR has an important role in this group. He is one of the few permanently based in Kabul, and provides EU political leadership. I attach the most up to date list of Special Envoys for Afghanistan and Pakistan.

We are also confused about the financial implications, and would be grateful if the Minister would explain the difference between the figures provided in February and now. Will the “expanded” EUSR have a presence in Pakistan? He will presumably need additional staff: where will they be based, and how will they be funded? Or are there other reasons for the differences between the two figures?

“There is no difference between the figures provided in February and now. As set out in February, and earlier this month, there are no additional costs for the expansion of the mandate. The EUSR is currently looking into the feasibility of setting up offices in Pakistan, but the intention is that any costs involved will be met by the existing budget.

We also feel bound to say that we are left with the impression that the new “quality assured” scrutiny process, in which senior staff would be providing more support to inexperienced desk officers, about which the Minister has recently been in correspondence with the Committee, has not got off to a good beginning. We should be grateful for the Minister’s comments.

“I am sure that the Committee will understand that systemic changes in the way we handle scrutiny may not immediately yield qualitative results. I should be grateful for any specifics that the Committee can give to help us improve the quality of our Explanatory Memoranda.”

Conclusion

7.13 We are grateful to the Minister for this further information, which we report to the House because of the high degree of interest in these issues.

7.14 The Committee’s request, and the provision of this further information, provides the answer to the Minister’s last sentence. It is one of the Committee’s longstanding requests of the FCO that all (and not just some) of its Explanatory Memoranda should, as well as explaining the nature of the proposal, also fully explain the relevant history

and political context (which has now been done, but in two instalments), so that the whole story is available to the general, interested reader (which includes ourselves, given that the Committee considers over 1000 documents and Explanatory Memoranda each year covering the whole of government activity), and not just to the expert community.

8 The EU and Serbia

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

<i>Legal base</i>	(a) and (b) Articles 300 and 310 EC; unanimity (c) —
<i>Department</i>	Foreign and Commonwealth Office
<i>Basis of consideration</i>	Minister's letter of 30 June 2008
<i>Previous Committee Reports</i>	HC 19–ix (2008–09), chapter 11 (4 March 2009); HC 19–v (2008–09), chapter 16 (28 January 2009); HC 19–i (2008–09), chapter 17 (10 December 2008); HC 16–xxiv (2007–08), chapter 15 (18 June 2008), HC 16–xxi (2007–08), chapter 17 (14 May 2008), HC 16–xii (2007–08), chapter 1 (20 February 2008) HC 16–x (2007–08), chapter 4 (30 January 2008) and HC 16–viii (2007–08), chapter 5 (16 January 2008); also see (26575) 8884/05: HC 34–i (2005–06), chapter 48 (4 July 2005); and (29103): 14999/07; (29104):15001/07; (29100):14995/07; (29099): 14993/07; (29101):14996/07; (29102):14997/07: HC 16–v (2007–08), chapter 1 (5 December 2007)
<i>Discussed in Council</i>	29 April 2008 General Affairs and External Relations Council
<i>Committee's assessment</i>	Politically important
<i>Committee's decision</i>	Cleared (debate on 29 April 2008); further information provided and requested

Background

8.1 The Stabilisation and Association Process is the process devised by the EU to bring the countries of the Western Balkans closer to the EU and to help prepare them for eventual

membership. The Stabilisation and Association Agreement (SAA) is a key step on the path to EU membership. It establishes a far-reaching legal relationship between the EU and the country concerned, entailing mutual rights and obligations; the gradual implementation of a free trade area; reforms designed to achieve the adoption of EU standards in areas such as justice, freedom and security, accompanied by formalised political dialogue; enhanced regional cooperation; and a Stabilisation and Association Council to supervise implementation.

8.2 The Commission completed negotiations for an SAA with Serbia on 10 September 2007. On 7 November 2007 Serbia and the Commission initialled the text of the Agreement.

The Council Decisions

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

8.4 The purpose of the second Council Decision is to authorise signature of an Interim Agreement (IA), comprising the Community competence elements (trade, agriculture, industrial and competition provisions of the SAA) at the same time as the SAA, to come into force as soon as possible after signature, to take account of the fact that ratification of the SAA may take up to a year following signature.

Previous consideration

8.5 Our previous consideration is detailed in our previous Reports. In brief, the Committee has been engaged in prolonged discussion with successive Ministers for Europe since January 2008 about signature of these Council Decisions and, given differences then obtaining among Member States on the signing of the Interim Agreement, an Interim Political Agreement. In the event, they were resolved among Member States in such a way that the 29 April 2008 GAERC approved the Council Decisions, whereupon the two agreements were signed. On the same day, European Committee B debated these documents and a collection of annual progress reports on the Western Balkan EU aspirants.³⁴

8.6 As we have noted, we have had no concerns over the nature of the SAA or of its conclusion with Serbia *per se*: on the contrary; however, what had bedevilled this process all along was the behaviour of the Serbian authorities with respect to the International Criminal Tribunal for (former) Yugoslavia (ICTY). Although the ICTY had been prepared to indicate to the Commission and Council that cooperation had improved sufficiently to warrant continued negotiation and, latterly, initialling of a text, it was plainly not yet able to certify that “full cooperation” had been obtained. The Committee’s concern has thus revolved around this associated ICTY Conditionality.

34 See <http://www.publications.parliament.uk/pa/cm200708/cmgeneral/euro/080429/80429s01.htm>. for the record of that debate.

8.7 Our two most recent Reports summarise our discussion with the previous Minister for Europe (Caroline Flint), and in particular her letters of 4 December 2008 and of 16 and 18 February 2009. In essence, the Committee sought to understand the process whereby the Government shifted its position — first abandoning the requirement for full cooperation prior to signature of the SAA, and then abandoning it prior to implementation of the IA — and the then Minister sought to explain how this had happened. Following the 23 February 2009 GAERC meeting, the then Minister said that:

“There was an inconclusive discussion on the possibility of implementing Serbia’s “Interim Agreement” with the EU. I confirmed that, while the UK would be ready for the EU to recognise Serbia’s significantly improved co-operation with the International Criminal Tribunal for the former Yugoslavia (ICTY) in The Hague by allowing entry into force of Serbia’s “Interim Agreement”, full co-operation with ICTY remains the condition set by the EU for ratification of Serbia’s Stabilisation and Association Agreement with the EU.”

8.8 The Government’s position on this matter now being finally made clear, we looked forward to hearing more from the Minister as and when the situation changed — either within the confines of the Council or in the degree of cooperation by the Serbian authorities — and, in the meantime, given the degree of interest in the House in the western Balkans and in the degree of cooperation with the ICTY on the part of both prospective and aspiring Candidate countries there, we reported these further exchanges to the House.³⁵

The Minister’s letter of 30 June 2009

8.9 The Minister for Europe at the Foreign and Commonwealth Office (Baroness Kinnock of Holyhead) writes about the discussions on Serbia’s cooperation with ICTY at the General Affairs and External Relations Council (GAERC) on 15/16 June, as follows:

“Following his visit to Belgrade on 11/12 May 2009 and formal presentation of the ICTY completion strategy to the United Nations Security Council (UNSC) on 4 June 2009, ICTY Chief Prosecutor Serge Brammertz was invited to the GAERC on 15 June to discuss Serbia’s co-operation with ICTY. I attach a copy of the relevant section of Brammertz’s report to the UNSC for your information.³⁶ Following Brammertz’ presentation, there was a debate amongst EU Member States on the implications of Brammertz’ report for implementation of Serbia’s Interim Agreement and ratification of her Stabilisation and Association Agreement (SAA).

“As my predecessor informed the Committee, the Government’s existing policy is that the UK would be content to implement now Serbia’s Interim Agreement on the basis of Serbia’s significantly improved co-operation with the ICTY, while keeping ratification of the SAA conditional on Serbia’s full co-operation with the ICTY. In our view, ‘full co-operation’ would mean committed and sustained activity from the Serbian Government, demonstrating 100 percent effort and political will. Co-

35 HC 19–ix (2008–09), chapter 11 (4 March 2009); see headnote.

36 Reproduced at Annex 1 to this chapter of our Report.

operation with the Tribunal covers efforts in a range of areas including: tackling support networks; meeting requests for documents; allowing access to archives; ensuring protection of witnesses; as well as locating and transferring remaining indictees.

“However, discussion at the 15/16 June GAERC confirmed that there was no consensus amongst EU Member States on implementation of the Interim Agreement and the EU will therefore not at this stage proceed to unblock it. In the event that consensus on this issue be reached in subsequent EU discussion, we envisage that the IA will be unblocked in due course by revisiting the existing GAERC conclusions on ICTY conditionality, rather than by a Council Decision (the Minister’s emphasis). However, like my predecessor, I will keep the Committees updated of any future progress on this issue.”

Conclusion

8.10 In her letter of 4 December last, the then Minister said that “Implementation of the Interim Agreement involves a further Council Decision, and is therefore subject to Parliamentary scrutiny”. We therefore ask the Minister to explain why, and on what basis, it has now been decided that “revisiting the existing GAERC conclusions” is an appropriate way to “unblock it”. And why the Minister has underlined this sentence. The impression given is that, contrary to the assurances that we have received hitherto, the Government is seeking to move to the next stage and then announce the fact, so as to avoid having to explain the decision to do so ahead of time.

8.11 Given that the interim SAA contains all the Community competence elements (i.e., trade, agriculture, industrial and competition provisions) of the SAA, we should also like the Minister to explain what Serbia would gain from the full SAA, i.e., what incentives would the Serbian authorities then have to make them move with greater determination — exercising “100 percent effort and political will” — towards full cooperation, as defined above, including locating and transferring remaining indictees, and in particular Ratko Mladic.

Annex 1

“Report of Serge Brammertz, Prosecutor of the International Criminal Tribunal for the Former Yugoslavia — May 2009

“Cooperation of Serbia

“30. Serbia has made additional progress in its cooperation with the Office of the Prosecutor.

“31. In the past six months, Serbia’s assistance in terms of access to archives and the provision of documents continued to improve. Serbia provided timely responses to the

large majority of requests for assistance from the Office of the Prosecutor and has addressed nearly all important outstanding requests. Serbia's National Council for Cooperation with the Tribunal successfully led these efforts. The Office of the Prosecutor encourages Serbian authorities to ensure that this trend remains stable and irreversible. Their assistance in this regard will remain of paramount importance during the upcoming senior leadership trials, including the *Karadžić* case.

“32. The Serbian authorities have responded adequately and in a timely manner to specific requests for assistance, particularly in facilitating the appearance of witnesses before the Tribunal. In specific cases, the Office of the Serbian War Crimes Prosecutor and Serbian security agencies promptly responded to requests to secure the safety of threatened witnesses by taking certain measures. As witness interference remains a serious problem and a matter of serious concern to the Office of the Prosecutor, it will continue to work closely with and rely upon the Serbian authorities when such cases are identified.

“33. The most critical area of concern regarding cooperation from Serbia remains the apprehension of fugitives Ratko Mladić and Goran Hadžić. Based on currently available information, the Office of the Prosecutor believes that both fugitives are within the reach of Serbian authorities.

“34. In this regard, the Office of the Prosecutor continues to follow closely the efforts of Serbian authorities to locate these fugitives and is regularly represented in coordination meetings of the Action Team in charge of tracking fugitives. During the Prosecutor's visits to Belgrade in April and May 2009, Serbian authorities fully briefed him on the security services' tracking efforts.

“35. Since the arrest of Radovan Karadžić, further progress has been made at the operational level. Serbia's National Security Council and the Action Team have taken steps to ameliorate the efficacy of ongoing operations and coordination between the different government services. These services appear determined and capable to locate and arrest the remaining fugitives. Complex and widespread search operations against fugitives and their support networks are taking place. Notwithstanding certain deficiencies in recent search and seizure operations, the professionalism of the government services in charge of tracking has generally improved. Along with ground operations, a thorough review and analysis of available information is now under way. Under the previous leadership of the security and intelligence services, crucial information that could have led to the apprehension of fugitives was not acted upon. As a result, the authorities are re-analysing all information previously available and verifying all possible leads.

“36. In order to achieve additional concrete positive results in the near future, the Serbian authorities must continue to provide all necessary support to the professional work done at the operational level. Therefore, the Government, its members and key officials should foster an atmosphere conducive to improved cooperation with the Office of the Prosecutor. Negative and unjustified statements calling into question the integrity of the International Tribunal are in this regard counterproductive and could have an adverse impact on Serbia's cooperation with the Tribunal.”

9 ESDP: Piracy

(a)	
(30724)	Council Decision concerning the signing and provisional application of the Agreement between the European Union and the Republic of Seychelles on the conditions and modalities for the transfer of persons suspected of having committed acts of piracy, or acts of armed robbery in the territorial sea and archipelagic waters of the Republic of Seychelles, and detained by the European Union-led Naval force (EUNAVFOR) and seized property in the possession of EUNAVFOR, from EUNAVFOR to the Republic of Seychelles and for the treatment after such transfer.
—	
—	
(b)	
(30728)	Council Decision concerning the conclusion of the Agreement between the European Union and the Republic of Seychelles on the status of the of the European Union-led forces in the Republic of the Seychelles in the framework of the EU military operation ATALANTA.
—	
—	

<i>Legal base</i>	Article 24 EU; unanimity
<i>Department</i>	Foreign and Commonwealth Office
<i>Basis of consideration</i>	EM of 30 June 2009
<i>Previous Committee Reports</i>	None; but see (30341), (30348) and (30349) HC 19–iv (2008–09) chapter 17 (21 January 2009); also see (30040) 13989/08; HC 16–xxxvi (2007–08), chapter 17 (26 November 2008) and HC 16–xxxii (2007–08), chapter 10 (22 October 2008); also see (29953) —: HC16–xxx (2007–08), chapter 19 (8 October 2008)
<i>Discussed in Council</i>	To be determined
<i>Committee’s assessment</i>	Politically important
<i>Committee’s decision</i>	Cleared; further information requested

Background

9.1 In response to growing international concern over the problem of piracy off the coast of Somalia, the United Nations Security Council adopted Resolution (UNSCR) 1816 (2008) in June which encouraged “States interested in the use of commercial maritime routes off the coast of Somalia, to increase and coordinate their efforts to deter acts of piracy and armed robbery at sea”. Then, on 7 October 2008, the Security Council unanimously adopted UNSCR 1838, which was initiated by France and co-sponsored by 19 countries (Belgium, Croatia, the US, UK, Italy, Panama, Canada, Denmark, Spain, Greece, Japan, Lithuania, Malaysia, Norway, the Netherlands, Portugal, Korea and Singapore).

9.2 Our previous reports set out the history of the European Union’s endeavours to address this problem, leading to the creation of the first ESDP naval operation, Operation Atalanta.³⁷

9.3 Most recently, the Committee considered an Explanatory Memorandum of 15 January 2009 from the then Minister for Europe, giving “an overview on decisions made to facilitate the progress of Operation Atalanta” and incorporating the Joint Action launching the operation and two Council Decisions on Status of Force Agreements with both the Somali Republic and Djibouti. Further details in our most recent Report included that: the Operation Commander is Rear Admiral Phil Jones; the Operation Headquarters is at Northwood (alongside the UK’s Permanent Joint HQ); the anticipated UK share for the year of the Operation was £1.2 million; the mission reached Initial Operation Capacity on 13 December 2008, achieving effective handover with the NATO interim mission which terminated the day before; then included current or planned military contributions (either warships or Maritime Patrol Aircraft) from 8 EU partners (UK, Belgium, France, Greece, Germany, Netherlands, Spain, Sweden) “with others showing a strong interest in participation”; the EU continued “to push others to do so, including non EU states”; HMS Northumberland had been provided for the first period of the operation; and that Operation Atalanta will last until 13 December 2009.

9.4 The then Minister also referred to an exchange of letters between the EU and Kenya that give the right to enter and freedom of movement within the territory (including territorial waters and airspace) of Kenya “strictly limited to the necessities of the operation”, and mentioned that negotiations on an agreement on the handover of pirates for trial were now in their final stages (the UK and Kenya having concluded a similar agreement on 11 December 2008).

9.5 The then Minister noted that the Joint Action raised an issue of fundamental rights, and explained that Article 12(1):

“provides that persons having committed or suspected of having committed acts of piracy or armed robbery in Somali territorial waters or on high seas shall be transferred to the competent authorities of the flag Member State or to the third State participating in the operation of the vessel which took them captive or, if this State cannot or does not wish to exercise jurisdiction, to a Member State or a third State which does wish to exercise its jurisdiction over them.”

and that under Article 12(2):

“these persons cannot be transferred to a third State, including Somalia, if the conditions of transfer have not been agreed with the third State in conformity with the applicable international law, notably international human rights law, in order to guarantee that no one is submitted to the death penalty, torture or any other cruel, inhuman or degrading treatment.”

37 (300400 13989/08; see HC 16–xxxvi (2007–08), chapter 17 (26 November 2008) and HC 16–xxxii (2007–08), chapter 10 (22 October 2008); also see (29953) —: HC16–xxx (2007–08), chapter 19 (8 October 2008); see headnote.

9.6 The Minister went on to note that applicable international and human rights law would include Article 7 of the International Covenant on Civil and Political Rights, which, she said, provides that “No-one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.” The Minister further noted that the same provision is to be found in the Universal Declaration of Human Rights 1948, Article 5.

9.7 The Minister also referred to the 1984 Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, in which she noted that:

- Article 3 (1) provides “that no State Party shall expel, return or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture;
- Article 6 (1) that “Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life”;
- Article 6 (2) that “in countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in force at the time of the commission of the crime and not contrary to the provision of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide”;
- “this penalty can only be carried out pursuant to a final judgement rendered by a competent court. The death sentence cannot be imposed for crimes committed by persons under eighteen years (Article 6 (5) and anyone sentenced to death shall have the right to seek pardon or commutation of the sentence (Article 6 (4)).”

9.8 We once again thanked the Minister for her comprehensive response, and had no further questions at that stage. We did, however, ask the Minister either to deposit an Explanatory Memorandum, or write with details of, and her views upon, the review of Operation Atalanta that we presumed would be conducted at the end of its year of operation, and for that Explanatory Memorandum or letter to include information about what action the Government and the EU had taken during the year of operation to address the root causes of the immediate problem and what the outcomes are by then.

9.9 In the meantime, we cleared the documents, and looked forward to receiving as soon as possible the final Council Decision regarding the EU-Kenya agreement on the handover of pirates for trial.

9.10 We also once more drew our report to the attention of the Foreign Affairs and the Defence Select Committees, so that they might continue to be aware of what the Minister had to say.³⁸

The draft Council Decisions

9.11 In her Explanatory Memorandum of 30 June 2009, the Minister for Europe at the Foreign and Commonwealth Office (Baroness Kinnock of Holyhead) explains that she is

38 (30341), (30348) and (30349) HC 19–iv (2008–09) chapter 17 (21 January 2009); see headnote.

able at this stage to deposit only draft texts, and that she will provide the Committee with a final version “once available”. In the meantime, she describes each one as follows:

Status of Force Agreement with Seychelles

“The SOFA allows the EU to freely enter territory (including territorial waters and airspace) of the Republic of the Seychelles and total freedom of movement thereof; the right to detain pirates in the Republic of the Seychelles waters; immunity of jurisdiction; immunity from all dues, customs etc.”

Transfer of Persons suspected of having committed acts of piracy, or acts of armed robbery

“The transfer agreement allows EUNAVFOR to transfer persons detained by EUNAVFOR in connection with armed robbery and associated seized property to the Seychelles for the purpose of investigation and prosecution.”

9.12 The Minister also recalls the provisions of Article 12(1) and 12(2) regarding the treatment of those persons who have been apprehended, having committed or being suspected of having committed acts of piracy or armed robbery in Somali territorial waters or on the high seas.

The Government’s view

9.13 The Minister says that:

“The UK remains committed to international action to counter piracy effectively in the region and is pleased to be playing a leading role in the EU operation, by providing the Operation Commander and Operation Headquarters . This action has resulted in lowering the number of successful attacks in the Gulf of Aden and to innovations such as close co-operation with both industry and non coalition navies (eg India).

“In addition to supporting the EU operation, the UK consults with maritime organisations, encouraging effective prevention measures and continues with partners (including the European Commission) in its efforts to tackle, on land, the root causes of piracy in Somalia, which provide the only long term solution to this problem.”

9.14 She goes on to say that:

“It is strongly in the UK’s interest to support this mission because piracy off the Horn of Africa is threatening a key global economic artery as well as regional trade. The UK remains an important centre of global international shipping and the Government has been working closely with the industry and regional partners to calibrate the international response. The UK also welcomes strongly the active role

being taken by the EU in responding to this challenge, working alongside NATO and the multinational Combined Task Forces 150 and 151”³⁹

9.15 With regard to the year to 9 June 2009, the Minister says:

“there have been 132 attempted attacks off the coast of Somalia, of which 29 have been successful. There are currently (24 June) 9 ships and 151 crew member held by pirates. Only 5 of the 2009 hijackings have been in the Gulf of Aden Transit Corridor, and only 1 involved a vessel registered with the EU operation and following agreed best practice. The ratio of successful attacks in the Gulf of Aden has reduced from 1 in 3 at the end of 2008 to about 1 in 8 for most of the year to date and 1 in 11 in May. International effort may have had effect of pushing pirates to operation further South East including in Seychelles waters hence the desirability of the EU concluding these agreements with the Seychelles.”

9.16 With regard to activity at the United Nations, the Minister reports that:

“The UK supported a new piracy resolution (UNSCR 1851) adopted by the Security Council on 16 December 2008. This called for the establishment of an International Contact Group on Piracy off the Coast of Somalia (CGPCS). The CGPCS has met three times, the most recently in May in New York. The CGPCS established four working groups focusing on the following areas;

- Working Group 1 — Operational co-ordination and regional capability development — UK lead
- Working Group 2 — Judicial Frameworks for Arrest, Prosecution and Detention of Pirates — Danish lead
- Working Group 3 — strengthening Commercial Shipping Self-Awareness and Self-Defence — US lead
- Working Group 4 — Improving Diplomatic and Public Information Efforts — Egyptian lead”

9.17 Finally, recalling that, having started on 8 December, reached Initial Operation Capacity (IOC) on 13 December 2008 and being intended to last until 13 December 2009, EU Ministers agreed in May to extend Operation Atalanta for a further 12 months, and

39 Combined Task Force 150 (CTF-150) is a multinational coalition naval task force with logistics facilities at Djibouti established to monitor, inspect, board, and stop suspect shipping to pursue the War on Terrorism and in the Horn of Africa region (HOA) (includes operations in the North Arabia Sea to support Operation Iraqi Freedom (OIF), and operations in the Indian Ocean) to support Operation Enduring Freedom — Horn of Africa (OEF-HOA). These activities are referred to as Maritime Security Operations (MSO). Countries presently contributing to CTF-150 include Canada, Denmark, France, Germany, Pakistan, Sweden, the United Kingdom and the United States. Other nations who have participated include Australia, Italy, Netherlands, New Zealand, Portugal, Spain, and Turkey. The command of the task force rotates among the different participating navies, with commands usually lasting between four and six months. The task force usually comprises 14 or 15 vessels.. CTF-150 is coordinated with, and incorporates vessels of, the US Navy’s Fifth Fleet, under the Combined Forces Maritime Component Commander/Commander US Naval Forces Central Command in Bahrain. On January 8, 2009, the United States Fifth Fleet headquarters in Manama, Bahrain announced the formation of CTF-151. The USS San Antonio (LPD-17) was designated as the first flagship, serving as an afloat forward staging base (AFSB) for a variety of force elements. Initially, CTF-151 consisted of the *San Antonio*, USS *Mahan* (DDG-72), and HMS *Portland* (F79), with additional warships expected to join this force. Twenty countries were expected to contribute to the force, including Canada, Denmark, France, the Netherlands, Pakistan and Singapore. On 29 May, the Australian Government re-tasked Australian Warship HMAS Warramunga (FFH 152) from duties in the Persian Gulf to the taskforce.

that the revised Joint Action to extend the operation will be prepared and submitted to the Committee “after the summer.”

Conclusion

9.18 We note that the General Affairs and External Relations Council (GAERC) on 15 June adopted the following conclusions:

“The Council noted that the Operation ATALANTA had demonstrated its ability to act effectively against piracy, that piracy off the coast of Somalia was likely to remain a serious threat beyond Operation ATALANTA’s current end date of 13 December 2009, and that early agreement on extending the operation would facilitate the necessary force generation. In this context, the Council agreed that Operation ATALANTA should be extended for one year from its current end date”⁴⁰

9.19 We understand the benefit regarding force generation of early agreement on extending the operation. But we presume that the mandate will also need to be changed. We therefore draw the Minister’s attention to the need to ensure that the Joint Action is submitted for scrutiny in good time for questions to be raised and answered, and not in a last minute rush before the Christmas recess.

9.20 We also draw her attention to:

- the need for Explanatory Memoranda to explain all the relevant information and not assume expert knowledge; the Committee should not, in its view, have to search the internet to find out what Combined Task Forces 150 and 151 are;
- the request to her predecessor that her Explanatory Memorandum should include information about, and her views upon, the achievements, failings and lessons learned in Operation Atalanta’s first year and what action the Government and the EU have taken during the year of operation to address the root causes of the immediate problem and what the outcomes are by then.

9.21 We would also ask the Minister to let us know what happened with regard to the agreement between the EU and the Kenyan authorities on the handover of pirates for trial, negotiations upon which were, her predecessor said in her January Explanatory Memorandum, in their final stages.

9.22 In the meantime, we clear the documents.

40 See Council Conclusions at http://www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/en/gena/108452.pdf

10 Common Frame of Reference

(28847) 12269/07 COM(07) 447	Second Commission Progress Report on the Common Frame of Reference
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<i>Legal base</i>	—
<i>Department</i>	Ministry of Justice
<i>Basis of consideration</i>	Minister’s letter of 19 June 2009
<i>Previous Committee Report</i>	HC 41–xxxvi (2006–07), chapter 13 (24 October 2007), HC 19–v (2008–09), chapter 17 (28 January 2009) and HC 19–x (2008–09), chapter 9 (11 March 2009)
<i>To be discussed in Council</i>	N/A
<i>Committee’s assessment</i>	Legally and politically important
<i>Committee’s decision</i>	Cleared (decision reported on 24 October 2007); further information now received

Background

10.1 The Common Frame of Reference (“CFR”) project explores ways of studying private law throughout the EU either as a means to providing a so-called “tool-box” for the drafting and interpretation of legislation or as a way of harmonising private law throughout the EU, mainly in the area of contract law. The project can be traced back to the early 1980s when the Commission on European Contract Law (also referred to as the “Lando Commission”) was set up and received funding from the Legal Services of the European Commission. This group published the Principles of European Contract Law (“PECL”), a set of general contract law rules in three parts, between 1995 and 2003.⁴¹ The PECL were based on comparative and evaluative studies of the contract laws of the EU Member States and of other national and international contract law systems.

10.2 In 1998 another group of academics was established, the Study Group on a European Civil Code (“Study Group”). This group set out to draft the Principles of European Law (“PEL”). It employed the same comparative methodology as the Lando Commission, but the scope of the PEL was designed to be much broader than that of the PECL. Apart from rules for the general law of contract, the PEL project was designed also to cover the law relating to specific types of contracts (sales, leases etc), extra-contractual obligations (tort, unjustified enrichment, *negotiorum gestio*) and fundamental issues regarding the law on assets other than immoveable assets (transfer of title, security for credit etc.). The results

⁴¹ O Lando and H Beale (eds), *Principles of European Contract Law: Parts I and II, Combined and Revised*. Prepared by the European Commission on Contract Law (2000); O Lando et al (eds), *Principles of European Contract Law: Part III* (2003). A full version of the PECL is available at http://frontpage.cbs.dk/law/commission_on_european_contract_law/

have been published in eight volumes since 2006⁴² and work on the PEL is scheduled to be completed around 2009/2010.

10.3 In February 2003 and October 2004, the European Commission published two further documents promoting improvements in the coherence of the EC consumer law *acquis* and outlining the elaboration of a Common Frame of Reference (“CFR”).⁴³ In May 2005 the “Joint Network on European Private Law” (also called “CoPECL Network of Excellence”) was established, following the grant of substantial funding by the European Commission under the Sixth Framework Programme for research and technological development. The Joint Network undertook to deliver a draft proposal for a CFR by 2007. It comprises several universities, institutions and other organizations from all over Europe.

10.4 The “Interim Outline Edition” of the Draft Common Frame of Reference (“DCFR”) was published in December 2007 and is the result of the work of two of the academic groups that are members of the Joint Network. The final version of the DCFR was published in the spring of 2009.

The purpose of the DCFR

10.5 There remains uncertainty about the ultimate purposes of the final CFR. The project was originally initiated by a group of academics but it has been funded partly by the European Commission and was recently endorsed by the European Parliament. The European Commission in particular never clarified its approach to the possible uses of the project. On the one hand, the CFR is meant to be a ‘toolbox’ for the revision and the improvement of the consumer law *acquis*, setting forth the general principles of contract law, establishing a common legal terminology and providing some model rules. On the other hand, the CFR might also serve as a blueprint for a future European contract law that could be enacted in the form of an optional Instrument, i.e. as an additional contract law regime that would be placed at the disposal of the parties, and might, at some future stage, even form the basis for a unified, binding European Contract or Civil Code. The tension between these twin aims has never been resolved by the Commission or by the authors of the DCFR.

10.6 In scope, format and content the final version of the DCFR clearly goes beyond a “toolbox” for a revision of the *acquis*, and could serve as the basis for a blueprint of a draft European Civil Code in the area of patrimonial law. Such a code, however, is not currently advocated by any of the European Institutions or by any Member State, and so does not appear to be a realistic political option.

10.7 Nor does it seem at present as if the CFR will take the form of an instrument harmonizing the whole field of contract law in Europe. The Commission in particular appears to have retracted from its earlier more ambitious position.⁴⁴ The Commission’s

42 See, for example, Principles of European Law: Commercial Agency, Franchise and Distribution Contracts (PEL CAFDC), prepared by M Hesselink et al (2006); Principles of European Law: Sales (PEL S), prepared by E Hondius et al (2008).

43 European Commission, Communication to the European Parliament and the Council — A more coherent European Contract Law: An Action Plan, COM(2003) 68, OJ 2003 C 63/1; European Commission, Communication to the European Parliament and the Council — European Contract Law and the revision of the *acquis*: the way forward, COM(2004) 651 final.

44 See the statements of Commissioner M Kuneva in the European Parliament debate of 1 September 2008.

more modest recent position appears to be shared by the Council of Ministers, which defined its position on four fundamental aspects of the CFR at the meeting of the Justice and Home Affairs Council of 18 April 2008:⁴⁵

- Purpose of the Common Frame of Reference: a tool for better lawmaking targeted at Community lawmakers;
- Content of the Common Frame of Reference: a set of definitions, general principles and model rules in the field of contract law to be derived from a variety of sources;
- Scope of the Common Frame of Reference: general contract law including consumer contract law; and
- Legal effect of the Common Frame of Reference: a set of non-binding guidelines to be used by lawmakers at Community level on a voluntary basis as a common source of inspiration or reference in the lawmaking process.

The structure of the DCFR

10.8 The DCFR is divided into ten Books. Very broadly speaking, its basic structure follows that of the main Continental civil codes, which are divided into a first general part and a second part which contains the specific provisions. Book I contains a small number of “General Provisions” on the scope of application and the interpretation of the DCFR. It also provides some definitions and refers to the long list of definitions in Annex I to the DCFR. Books II and III contain those rules that will mostly be relevant for the CFR. They deal with general rules of contract law (e.g. formation and breach), but also with rules that are relevant for other kinds of obligations (e.g. set-off and limitation periods). Books IV–X deal with the law relating to specific types of contracts, *negotiorum gestio*,⁴⁶ tort, unjust enrichment, ownership in movables, proprietary security rights and trusts.

10.9 When we cleared the Commission’s second progress report on the CFR project in October 2007, we requested that the Minister keep the Committee informed of relevant further developments. Following publication of the interim DCFR the Government commissioned a report from Professor Simon Whittaker of Oxford University to provide a critical assessment of the content and possible roles of the DCFR. The Parliamentary Under-Secretary of State at the Ministry of Justice (Lord Bach) wrote on 10 December 2008, attaching a copy of Professor Whittaker’s report in its entirety.

10.10 Professor Whittaker’s report focuses on the usefulness of the DCFR as a means for improving the content and quality of EC legislation, and tries to assess its likely effect on the development of “European contract law” and to explain how such a development would relate to and affect English contract law. Amongst the report’s observations the following should be mentioned:

45 Council of the European Union, Press Release: 2863rd Council meeting, Justice and Home Affairs, Luxembourg, 18 April 2008, 8379/08 (Presse 96), p 18.

46 The *negotiorum gestio* was a Roman legal institution in which an individual acted on behalf of another, without his asking and without remuneration. It was considered a part of *officium* (duty), for instance, to defend a friend’s or neighbour’s interests while the friend or neighbor was away. The principal or *dominus* is bound to indemnify the volunteer or *gestor* in respect of the expenses and liabilities incurred.

- The coverage of the subject-matter of the DCFR is very broad and goes well beyond the topics necessary to regulate contracts in general and consumer contracts.
- The DCFR does not appear to be consistent in its use of the term “principle”, nor in its approach to how “principles” relate to rules.
- The DCFR was not designed and is not suitable to be used as either a ‘tool-box’ or an “optional instrument” because of its complexity and interpretative uncertainty.
- As a compromise between different legal traditions and systems the DCFR necessarily deviates from English contract in a number of respects. These include the English doctrine of conversation and the parole evidence rules for which the DCFR contains no equivalent provisions; the relatively broad scope in the DCFR of the doctrine of mistake and for the conferral of contractual rights on third parties; the general availability of the remedy of specific performance; and the broad scope of the principle of “good faith and fair dealing” throughout the DCFR.

The Government’s view and the Minister’s Letter

10.11 Since the inception of the CFR the Government has been consistent in its opposition to the development of a European code of contract law and to any suggestion of future EU legislation which could give full legal effect to the Common Frame of Reference. This position was expressly affirmed by the Minister (Lord Bach) when he last wrote to update us on the Government’s response to the publication of the outline DCFR, which was based on the detailed report prepared by Professor Whittaker of Oxford University. Based on Professor Whittaker’s and the 2008 Council position the Minister’s letter of 28 February 2009 emphasised the following points:

- The content of the CFR should fully respect national legal traditions.
- The CFR may include general contract law, including consumer contract law, with the possibility of including further special contracts later, without seeking to replace existing national rules in those areas it covers.
- The CFR should be a set of non-binding guidelines to be used by lawmakers at Community level on a voluntary basis as a common source of inspiration or reference in the lawmaking process.

10.12 As the CFR would not take effect as a legally binding document, the Minister assured us that no legal base would be required. We asked the Minister to keep us informed of any further developments in connection with the evolution of the CFR and the Government’s own thinking in relation to it.

10.13 The Minister has now written again and in his letter of 19 June 2009 informs us as follows:

“I am writing to inform you of recent developments on the Common Frame of Reference (CFR) on European contract law. The Justice and Home Affairs (JHA) Council met on 5 June and considered a report on some further broad conclusions on the CFR which build upon those reached in April and November 2008. A copy of

the report to the JHA Council is attached. These conclusions enlarge on and clarify those previously adopted and focus on:

- a) fundamental principles: the CFR should set out common fundamental principles of contract law, possibly accompanied by guidelines to cover cases where exceptions to those principles are required;
- b) definitions — the CFR should cover definitions of key concepts in contract law;
- c) model rules — the CFR should contain model rules that should be general in nature so that they can apply to all contracts. They should be drafted in sufficiently broad terms to be easily adaptable to all contractual situations;
- d) relationship with the proposed Directive on Consumer Rights — in developing the CFR, account should be taken of the development and negotiation of the proposed Directive (although they are separate projects whose objectives may not always coincide); and
- e) form of the CFR — the CFR should be a non-binding instrument, comprising a set of guidelines for use by Community legislators.

“You are aware that the Government has been in support of a future CFR on the basis that it is a non-binding source of guidance and reference for Community lawmakers when drafting or reviewing legislation in the area of contract law. This guidance should help to improve the quality and coherence of European legislation in the area of contract law.

“The Government remains of the view that any concept which is in any way binding upon Community lawmakers, even to the extent that it creates a presumption that the CFR should be used more often than not, is unacceptable. A future CFR should only operate as a set of voluntary guidelines to lawmakers.

Conclusion

10.14 We thank the Minister for his summary of and comments on the June Council conclusions on the CFR. We welcome the Government’s continuing assurance that the CFR will not be a legally binding code designed to replace national rules. We also welcome the Council’s collective statement by Member States in support this view.

10.15 We ask the Minister to keep us informed of all further developments, but have no further questions at this stage.

11 Evaluation of the Hague Programme

(30695) 10953/09 COM(09) 263	Commission Communication <i>Justice, freedom and security in Europe since 2005: an evaluation of the Hague Programme and Action Plan</i>
+ADD 1	Commission document: Implementation scoreboard: action by Member States to implement legislation adopted to give effect to the Hague Programme
+ ADD 2	Commission document: extended report on the evaluation of the Hague Programme
+ ADD 3	Commission document: general overview of progress in achieving the legislation and other action required by the Hague Programme

<i>Legal base</i>	—
<i>Document originated</i>	10 June 2009
<i>Deposited in Parliament</i>	17 June 2009
<i>Department</i>	Ministry of Justice
<i>Basis of consideration</i>	EM of 29 June 2009
<i>Previous Committee Report</i>	None
<i>To be discussed in Council</i>	No date set
<i>Committee's assessment</i>	Politically important
<i>Committee's decision</i>	Cleared; but relevant to the debate in European Committee B on the EU's justice and home affairs programme for the next five years (11060/09)

Background

11.1 In 1997, the Treaty of Amsterdam created a new objective for the European Community: “to provide citizens with a high level of security in an area of freedom, security and justice”. The Treaty on the European Union (the EU Treaty) and the Treaty establishing the European Community (the EC Treaty) were amended to give effect to the objective. The provisions came into effect in May 1999.

11.2 In October 1999, the European Council approved a five-year programme of action (“the Tampere Programme”) on justice and home affairs, including asylum and immigration, civil and criminal justice and police and customs cooperation. In 2004, the previous Committee made a Report to the House on a Communication from the Commission assessing progress in implementing the Tampere Programme and proposing

priorities for the next five years.⁴⁷ The Communication was debated on the Floor of the House on 13 October 2004.

11.3 In November 2004, the European Council agreed a further five-year programme of action on justice and home affairs (“the Hague Programme”).⁴⁸ In May 2005, the Commission proposed an Action Plan which set out about 250 measures (such as Green Papers, legislation and agreements with third countries) to give effect to the Programme.⁴⁹ It was adopted by the Council in June 2005.

The document

11.4 The Hague Programme will be time-expired by the end of this year. The negotiation of its successor (“the Stockholm Programme”) is one of the main priorities of the Swedish Presidency. This Communication will contribute to the process. It contains the Commission’s evaluation of the implementation of the Hague Programme. It is supported by three Annexes:

- ADD 1 contains tables commenting on the extent to which, in the Commission’s opinion, Member States have implemented the items addressed to them in the Action Plan;
- ADD 3 contains tables commenting on whether the Commission, the Council and the European Parliament have taken the action required of them by the Action Plan; and
- ADD 2 states, at greater length than the Communication itself, the Commission’s evaluation of the implementation of the Hague Programme.

11.5 The Communication assesses progress under the following headings:

- protection of fundamental rights;
- citizenship of the Union;
- the common European asylum system;
- migration and integration;
- border management;
- visa policy;
- the external dimension of asylum and migration;
- terrorism;
- police cooperation;

47 (25730) 10249/04: HC 4–xxviii (2003–04), 14 July 2004.

48 Hague European Council, 4–5 November 2004, Presidency Conclusions, paragraphs 14 to 20 and Annex I.

49 (26566) 8922/05: HC 34–iv (2005–06), chapter 22 (20 July 2005).

- organised crime;
- the European strategy on drugs;
- judicial cooperation in criminal matters;
- facilitating civil law procedure across borders;
- mutual recognition of judicial decisions;
- external relations; and
- financial instruments to provide support for action by the EU and Member States to give effect to the Hague Programme.

11.6 The Commission's overall assessment is that:

“There have been considerable advances towards realising many of the ambitions set out in the Hague Programme, and most of the specific measures it envisaged have been adopted. The full fruits of many of these measures will only become apparent in the longer term. Nevertheless, progress in certain areas remains mixed or limited.”⁵⁰

11.7 The Commission attributes the uneven progress to a variety of causes. It says, for example, that:

“Progress was comparatively slow in mutual recognition in criminal matters and police cooperation. The decision making process falling under the so-called ‘third pillar’ method ... requires unanimity [for the adoption of legislation by the Council]. This often leads to lengthy inconclusive discussions or ambitious proposals being reduced to agreement around lowest-common-denominator texts. A framework decision on procedural rights is one example of a proposal envisaged in the Hague Programme which was not adopted despite the importance attached to it by practitioners throughout Europe.”⁵¹

11.8 Basing itself on the lessons it has discerned from the implementation of the Hague Programme, the Commission says that the following “themes” should guide the EU's work on justice and home affairs in future:

- joined-up thinking and action are required not only on all matters concerned with justice and home affairs but also across the whole range of other EC policies;
- implementation and enforcement of EC legislation should be improved;
- more robust and systematic monitoring and evaluation arrangements are required using up-to-date, objective, reliable and comparable data; and
- Member States, the Council and the Commission need to work together to strengthen partnerships with third countries. Consistency between the EU's internal and external policies for justice, freedom and security is essential.

50 Commission Communication, page 13, penultimate paragraph.

51 *Ibid*, page 14, second full paragraph.

The Government's view

11.9 In his Explanatory Memorandum of 29 June 2009, the Parliamentary Under-Secretary of State at the Ministry of Justice (Lord Bach) tells us that the Government welcomes the Communication. It broadly agrees with most of the Commission's findings. The Minister says, for example, that:

“The Government [...] agrees with the section [...] on strengthening justice, in which the European Arrest Warrant is hailed as a success. The EAW has transformed extradition arrangements between the UK and EU Member States and has played an important role in the fight against the increasingly international nature of serious crime. On facilitating civil law procedure across borders, the Government agrees that significant progress has been made over the last five years [...]”⁵²

11.10 The Minister also says, however, that the comparative lack of progress on criminal justice cannot be blamed on the legislative process for third pillar measures:⁵³

“There is an important underlying sensitivity around the individual nature of each country's criminal justice system and the EU has to take the time to recognise and take proper account of this. The fact that progress may appear slow in some areas is because of the need to get this balance right.”⁵⁴

11.11 The Government notes the Commission's view that the implementation of the Directive on the free movement of persons was disappointing. The Minister says that that view is not shared by most Member States, including the UK. In the Government's view, free movement has been one of the EU's major achievements, but it is important to take effective measures against abuse of the right.

11.12 The Minister's Explanatory Memorandum comments on most of the sections of the Communication before concluding as follows:

“Finally, the Government supports the Commission's ideas for further work as a result of lessons learned from the Hague Programme. In particular, the Government agrees that the focus of future action should be on consolidation and enforcement. The EU has made substantial progress over the last ten years and it is important that we take stock to ensure that what has been done is coherent and achieves its aims and that any future work enhances it.”⁵⁵

Conclusion

11.13 We thank the Minister for his helpful Explanatory Memorandum and agree with the Government about the need to assess what has been achieved so far and to draw lessons from the assessment before proposing further action. Accordingly, we welcome

52 Minister's Explanatory Memorandum, paragraph 38.

53 “Third pillar” measures are concerned with police and judicial cooperation in criminal matters. Title VI of the EU Treaty provides the legal base for them. The measures require unanimous agreement in the Council and are not subject to co-decision with the European Parliament.

54 Explanatory Memorandum, paragraph 41, second and third sentences.

55 *Ibid*, paragraph 44.

the contribution the Commission Communication makes to the preparation of the EU's next programme for justice and home affairs.

11.14 There are no questions that we need put to the Minister about the Communication and we are content to clear the document from scrutiny. We note, however, that it is relevant to the debate in European Committee B the Stockholm Programme recommended in chapter 1 above.

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

Department for Environment, Food and Rural Affairs

(30688)
10769/09
COM(09) 250

Commission Communication with regard to the state of play on the control of food-borne Salmonella in the European Union

(30690)
10846/09
COM(09) 235

Amended Draft Council Directive on pure-bred breeding animals of the bovine species (codified version).

Foreign and Commonwealth Office

(30534)
8518/09
COM(09) 152

Commission Report on the use made in 2007 by the institutions of Council Regulations 300/76, last amended by Regulation 1873/2006 (on shift work), 495/77, last amended by Regulation 1945/2006 (on standby duty), 858/2004 (on particularly arduous working conditions).

(30704)
11086/09
COM(09) 285

Draft Council Regulation amending Regulation (EC) No 423/2007 concerning restrictive measures against Iran

HM Treasury

(30711)
11278/09
COM(09) 288

Preliminary draft amending budget No.6 to the general budget 2009 — General Statement of Revenue.

Formal minutes

Wednesday 8 July 2009

Members present:

Michael Connarty, in the Chair

Mr David S Borrow
Jim Dobbin

Kelvin Hopkins
Angus Robertson

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 12 read and agreed to.

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

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

* * *

[Adjourned till Wednesday 15 July 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*)