



House of Commons

European Scrutiny Committee

Twenty-sixth Report of Session 2008–09

Documents considered by the Committee on 15 July 2009



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Report, together with formal minutes

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Notes

Numbering of documents

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

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

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

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

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

Abbreviations used in the headnotes and footnotes

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

Euros

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

Further information

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

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

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Contents

Report			<i>Page</i>
Documents not cleared			
1	DEFRA	(30707) Rabies: non-commercial movement of pets	3
2	DFT	(30255) Rights of passengers	6
3	DFT	(30714) Transport policy	10
4	DWP	(30702) Marketing and use of biocidal products	14
5	FCO	(30572) (30573) (30612) (30639) Financial instruments for EU external action	19
6	MOJ	(30638) Standing of victims in criminal proceedings	26
Documents cleared			
7	DFID	(30361) (30509) European Investment Bank lending in non-EU countries	33
8	FCO	(30721) Breaches of the Cotonou Agreement by Republic of Guinea	40
		Annex 1: The political dimension of the Cotonou Agreement	48
9	FCO	(30749) EU and Georgia: EU Monitoring Mission	50
10	FCO	(30755) (30756) EU and Georgia: EU Special Representative and the independent international fact-finding mission on the conflict	55
11	HMT	(30710) Financial management	58
Documents not raising questions of sufficient legal or political importance to warrant a substantive report to the House			
12		List of documents	64
Formal minutes			64
Standing order and membership			65

1 Rabies: non-commercial movement of pets

(30707) 11216/09 + ADDs 1–2 COM(09) 268	Draft Regulation amending Regulation (EC) No 998/2003 on the animal health requirements applicable to the non-commercial movement of pet animals
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<i>Legal base</i>	Articles 37 and 152(4)(b)EC; co-decision; QMV
<i>Document originated</i>	16 June 2009
<i>Deposited in Parliament</i>	23 June 2009
<i>Department</i>	Environment, Food and Rural Affairs
<i>Basis of consideration</i>	EM of 7 July 2009
<i>Previous Committee Report</i>	None, but see footnotes 2 and 3
<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 requested

Background

1.1 Regulation 998/2003¹ harmonised the Community's rules governing the non-commercial movement of pet animals, and, among other things, relaxed the rabies restrictions hitherto imposed by the UK (as well as by Ireland, Sweden, Finland and Malta) on imports of cats and dogs from other Member States and from listed third countries deemed to be free of rabies (or to present a risk no greater than that associated with movements between Member States). Thus, such animals may now be imported without undergoing quarantine, provided they have been vaccinated and are properly identified. However, the UK, Ireland, Sweden, Finland and Malta were permitted — subject to a transitional period, which was due to expire on 3 July 2008 — to require that the animals in question should be subjected to additional conditions, notably post-rabies vaccination blood testing and treatment against certain parasites: and, in the case of non-listed third countries, they may also maintain quarantine arrangements.

1.2 The Commission was required to present by 1 February 2007 a report on the subsequent need for these additional controls, but only did so in October 2007.² Consequently, in order to allow sufficient time for proper consideration to be given, it proposed³ that the current transitional arrangements should be extended until 1 September 2009.⁴ It also noted that four policy options were being considered — the continuation of the present pre-entry conditions for UK, Ireland, Sweden, Finland and Malta on a permanent basis; an extension of the current transitional period; a lifting of those

1 OJ No. L 146, 13.6.03, p.1.

2 (28992) 13718/07: see HC 41–xxxvi (2006–07), chapter 7 (24 October 2007) and HC 16–x (2007–08), chapter 9 (30 January 2008)

3 (28991) 13705/07: see HC 41–xxxvi (2006–07), chapter 7 (24 October 2007) and HC 16–x (2007–08), chapter 9 (30 January 2008)

4 Regulation (EC) No. 454/2008 subsequently extended this period until 30 June 2010.

measures, and an adjustment to the current rules — and that the Commission would be putting forward further proposals in due course.

1.3 In reporting these two documents to the House on 30 January 2008, we also noted that, in response to our query as to how the Government would view a weakening, or possibly removal, of the additional safeguards currently applied by the UK, we were reminded by the then Minister (Lord Rooker) that the UK's long standing quarantine system had been modified in February 2000 when the Pet Travel Scheme was introduced, and that that Scheme provided an alternative if cats and dogs entering the UK met certain conditions — conditions which he said had been retained, virtually unchanged, with the introduction of Regulation(EC) No. 998/2003. We were also told that a review by DEFRA had indicated that the current UK controls may no longer be proportionate to the risk of rabies entering the UK, but that the Government expected there to be detailed discussion of future proposals for any revised regime, to ensure that it is proportionate to the risk of disease actually entering the UK or the rest of the Community.

The current proposal

1.4 The Commission has now put forward this proposal for a further extension of the present arrangements. In doing so, it has recalled the reference in its earlier report to an opinion of the European Food Safety Authority (EFSA) that the continuing presence of rabies in certain Member States is primarily in wildlife, and that, as that source of infection is eliminated, the occurrence of the disease in domestic animals diminishes. It adds that the Community has approved a number of programmes to eradicate rabies in wildlife in the Member States in question, and that Community support for these programmes is currently expected to be completed by the end of 2011. In view of this, it has proposed a further extension of the special arrangements until 31 December 2011.

The Government's view

1.5 In his Explanatory Memorandum of 7 July 2009, the Minister of State at the Department for Environment, Food and Rural Affairs (Jim Fitzpatrick) says that the proposal as it stands will largely maintain the current policy in respect of the UK's animal health requirements for the import of pet dogs, cats and ferrets until 31 December 2011. It does, however, suggest one amendment relating to the health requirements for pets entering the UK from third countries not listed in the Regulation, in that it would remove the explicit reference to the requirement for pets from unlisted third countries to re-prepare under the Pet Travel Scheme after their entry into the Community but before entry to the UK. The UK will be seeking clarity from the Commission on this point, and will seek to maintain the current arrangement whereby pets undergo additional health requirements before they can enter the UK from unlisted third countries via another Member State.

1.6 The Minister points out that the UK would from 1 January 2012 have to fall in line with the movement requirements for pets which currently apply in most other Member States. This would mean that pets from the rest of the Community and certain listed third countries (such as the USA and Australia) would no longer need a pre-entry blood test, and could enter the UK 21 days after being vaccinated against rabies. Moreover, they would no longer be required to be treated against certain ticks and tapeworm before entry

(though he notes that the Commission would be able to propose additional measures for diseases other than rabies to be carried out on pet animals before entry into a Member State).

1.7 In the case of pets entering from unlisted third countries, the rules would be the same as for those entering most other Member States. These are more stringent than the controls for intra-Community movement, and, as well as a rabies vaccination, pets would also need a blood test a month after vaccination, with the test being carried out at an Community-approved laboratory, and then wait a further 3 months before being allowed to enter the UK or any other Community country. The Minister says that this element of the proposal will form part of ongoing discussions with the Commission and others, and that the Government will prepare an Impact Assessment when the outcome of those discussions is known.

Conclusion

1.8 Insofar as this proposal would extend the present position for another 18 months until the end of 2011, it is in itself unexceptionable. However, it leaves open the question of what would happen after that date. As we understand it, the UK (and other Member States to which special arrangements currently apply) would, in the absence of any further Community measures being adopted, have to fall into line with the remaining Member States, and we also understand that there would in that event no longer be an option to apply quarantine for animals entering from non-listed third countries.

1.9 Consequently, before we clear the current document, we would be grateful if the Minister could confirm whether our understanding of the situation is correct; indicate whether he expects there to be any further proposals to extend some kind of special arrangements in this area for the UK and other Member States in question; and say whether the Government's position, were there to be no such extension, remains as stated in January 2008 by Lord Rooker.

2 Rights of passengers

(30255) 16933/08 + ADDs 1–2 COM(08) 817	Draft Regulation on the rights of passengers in bus and coach transport 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 8 July 2009
<i>Previous Committee Report</i>	HC 19–v (2008–09), chapter 4 (28 January 2009)
<i>To be discussed in Council</i>	Possibly 18–19 December 2009
<i>Committee’s assessment</i>	Politically important
<i>Committee’s decision</i>	Not cleared; further information awaited

Background

2.1 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.⁵ 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.⁶ In December 2008 the Commission presented a draft Regulation, which is still under scrutiny, intended to establish a set of rights for passengers travelling by sea and inland waterways.⁷

2.2 In December 2008 the Commission also presented this draft Regulation, intended to establish a set of rights for passengers using bus and coach services on both domestic and international routes. The aim of this proposal is to:

- make bus and coach transport more attractive;
- achieve a level playing field, both between operators in different Member States and between different modes of transport; and
- remove potential barriers to disabled people and people with reduced mobility using buses and coaches by addressing issues around accessibility and the provision of assistance.

2.3 The draft Regulation has provisions in six chapters to:

5 (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.

6 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”.

7 (30264) 11990/08 + ADDs 1–2: see HC 19–xxiii (2008–09), chapter 3 (8 July 2009).

- prevent discrimination on grounds of nationality or place of residence with regard to conditions and prices offered to passengers by operators;
- establish standard rules on liability in the event of death or injury of passengers and loss of or damage to their luggage and to harmonise these with other modes of transport;
- prevent discrimination on the grounds of disability or reduced mobility with regard to booking a journey or boarding a vehicle (unless safety regulations or the size of the vehicle makes such access impossible);
- give disabled persons and persons with reduced mobility the right to assistance during their travel, free of charge;
- oblige companies to provide all passengers with adequate information throughout their journey, particularly where services are cancelled or subject to long delays, and with information about their rights; and
- ensure operators have a complaint handling mechanism, with each Member State designating a body responsible for the enforcement of the Regulation.

2.4 When we considered this proposal, in January 2009, we reported that, whilst the Government supported creating a level playing field for international bus and coach services and introducing passenger rights for all modes of transport, it was important for the proposed Regulation to reflect:

- the differences between international and local bus services;
- that the bus and coach industry consists of a significant number of small operators; and
- that the bus and coach industry has much less control over the infrastructure on which its vehicles run, compared to the aviation and rail industries.

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.

2.5 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 position of local bus services — that is limitation of the scope for exemption from the new requirements to services operated under public service contracts;
- 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.⁸

The Minister's letter

2.6 The Minister of State, Department for Transport (Mr Sadiq Khan) writes now in response to our earlier report and to tell us also of the European Parliament's first reading of the proposal. The Minister first tells us that the Government's consultation on the proposal closed on 14 April 2009 and the responses are helping to inform its position. And he encloses the Government's initial consultation impact assessment,⁹ which accompanied the consultation document, and which will be updated in light of the consultation responses and as the negotiations progress.

2.7 Of the responses to the consultation the Minister says, in summary, that:

- most respondents felt that the proposed Regulation did not achieve a reasonable balance between the rights of passengers and the economics of service provision;
- there was concern from operators that the proposal was impractical and disproportionate in respect of local bus services and could make insurance extremely expensive, assuming cover could be obtained at all;
- passenger representatives gave qualified support to the concept of passenger rights, but acknowledged that, as drafted, the proposals could pose practical difficulties in the provision of some services;
- they suggested that passenger rights could be delivered through a different mechanism; and
- disability organisations, however, felt the draft Regulation would provide more consistent rights for disabled people across the Community.

2.8 On Council consideration of the draft Regulation the Minister tells us that:

- in Working Group meetings the scope of the proposal has been the key issue for most Member States;
- other issues include liability for death and injury of passengers, advanced payments in cases of death or personal injuries, possible reasons for refusal of disabled persons or persons with reduced mobility from transport services, the right to assistance, especially on board during the journey, training of all personnel, the responsibility of transport undertakings in the event of cancellations and long delays at departure and the date of entry into force of the Regulation;
- at the Transport Council of 11 June 2009 the Czech Presidency gave a progress report and held a policy debate, during which Member States were invited to comment on options for the scope of the draft Regulation

⁸ See headnote.

⁹ See <http://www.dft.gov.uk/consultations/closed/eu-bus/impactassessment.pdf>.

- the Government stressed that the proposed exemption for urban, suburban and regional transport operated under public service contracts was discriminatory in respect of those Member States, such as the UK, whose markets have moved to open competition beyond public service contracts, and that such a condition should not be attached to the exemption;
- on that basis, the Government joined a large number of Member States in calling for the proposed Regulation's scope to be limited to long-distance and international journeys;
- the Government also raised concerns about the liability provisions — the UK has well-established fault-based principles for determining liability for road traffic accidents, the introduction of strict liability would cut across these, effectively creating a separate system in relation to determining liability and compensation for road traffic accidents involving one particular type of road user and this would cause confusion and uncertainty in UK law;
- progress in resolving the issues discussed at Working Group level has been relatively slow so far;
- however, the Swedish Presidency has indicated that it hopes to make good progress, with a view to a possible political agreement at the Transport Council on 17–18 December 2009; and
- the Government will continue to work to ensure that the final proposal is proportionate and practical in its application.

2.9 The Minister also tells us that the European Parliament adopted an opinion on the draft Regulation at a first reading on 23 April 2009. It has proposed a number of amendments, including ones on the scope, liability for death and injury of passengers, advance payments in cases of death or personal injuries, possible reasons for refusal of disabled persons or persons with reduced mobility from transport services, the right to assistance, responsibilities of undertakings in the event of cancellations and long delays and the date of entry into force of the proposed Regulation. The Minister comments that:

- whilst the Government welcomes the intention behind some of these changes, it does not welcome the amendment to the scope, which would prevent the exemption of rural bus services and still retains the public service contract condition; and
- it is also concerned that some of the proposed amendments, particularly in respect of the responsibilities of undertakings in the event of cancellations and long delays, do not take into account the specific characteristics of the bus and coach sector, which consists largely of small and medium enterprises.

Conclusion

2.10 We are grateful for the Minister's account of where matters stand with 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 political agreement 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 the updated impact assessment, particularly with some quantification of costs and benefits. Meanwhile the document remains under scrutiny.

3 Transport policy

(30714) 11294/09 COM(09) 279	Commission Communication: <i>A sustainable future for transport: towards an integrated, technology-led and user friendly system</i>
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<i>Legal base</i>	—
<i>Document originated</i>	17 June 2009
<i>Deposited in Parliament</i>	24 June 2009
<i>Department</i>	Transport
<i>Basis of consideration</i>	EM of 8 July 2009
<i>Previous Committee Report</i>	None
<i>To be discussed in Council</i>	9 October 2009
<i>Committee's assessment</i>	Politically important
<i>Committee's decision</i>	Not cleared, further information requested

Background

3.1 The Community's transport policy is set currently within the broad context of the Commission's 2001 White Paper *European Transport Policy for 2010: Time to decide*.¹⁰

The document

3.2 This Commission Communication is a consultation document inviting all interested parties to provide views on the future of transport and possible policy options. The intention is to stimulate debate and encourage policy options to be identified so as to lead to formulation of concrete proposals for the Commission's next transport policy White Paper, expected towards the end of 2010. That White Paper is intended to set out policy for the next decade.

3.3 The Communication is divided into five parts, the first of which is a short introduction. The second section reviews the Community's transport policy since 2000. The Commission describes some successes, including:

¹⁰ (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.

- market opening;
- progress with implementing the Trans-European Transport Network programme;
- some progress with energy efficiency, such as through the agreement of performance standards for new passenger cars adopted in April 2009;
- progress with maritime safety;
- reduction in road casualties;
- an enhanced Community legislative security regime; and
- passenger rights.

However, in this section the Commission also identifies some broad-ranging outstanding issues, such as limited progress in achieving some of the Community goals for sustainable development and insufficient progress in reducing transport's energy usage and greenhouse gas intensity.

3.4 In the third section the Commission identifies six trends or challenges for transport over the next fifty years. But, noting that it is difficult to anticipate which will have the greatest influence in shaping the future of transport, the Commission does not place the six, which follow, in any kind of priority order:

- ageing — by 2060, the median age of the population is projected to be seven years higher than it is today, with an increasing demand for secure and reliable transport together with other greater demands on public resources, for instance for pensions and health care;
- migration and internal mobility — net migration to the Community might add 56 million people to its population in the next five decades added to further reductions to barriers to movement of people and goods within the single market;
- environmental challenges — the growing urgency to address the negative environmental impact of transport and the potential threat of climate change to transport, for instance the effect of rising sea levels for ports;
- the increasing scarcity of fossil fuels — the expectation that oil and other fossil fuels will become more expensive as demand increases and low-cost sources dry up;
- urbanisation — a projected increase in urbanisation, with the proportion of the Community's population residing in urban areas expected to increase from 72% in 2007 to 84% in 2050, having consequences for congestion and pollutants; and
- global trends affecting the Community's transport policy — increased globalisation, the further deepening of the single market and continued economic integration with the Community's neighbouring regions, in Eastern Europe and North Africa, and globally.

3.5 In the fourth section of the Communication the Commission identifies seven broad policy objectives or operational goals for wider consideration:

- quality transport that is safe and secure;
- a well maintained and fully integrated network;
- more environmentally sustainable transport;
- keeping the Community at the forefront of transport services and technologies;
- protecting and developing the human capital — that is identification of skills shortages, training and maintaining and improving working conditions;
- smart prices as traffic signals — that is charging internal and external costs to promote efficiencies; and
- planning with an eye with an eye to transport: improving accessibility — including taking into account that increasing centralisation of services creates a further need for transport.

3.6 The fifth section discusses, under seven headings, the use of possible policy instruments to respond to the challenge of sustainable transport:

- infrastructure — maintenance, development and integration of modal networks;
- funding — finding the resources for sustainable transport;
- technology — how to accelerate the transition to a low-carbon society and lead global innovation;
- the legislative framework — further promoting market opening and fostering competition;
- behaviour — educate, inform and involve;
- governance — effective and coordinated activity; and
- the external dimension — the need for the Community to speak with one voice.

3.7 In the brief final section the Commission encourages contributions to the consultation exercise by 30 September 2009, says it will be organising a stakeholder conference in autumn 2009 and notes its intention to produce a White Paper setting out policy measures to be adopted in the decade 2010–2020.

The Government's view

3.8 The Minister of State, Department for Transport (Mr Sadiq Khan), noting that the Communication is not a legislative proposal and gives rise to no immediate and specific policy considerations, says that it provides a welcome opportunity to influence the development of policy options well in advance of the next White Paper being produced. The Minister continues that:

- the Government broadly accepts the range of trends and challenges in the Communication, but public consultation will provide an opportunity to validate all sections and identify any gaps
- the Government's main concerns are that the Communication does not indicate any real prioritisation and direction at this stage or provide a sufficient review of the successes and failings of past Community policies;
- the Government will seek views on policy options for public stakeholders, but a key objective for the Government in the development of transport policy is to move towards a low carbon transport system, whilst continuing to support economic competitiveness;
- the Government's response to the Communication will take account of its carbon reduction strategy for transport, which is to be published shortly;
- the Communication makes no reference to the need to support the development of advanced, low carbon transport fuels;
- in Scotland the importance of environmental issues is reflected in the Climate Change (Scotland) Act, which sets a new interim carbon emission reduction target of 42% by 2020 (subject to possible revision by Scottish Ministers), in addition to the overall target of 80% by 2050 and the Climate Change Delivery Plan highlights key areas for emissions reductions for a number of sectors including transport;
- in relation to the Commission highlighting the importance of technology, the UK has been an early adopter of intelligent transport systems technologies and there are already a number of successful applications in operation;
- the Government is committed to implementing technology only where it addresses policy requirements, supported by a business case;
- so the Government will encourage the Commission to prioritise the gathering of robust data, evaluation and developing business cases for technology deployment in line with transport policy objectives, before defining proposals designed to generate regulation to accelerate the current pace of technological deployment;
- the Government intends to carry out a public consultation to contribute to the development of the its formal response to the Commission;
- the Government has consulted the Devolved Administrations and will invite further contributions through the public consultation process; and
- those to be consulted have the option of responding directly to the Commission if they prefer.

Conclusion

3.9 The proposed White Paper will be an important driver of Community transport policy developments in the decade from 2010. So, given its intended role in preparing the White Paper, before considering this Commission Communication further we wish

to see the outcome of the Government’s consultation and its consequent response to the document. Meanwhile it remains under scrutiny.

4 Marketing and use of biocidal products

(30702) 11063/09 + ADDS 1–2 COM(09) 267	Draft Regulation concerning the placing on the market and use of biocidal products
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<i>Legal base</i>	Article 95EC; co-decision; QMV
<i>Document originated</i>	12 June 2009
<i>Deposited in Parliament</i>	19 June 2009
<i>Department</i>	Work and Pensions
<i>Basis of consideration</i>	EM of 3 July 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>	Not cleared; further information awaited

Background

4.1 Biocidal products are used to destroy harmful organisms by chemical or biological means, and their marketing and use within the Community is regulated under Directive 98/8/EC.¹¹ As with comparable measures for other products, such as pesticides, this involves a two-stage process — the so-called “active substances” which give biocidal products their properties being approved by the Community (and included in the list of such products in an Annex to the Directive, following action by the Commission under the comitology process), whilst the authorisation of the biocidal products themselves is in the hands of Member States, with provision being made for a product approved in one Member State to be used in another. The Directive contains a simplified procedure for approving low-risk products; and it includes provisions governing the use (and confidentiality) of data supplied in support of an application for approval, the use of such data for second or subsequent applications, and rules relating to the classification, packaging, labelling and advertisement of products.

4.2 The Directive also provides that active substances on the market when it came into force should be reviewed to ensure they can still be used, and individual products containing them would then have to be authorised. This review programme was originally expected to last 10 years, and the Directive therefore contained a transitional period (until

11 OJ No. L 123, 24.4.98, p.1.

14 May 2010) during which Member States can continue to apply their national rules for authorising these products. However, a report¹² by the Commission in October 2008 noted that the progress to date had been slower than anticipated, and that there was therefore a need for a further transitional period so that existing active substances and biocidal products could remain on the market while that process was completed. It was therefore accompanied by a draft Directive¹³ extending the transitional period by three years.

The current proposal

4.3 In the light of consultations which it has carried out since then, the Commission has now put forward this proposal to replace Directive 98/8/EC by a Regulation, and to take into account a number of criticisms of the present arrangements.

4.4 More specifically, it would make changes in the following areas:

Scope of the measure

Under the current Directive, where a biocidal product is used to protect an article within the Community, only an authorised product may be used, whereas no such restrictions apply where such treatment takes place outside the Community and the article is then imported: the proposal would remove that loophole, and also ensure that appropriate labelling conditions apply to both Community and non-Community manufacturers. In addition, it would clarify application to active substances generated in situ and to biocidal products used in materials which come into contact with food.

Product authorisation

Under the current system, all biocidal products are authorised at Member State level, with the proviso that an authorisation by one Member State can be recognised in another. The new Regulation would make two changes — it would strengthen the mutual recognition arrangement, and introduce a centralised Community authorisation system for biocidal products based on new active substances and low-risk products, allowing them to be placed on the Community market without any need for separate national authorisations or the mutual recognition process.

Data sharing

At present, a Member State is prevented from using data submitted by a first applicant for the evaluation of subsequent applications unless the first applicant agrees, and, whilst applicants are encouraged to cooperate in compiling the necessary data, sharing is not mandatory. Subject to suitable compensation being provided, the current proposal would make mandatory the sharing of data relating to vertebrate animal tests in order to avoid the submission of multiple dossiers and to minimise animal testing so far as possible.

12 (30029) 14027/08.

13 (30028) 14024/08.

Data requirements

The current Directive requires toxicity and ecotoxicity studies to be undertaken for active substances, and the same set of data must be submitted for all biocidal products. Given that this may not always be necessary and that the cost of these studies is high, the Commission says that it has resulted in a tendency for existing active substances to be supported or for the abandonment of substances where there is no prospect of an economic return. It also considers that the costs are likely to be particularly disproportionate where substances are considered to be low-risk. This proposal would therefore enable the need for certain data to be waived where it is not scientifically necessary, and would at the same time aim to harmonise the basis on which Member States grant waivers.

Fees

At present, each Member State is responsible for deciding its own structure and level of fees, which has resulted in significant inconsistencies, as well as fees which are seen to be disproportionately high in the case of small and medium sized enterprises. The proposal would enable the Commission to establish rules for a harmonised fee structure, and to set out the principles on which this will be based.

The Government's view

4.5 We have received from the Parliamentary Under-Secretary of State at the Department for Work and Pensions (Lord McKenzie of Luton) an Explanatory Memorandum of 3 July 2009. He says that the Government fully supports the regulation of biocidal products at a European level, and that there are no major policy issues which would give it grounds to oppose outright the introduction of this Regulation, which he describes as urgently needed in the light of the very slow progress made so far in the 10 year programme envisaged in Directive 98/8/EC for reviewing existing active substances. In particular, he notes that by June 2009 only some 30 such substances had been agreed for inclusion in the positive list, and that no biocidal products had yet been authorised in Member States: and he suggests that, even though the review programme has been extended until 2014, that extended deadline may not be achievable. He also observes that UK stakeholders, and particularly SMEs, have been heavily critical of the current Directive, and have argued that its requirements are onerously expensive, and that it is overly complicated and disproportionate in relation to its overall benefits. In particular, the costs of supporting an active substance through the assessment process are high, due to the cost of data gathering/provision and the fees levied by some Member States for assessing the data package.

4.6 As regards specific aspects of the proposal, the Minister comments that:

- the proposed use of a Regulation is in line with the measures agreed in 2006 and 2008 respectively for chemicals (REACH) and Classification, Labelling and Packaging, as well as with recent developments on pesticides and cosmetics;
- the UK supports the retention of the concept of assessing active substances at Community level for inclusion in a positive list, and then authorising biocidal

products for the market; however, although it considers the areas identified by the Commission for improvement are appropriate, it believes that, in some cases, the changes do not go far enough and that other options should be explored to improve the workability of the system;

- it aims to examine the opportunity for further simplification and streamlining of the requirements, and to question in particular the proposal to extend the scope of biocides regulation to treated materials (where it is concerned that the high cost to industry of assessing the additional active substances and authorising additional products may outweigh the current disadvantage to Community manufacturers from imported materials containing biocides not authorised in the Community);
- practical, workable arrangements for migrating from the present Directive to the new directly effective Regulation are essential.

4.7 The Minister has also provided an initial Impact Assessment, which forms the basis of the Government's consultation with UK stakeholders, and which will be updated in the light of the responses received. In the meantime, the Assessment suggests that, on the basis of the figures produced by the Commission, the total cost to the UK could give rise to a cost of between £27.3 and £99.7 million over 10 years, with corresponding benefits of between £318.2 and £804.9 million. However, he also points out that the Commission accepts that the benefits are likely to be towards the lower end of this range, and that even these are unlikely to be realised fully in practice.

Conclusion

4.8 We note the Government's support for the regulation of biocidal products at a European level, and that it has no major problems over the amendments now proposed. Equally, we note that it is in the process of consulting interested parties within the UK on the basis of the initial Impact Assessment provided by the Minister, and that, insofar as the figures in that Assessment are based upon the one carried out by the Commission, the Government intends to produce its own assessment of the costs and benefits in the light of the responses to its consultation. Consequently, we think it right to await that Assessment before considering the proposal further, but we are in the meantime drawing it to the attention of the House.

5 Financial instruments for EU external action

(a) (30572) 9213/09 COM(09) 196	Commission Communication: <i>Mid-term review of the financial instruments for external actions</i>
(b) (30573) 9225/09 SEC(09) 530	Commission Staff Working Document: <i>Report evaluating the implementation of the financial implements for external action</i>
(c) (30612) 9268/09 COM(09) 195	Draft Regulation amending Regulation (EC) No. 1717/2006 establishing an Instrument for Stability
(d) (30639) 10408/1/09 +ADDs 1–3 COM(09) 197	Draft Council Regulation amending Regulation (EC) No. 1934/2006 establishing a financing instrument for cooperation with industrialized and other high-income countries and territories

<i>Legal base</i>	(a) — (b) — (c) Article 181a EC; QMV; co-decision (d) Article 179a and 181a EC; QMV; co-decision
<i>Documents originated</i>	(a)– (c) 21 April 2009 (d) 22 April 2009
<i>Deposited in Parliament</i>	(a) and (b) 29 April 2009 (c) 1 May 2009 (d) 5 June 2009
<i>Department</i>	Foreign and Commonwealth
<i>Basis of consideration</i>	EM of 7 July 2009
<i>Previous Committee Report</i>	None
<i>To be discussed in Council</i>	To be determined
<i>Committee’s assessment</i>	Politically important
<i>Committee’s decision</i>	Not cleared; further information requested

Background

5.1 In preparation for the 2007–13 financial perspective, the Commission, Council and the European Parliament simplified a plethora of different financial regulations, or Instruments. These include what the Commission’s Europeaid website describes as “The EU’s financial toolkit”, whose main elements are as follows:

European Neighbourhood and Partnership Instrument (ENPI)

The ENPI provides EU assistance to 17 countries: Algeria, Armenia, Azerbaijan, Belarus, Egypt, Georgia, Israel, Jordan, Lebanon, Libya, Moldova, Morocco, the Palestinian Authority, Russia, Syria, Tunisia and Ukraine. It comprises a specific cross-border co-operation component covering border regions in the European Union Member States.

Development Co-operation Instrument (DCI)

The DCI covers three main components. The first is to provide assistance to South Africa and 47 developing countries in Latin America, Asia and Central Asia, and the Middle East (only those countries not covered by the European Neighbourhood and Partnership Instrument or the European Development Fund).¹⁴ Secondly, it supports the restructuring of sugar production in 18 ACP countries. Thirdly, it runs five thematic programmes: *investing in people; environment and sustainable management of natural resources including energy; non-state actors and local authorities in development; food security*; as well as *migration and asylum*.

The five DCI thematic programmes support actions in all developing countries (including those covered by ENPI and the EDF), global actions and external projections of as well as the fleshing out of Commission internal policies.

European Instrument for Democracy & Human Rights (EIDHR)

EIDHR contributes to the development of democracy, the rule of law, respect for human rights and fundamental freedoms. It has been designed to complement the various other tools for implementation of EU policies in this area, which range from political dialogue and diplomatic demarches to various instruments of financial and technical co-operation, including both geographic and thematic programmes. It also complements the more crisis-related interventions of the new Stability instrument.

Instrument for Stability (IfS)

The IfS aims to contribute to stability in countries in crisis by providing an effective response to help preserve, establish or re-establish the conditions essential to the proper implementation of the EU's development and co-operation policies (the 'Crisis response and preparedness' component).

In the context of stable conditions for the implementation of EU co-operation policies in third countries, the IfS helps to build capacity both to address specific global and trans-regional threats having a destabilising effect and to ensure preparedness to address pre- and post-crisis situations (the 'global and regional trans-border challenges' component).

¹⁴ European Development Fund (EDF); based on the Cotonou agreement, which provides the bedrock of EU co-operation with African, Caribbean and Pacific countries, the EDF supports assistance to the Union's 78 ACP partner countries and the overseas countries and territories of Member States. The 10th EDF entered into force in January 2008.

The ‘crisis response and preparedness’ component is managed by Directorate General External Relations. The ‘global and regional trans-border challenges’ component is managed by EuropeAid.

Nuclear Safety Co-operation Instrument (NSCI)

NSCI finances measures to support a higher level of nuclear safety, radiation protection and the application of efficient and effective safeguards of nuclear materials in third countries.¹⁵

5.2 In addition, the overall package includes:

The Instrument for Cooperation with Industrialised Countries (ICI)

The ICI promotes cooperation between the European Union and seventeen industrialised and other high-income countries and territories in North America, the Asia-Pacific region and the Gulf region

The Instrument for Pre-accession Assistance (IPA)

This is the vehicle by which pre-accession technical assistance is delivered to candidate countries.

The Humanitarian Aid Regulation

The extant Humanitarian Aid Regulation was not amended.

5.3 The Committee considered these on several occasions during the gestation process, culminating in a debate in the European Standing Committee on 10 November 2005,¹⁶ and subsequently, particularly during the formulation of the thematic programmes.

The Commission Communication

5.4 The Commission notes that the new instruments are being implemented through Country Strategy Papers, Regional Strategy Papers, Thematic Strategy Papers and, for the IPA, Multi-annual Indicative Planning Documents. These programming documents, accompanied by multi-annual financial allocations, “allow clear commitment and delivery of aid in partnership with the beneficiaries.”

5.5 The Commission further notes that:

- they are required under these regulations to submit a report on their implementation by 31 December 2010, and to propose any necessary amendments;
- in final negotiations before the instruments were adopted, the Commission agreed — at the European Parliament’s request — to carry out the review before the 2009 European

¹⁵ See http://ec.europa.eu/europeaid/what/delivering-aid/funding-instruments/index_en.htm for full details.

¹⁶ See <http://www.publications.parliament.uk/pa/cm200506/cmstand/euro/st051110/51110s01.htm> for the record of this debate.

Parliament elections and to take Parliament’s reports and recommendations into account;

- this mid-term review (MTR) covers the legal instruments only;
- European Parliament recommendations not affecting the legal texts will be considered in the mid-term review of the strategy and programming documents;
- that latter review will assess performance so far and update the strategies in the light of developments in partner countries, when “particular attention will be paid at that point to civil society participation and aid effectiveness”;
- the review process and updated strategy papers, together with multi-annual indicative programmes allocating the budget for 2011–2013 by sector, are expected to be completed by the end of 2009;
- the IPA is governed by a different strategy and programming framework which covers a rolling three-year period updated annually in line with the Enlargement Strategy Paper.

5.6 This present MTR “aims to verify that the instruments are meeting the objectives set for the reform, partly through major simplification”. Thereafter, “simplification being an ongoing process, the Commission will also consider the scope for further improvements, including amendments to the Financial Regulation, in particular as regards the control environment.”

5.7 The Commission is accompanied by a Commission Staff Working Paper reporting in more detail on the individual instruments; and two legislative proposals, where the Commission has concluded from the review that certain amendments are necessary.

5.8 In her Explanatory Memorandum of 7 July 2009, the Minister for Europe at the Foreign and Commonwealth Office (Baroness Kinnock of Holyhead) analyses the Commission proposals as follows:

“The central objective of the **Development Cooperation Instrument (DCI)** is the eradication of poverty, including through the pursuit of the Millennium Development Goals (MDGs). The Communication notes that delivery of the DCI objectives is on track. The first wave of strategy papers and the first three years of Annual Action programmes were drafted on the basis of donor coordination, dialogue with partner countries and participation by civil society.

“The European Parliament has identified some proposed projects that it feels do not meet the DCI objectives as they are not sufficiently focused on poverty reduction or do not fulfil the criteria for Official Development Assistance (ODA). These are primarily with countries that have emerging economies and middle income countries, and cover projects based around economic cooperation and education (for example a European Business and Technology Centre in India). The Commission proposes to amend the Regulation establishing a financing Instrument for Cooperation with Industrialised and other high-income countries and territories

(ICI) to enable these activities to be included in the ICI rather than changing the nature of the DCI.

“Cooperation under the **European Neighbourhood and Partnership Instrument (ENPI)** goes beyond promoting sustainable development and economic growth. It also supports steps towards economic integration with the EU as enshrined in the European Neighbourhood Policy (ENP). The Communication describes how good progress is being made towards supporting the implementation of ENP action plans, for example financing university cooperation and twinning initiatives. The Commission propose that the Regulation should be amended to give the option of setting up revolving funds, the lack of which severely hampers the Union’s ability to support private sector operations.

“The primary objective of the **Instrument for Pre-accession Assistance (IPA)** is to assist candidates and potential candidates in the process towards EU membership. In spite of some initial delays due to late approval of the legal base, programming in 2007 and 2008 largely took place in a smooth and effective way with implementation starting in the course of 2008. To increase support in economic and social development IPA support is coordinated with International Financial Institutions and other donors. All beneficiary countries have made progress towards assuming greater responsibility for the management of IPA programmes. There is no need to modify the IPA Regulation in the Commission’s view.

“The aim of the **Instrument for Stability (IfS)** is to provide the Community with a consistent approach to crisis response. Short term (Article 3) crisis response measures adopted since the instrument began in 2007 have started to deliver results; the measures supported a broad range of issues from transitional justice to post disaster recovery. The longer term (Article 4) Strategies and Indicative Programmes for 2007–2011, to counter global and transregional threats — organised crime; trafficking; proliferation; and threats to infrastructure and public health — have been adopted after receiving support from both the IfS Committee (all Member States) and the European Parliament. The Instrument’s Annual Report is due to issue at the end of June.

“The Commission proposes to amend the IfS regulation to take into account a judgement by the European Court of Justice on small arms and light weapons, the regulations regarding third country participation in long term measures, and to increase the allocation available for long term critical infrastructure and public health measures.

“The contractual phase of the **European Instrument for Democracy and Human Rights (EIDHR)** only started in autumn 2008. The Communication states that it is therefore too early to evaluate delivery against its objectives, which are to address global, regional, national and local human rights and democratisation issues, mainly in partnership with civil society and independently of the consent of third-country governments and other public authorities. In the Commission’s view the wording in the Regulation on taxes, duties and charges needs to be aligned with the other Instruments.

“The **Instrument for Nuclear Safety Cooperation (INSC)** covers actions in the field of nuclear safety and safeguards, the transition from the previous instrument has been smooth. The INSC has refocused cooperation and extended geographical coverage to include third countries. The Communication notes that no revision of the regulation is required at this stage.

“The **Instrument for Cooperation with Industrialised and other high-income countries and territories (ICI)** has proved effective in developing co-operation in the areas of: public diplomacy; economic partnership and business cooperation; and people to people links.

“From 2011 the ICI will also incorporate the current pilot project on transatlantic methods for handling global challenges (a European Parliament initiative), this will be financed from the current financial envelope. The Commission also proposes to amend the ICI regulations to cover some DCI projects, by extending its geographical coverage” (as noted above).

The Government’s view

5.9 The Minister says that she “strongly supports the need for reviews of Instruments funded from the EC Budget, to ensure that objectives are being met as well as sound financial management”, and is “generally satisfied with progress to date on all the Instruments, and looks forward to the mid term performance reviews of each Instrument.” She continues as follows:

“The European Parliament has taken the view that some proposed activities under the DCI programmed by the Commission were not sufficiently geared to poverty eradication and the Millennium Development Goals or did not fulfil the criteria for Official Development Assistance (ODA). The Commission propose to address this by amending the ICI regulation to extend its geographical scope to include DCI countries. How the activities are funded under the revised ICI needs to be closely monitored. The UK would be opposed to any reduction in the financial allocation for the DCI, so any proposed amendment to the ICI would need to be framed within the ICI’s current financial ceiling.

“Under the ENPI, the UK will look carefully at the development of the newly agreed Eastern Partnership initiative, a €600million programme of political cooperation and economic integration between the EU and its six Eastern neighbours (Ukraine, Moldova, Armenia, Georgia, Belarus and Azerbaijan). The UK’s key priority is to ensure that the new proposal is realistic and in line with partner country needs, priorities and absorption capacity.

“The Instrument for Stability (IfS) Regulation will be amended in three areas:

- “to bring it in line with case law, following a judgement of the European Court of Justice (Case C-91/05 ECOWAS) on small arms and light weapons (SALW). The Commission proposes to amend Articles 3(2)(i) and 4(1)(a) to remove the restriction on support for measures taken by third countries to combat the illicit use of and access to SALW;

- “to revise the provisions on the participation of OECD countries which are not EU Member States in longer term projects under Article 4(3) and bring them inline with participation in the short term measures under Article 3.
- “to increase the budget limit for Article 4(1) measures concerning threats to law and order, critical infrastructure and public health, from 7% to 10%; any costs will be met from within the overall SI budget allocation.”

5.10 The Minister goes on to explain that:

“The Council (including Member States) and the Commission were in dispute over the role the Community could play in countering the illegal trade in SALW, leading to the Commission challenging the Council in the European Court of Justice (ECJ) in Case C-91/05. The judgement states that measures to combat small arms fall within the competences of the Community and cannot be pursued under the Common Foreign Security and Defence Policy (CFSP) if their main aim relates to development policy. While the judgement makes the distinction between Council and Commission competences clearer, the UK will work to ensure that the amendments allow some SALW non-proliferation issues to remain within the CFSP sphere without the risk of being challenged as inconsistent with Article 47 of the EU Treaty.”

5.11 Looking ahead, the Minister says that discussion of the overview Communication is expected to begin in July, with discussions on the individual proposals to amend the various instruments expected to commence in the autumn.

Conclusion

5.12 **As the Commission makes clear, the next Mid-Term Review — assessing performance so far, updating the strategies in the light of developments in partner countries, paying “particular attention ... to civil society participation and aid effectiveness”, updating strategy papers and multi-annual indicative programme allocating — that is to be completed by the end of 2009 is perhaps the more important of these two exercises.**

5.13 **Even so, the Minister indicates that the proposed amendments to the regulations are not entirely straightforward. We should therefore be grateful if the Minister would write to us after the “overview” Communication has been considered by the Council; and would also keep us informed about discussions with the European Parliament.**

5.14 **We also ask that she continues to keep us informed over the unresolved question of where the €600 million for the new Eastern Partnership is to be found.**

5.15 **In the meantime we shall retain the documents under scrutiny.**

6 Standing of victims in criminal proceedings

(30638) 9808/09 COM(09) 166	Commission Report on the basis of Article 18 of the Council Framework Decision of 15 March 2001 on the standing of victims in criminal proceedings (2001/220/JHA)
+ ADD 1	Commission Staff Working Document — accompanying document to the Commission’s report

<i>Legal base</i>	—
<i>Document originated</i>	20 April 2009
<i>Deposited in Parliament</i>	13 May 2009
<i>Department</i>	Justice
<i>Basis of consideration</i>	EM of 31 May 2009
<i>Previous Committee Report</i>	None, but see (25371) 6029/04: HC 42–xiii (2003–04), chapter 7 (17 March 2004) and HC 42–xvii (2003–04), chapter 18 (21 April 2004)
<i>To be discussed in Council</i>	No date set
<i>Committee’s assessment</i>	Legally and politically important
<i>Committee’s decision</i>	Not cleared; further information requested

Background

6.1 The Council Framework Decision of 15 March 2001 on the standing of victims in criminal proceedings sets out a number of standards for providing information to victims in criminal proceedings and for their protection and compensation. These include the possibility of testifying in court (Article 3); the right to receive various types of information relevant to the protection of victims (Article 4); the right to advice concerning the role of victims in proceedings (Article 6); reimbursement of expenses (Article 7); the right to a suitable level of protection for victims and their families (Article 8); the right to compensation (Article 9); and promoting the role of victim support organisations (Article 13).

6.2 Article 18 of the Framework Decision requires each Member State to forward to the Council and the Commission the text of the provisions enacting its requirements into national law. The Council is to assess the measures taken by the Member States by means of a report from the General Secretariat of the Council based on information provided by the Member States and a written report from the Commission.

6.3 The previous Committee reviewed the Commission’s first report in March and April 2004.¹⁷

¹⁷ See headnote.

The Commission's report

6.4 The document under scrutiny is the Commission's second report pursuant to in Article 18 of the Framework Decision. Where the report makes comments on implementation by the UK, these are set out below.

6.5 Article 1 of the Framework Decision lays down definitions of "victim", "victim support organisation", "criminal proceedings", and "mediation in criminal cases". The Commission reports that no Member States had adopted legislation to implement this Article, though several referred to existing national definitions. The Commission notes that the UK gives a wide definition for "victim".

6.6 Article 2(1) requires that the victim be given "a real and appropriate role" in the criminal legal system. The Commission refers to the UK making "explicit reference" to this in its report. Article 2(2) concerns "particularly vulnerable victims" for whom "specific treatment best suited to their circumstances" should be provided; the Commission notes that the UK is among a handful of Member States whose legislation protects persons considered vulnerable owing to their physical or mental fragility.

6.7 Under Article 3, the Commission reports that most Member States grant victims a number of rights as parties to criminal proceedings but notes that victims are not parties to criminal proceedings in common law countries. Although the UK and Ireland recognise the right of a victim to be heard in criminal proceedings, the UK did not submit specific provisions showing how this is implemented.

6.8 Article 4 lists ten categories of information which must be transmitted to victims. The UK is reported to be among the Member States that posted such information on websites and/or in information booklets, although the Commission noted that UK authorities are under no obligation to transmit such information to victims. The Commission further reports that the UK's rules on notifying victims of an offender's release have two weaknesses. "The Criminal Justice and Court Service Act 2000 requires the victim to be informed of plans to release the offender and of conditions to which the offender is to be subject on release, but this applies only where the offender was sentenced to more than 12 months for a sexual or violent offence. The Scottish legal system provides for the victim to be informed of the aggressor's release but the instrument is not mandatory".

6.9 Article 5 contains an obligation to "minimise as far as possible communication difficulties" as regards victims' understanding, or involvement in, the relevant steps of the criminal proceedings, to an extent comparable with the measures taken in respect of defendants. The Commission reports that "communication difficulties" could be interpreted more broadly to include the understanding of the procedure itself, but all member States understood this to be limited to linguistic barriers. For the UK, and four other Member States, the Commission reports that "transmitted provisions show a poor level of implementation".

6.10 Article 8 confers different rights of protection on victims. Article 8(3) aims to reduce contact between victims and offender, in particular by providing for separate waiting areas in courts. The Commission reports that the UK stated that it complies with this in practice but not in law. Article 8(4) requires Member States to protect victims by allowing them to

testify in a manner that will protect their vulnerability. The Commission reports that the UK applies measures in the Crown Courts but their application to Magistrates' Courts is confined to the use of audio-visual link-ups.

6.11 Article 9(1) obliges Member States to ensure that the decision on compensation by the offender is taken within a reasonable time, and Article 9(3) that the victim's property is returned promptly. The Commission reports that the UK notified no "transpositional provisions" in either regard.

6.12 Article 15 requires Member States to prevent "secondary victimisation", particularly through building separate facilities for victims in courts and police stations. The Commission reports that the UK, with many other Member States, stated that it has introduced the necessary measures, although the information provided was "vague and unsatisfactory".

6.13 The Commission concludes that the implementation of the Framework Decision is unsatisfactory: national legislation in Member States contains numerous omissions and largely reflects legislation adopted prior to the Framework Decision coming into force. The aim of harmonising legislation in this field has therefore not been achieved. Moreover, many of the provisions which have been implemented have been through non-binding guidelines and recommendations, and the Commission could not assess whether these had been adhered to in practice. The Commission invites Member States to consider the report and provide all further relevant information.

The Minister's Explanatory Memorandum of 31 May 2009

6.14 In his Explanatory Memorandum the Parliamentary Under-Secretary of State at the Ministry of Justice (Lord Bach) states that, overall, there are a number of issues on which the Commission's report either does not reflect the current position in the UK or is mistaken in its assessment of implementation. Although updated information on the UK's transposition of the Framework Decision was sent to the Commission during 2008, the report does not entirely reflect this. He informs the Committee that the Government will be writing to the Commission and the Council, as invited in the report, to provide them with the latest information on the UK's implementation of the Framework Decision.

6.15 He then sets out below the key articles to which this applies.

6.16 Article 3: hearings, and provision of evidence

"Article 3 provides for victims to be heard during proceedings and to give evidence. The Commission's report states that the UK did not submit specific evidence of how this article has been transposed. Victims who are witnesses are able to give evidence in criminal proceedings. They are able to make a written statement to the police and also to give oral evidence during a trial. However, it is a matter for the independent prosecutor to determine who they call to give evidence on behalf of the prosecution in any particular case.

"In England and Wales, victims can make a written victim personal statement to the court that explains the physical, emotional and financial impact the crime has had on them. In Scotland, section 14 of the Criminal Justice (Scotland) Act 2003 allows

victims of a crime to lay a statement before the court (following a finding of guilt but before sentencing) that outlines the physical, emotional and financial impact the crime has had on them. In Northern Ireland, victims can make a victim impact statement that outlines the physical, emotional and financial impact the crime has had on them.

6.17 Article 4: right to receive information

“Article 4(1) lists 10 types of information that must be provided to victims. The Commission’s report states that ‘UK authorities are under no obligation to provide victims with all the information’. This assessment is mistaken. Under paragraph 5.3 of the England and Wales Code of Practice for Victims of Crime, police forces in England and Wales are legally required to inform victims of the services and support available to them. In Scotland, section 18 of the Criminal Justice (Scotland) Act 2003 allows police officers to refer to victims to appropriate support organisations, and these will assist the victim, including providing appropriate information. Northern Ireland’s criminal justice organisations have an obligation under the Northern Ireland Victims of Crime Code of Practice to provide victims with information. Information is available in a range of languages.

“The Commission also states that the provision to make special arrangements available to non-resident victims was ignored by most Member States. This does not fully reflect the position in the UK. In England and Wales, paragraph 3.15 of the Code of Practice for Victims of Crime requires criminal justice agencies to provide support and information to non-resident victims. In practice, assistance such as travel and subsistence expenses will also be provided to non-resident victims who are required to come to England and Wales to give evidence in court. In Scotland, witnesses receive travel and out of pocket expenses, including compensation for loss of earnings, regardless of their country of residence. In addition, the families of homicide victims can be given travel and subsistence costs to enable them to attend the trial of the accused. In Northern Ireland criminal justice organisations apply the same standards to the needs of non-resident victims as resident victims, particularly in view of Northern Ireland’s land border with another Member State.

“Article 4(2)(a) requires that victims are informed about the outcome of their complaint. The Commission states that the UK did not submit evidence about informing victims of any sentence in their case. This does not fully reflect the position in the UK. In England and Wales, paragraphs 6.7 and 6.8 of the Code of Practice for Victims of Crime requires all victims to be informed of the nature and meaning of any sentence given to the offender in their case. In Scotland, in serious cases, the Victim Information and Advice service (VIA, which is part of the Crown Office and Procurator Fiscal Service) maintains regular contact with the victim, and will inform him or her of the outcome of a case. Northern Ireland’s criminal justice organisations have an obligation under the Northern Ireland Victims of Crime Code of Practice to provide victims with information about the outcome of their case if they request it.

“Article 4(3) requires that victims — at least in cases where there might be danger to the victims — are informed of release if necessary. The Commission states that in

England and Wales, victims are only informed where the offender was sentenced to 12 months or more for a sexual or violent offence. Such cases are those where there is judged to be a risk of danger to the victims, and hence the Government considers that this meets the provisions of article 4(3).

“Article 4(4) provides for the victim not to receive information about the offender’s release should they wish. The Commission’s report states that the UK did not submit evidence of how this was transposed. In England and Wales, paragraph 3.8 of the Code of Practice for Victims of Crime provides for the victim to opt out of receiving this and other services should they wish. In Scotland, sections 16 and 17 of the Criminal Justice (Scotland) Act 2003 place notification to victims of information about offenders on a statutory basis. Since May 2008, victims of offenders sentenced to 18 or more months in prison are eligible to apply to receive information. The Northern Ireland Prison Service’s Prisoner Release Victim Information Scheme keeps victims informed of prisoner release only if they choose to receive the relevant information.

6.18 Article 5: communication safeguards

“Article 5 provides for communication safeguards at court for victims. The Commission’s report states that the UK has a poor level of implementation in relation to higher levels of protection available to defendants. In England and Wales, foreign language interpreters and deaf signers are available to assist both witnesses and the defendant in criminal proceedings. The Crown Prosecution Service will pay the costs for any communication aid required by a victim or witness at court. In addition to interpreters, the use of an intermediary is also available as a special measure to assist eligible vulnerable witnesses with communication difficulties communicate when being questioned, subject to the agreement of the court. The role of the intermediary is to intervene as necessary to communicate to the witness questions asked by the court, defence or prosecution. They may also communicate the answers the witness gives in reply. There are also special measures provisions to assist eligible vulnerable victims with communication aids, such as providing alphabetical boards and computers.

“In Scotland, the Vulnerable Witnesses (Scotland) Act 2004 puts in place safeguards for vulnerable victims and witnesses. The Scottish Government provides a range of information to victims, including information packs for the families of homicide victims, the families of road deaths and victims of rape or serious sexual assault, and these are translated as and when required.

“Article 18 of the Criminal Evidence (Northern Ireland) Order 1999 provides for aids to communication. Translation, interpretation and signing facilities are also made available.

6.19 Article 8: right to protection

“Article 8(3) provides for victims to wait at court in a separate area to defendants and their associates. The Commission state that the UK complies in practice but not in law. This assessment is partly mistaken. In England and Wales, paragraph 8.4 of the

Code of Practice for Victims of Crime places a legal requirement on courts to provide separate waiting areas wherever possible.

“Article 8(4) provides for protection to support vulnerable victims to testify. The Commission states that the UK’s transposition only fully applies in the Crown Court. This is mistaken. In England and Wales, special measures to assist vulnerable and intimidated victims give their best evidence in court are available in both the magistrates’ and the Crown Court. The Vulnerable Witnesses (Scotland) Act 2004 applies to all witnesses at a trial, including defence witnesses. In Northern Ireland, articles 11 to 14 and 18 of the Criminal Evidence (Northern Ireland) Order 1999 provide for special measures for vulnerable witnesses and apply throughout the Crown, magistrates’ and youth courts, as well as for appeals from magistrates’ court cases heard in the county court.

6.20 Article 9: right to compensation in the course of criminal proceedings

“The Commission report stated that the UK had either not notified them of transposal provisions, or had not sent relevant evidence. The Criminal Injuries Compensation Act 1995 provides for victims of violent crime to receive compensation for their injuries. The Criminal Justice Act 1972 provides for victims to receive court-ordered compensation from offenders. The Criminal Damage (Compensation) (Northern Ireland) Order 1977 and the Criminal Compensation (Northern Ireland) Order 2002 provide statutory compensation schemes in Northern Ireland.

6.21 Article 15: practical conditions regarding the position of victims in proceedings

“Articles 15(1) and 15(2) provide for proceedings and venues to be designed to prevent secondary victimisation, particularly with regards to courts, police stations, victim support organisations and other public services. The Commission’s report states that few Member States provided evidence that this provision had been transposed. In England and Wales, police procedures keep victims and witnesses separate from suspects. There are separate interview facilities at police stations to ensure victims do not come into contact with suspects or defendants, with designated identification parade suites. Nearly all court buildings have separate waiting areas for victims or areas that can be used for this purpose. The Youth Justice and Criminal Evidence Act 1999 also provides a number of means through which vulnerable or intimidated victims can give evidence without risk of secondary victimisation: for example giving evidence by video-link or clearing the court room.

“In Scotland, there are separate interview facilities at police stations. Designated identification parade suites exist with procedures clearly laid down for the separation of suspects and witnesses. Screens enable vulnerable witnesses to give their evidence out of sight of the accused, and closed circuit television equipment is available to allow vulnerable witnesses to provide their evidence from outside the courtroom. In Northern Ireland, the Criminal Evidence (NI) Order 1999 allows a victim’s video recorded evidence to be presented to the court. Evidence may also be given by televised live link, or from behind a screen and if the judge directs, the public section of the court room will be cleared.”

Conclusion

6.22 We thank the Minister for his Explanatory Memorandum.

6.23 We note the Commission's overall conclusion to its report on the implementation of the Framework Decision on the standing of victims in criminal proceedings that it has not been adequately implemented by Member States, with the consequence that legislation in this field has not been harmonised.

6.24 But we also note that the Commission's criticisms of implementation by the UK of this instrument are reported by the Minister to be inaccurate or mistaken, and not reflective of the information sent to the Commission by the Government in the course of 2008. Accordingly the Minister has written to the Commission and the Council to explain these inaccuracies.

6.25 We find it surprising that the Commission's report should have misconstrued so many national provisions in relation to victims in criminal proceedings, and query the value that can be placed on it as a consequence. We would be grateful to be made aware of the Commission's response to the Minister's letter before clearing the report from scrutiny.

6.26 We would also be grateful to be assured by the Minister that the correct assessment of the UK's implementation of this Framework Decision will be put before the Council and reflected in the report to be prepared by the Council Secretariat in accordance with Article 18.

7 European Investment Bank lending in non–EU countries

(a) (30361) 5444/09 COM(08) 910	Draft Decision granting a Community guarantee to the European Investment Bank against losses under loans and loan guarantees for projects outside the Community
(b) (30509) 8051/09 —	Court of Auditors Special Report No. 1/2009 concerning the Banking measures in the Mediterranean area in the context of the MEDA programme and the previous protocols together with the Commission’s replies

<i>Legal base</i>	(a) Art 179 and 181 a TEC; QMV; co-decision (b) Art 284(4) EC; —
<i>Department</i>	International Development
<i>Basis of consideration</i>	Minister’s letter of 4 July
<i>Previous Committee Report</i>	(a) HC 19–vii (2008–09) chapter 3 (11 February 2009) and HC 19–xiii (2008–09), chapter 7 (1 April 2009), (b) HC 19–xiv (2008–09), chapter 10 (22 April 2009); also see (27643) 11003/06 and (27645) 11006/06: HC 34–xxxvii (2005–06), chapter 8 (11 October 2006) and HC 41–v (2006–07), chapter 10 (10 January 2007); and (27924) 13558/06: HC 41–v (2006–07), chapter 9 (10 January 2007)
<i>To be discussed in Council</i>	March 2009
<i>Committee’s assessment</i>	Politically important
<i>Committee’s decision</i>	Cleared (decision reported on 1 April and 22 April 2009 respectively); further information now provided; further information requested

Background

7.1 The European Investment Bank (EIB) was created by the Treaty of Rome in 1958 as, according to its website, “the long-term lending bank of the European Union”; its mission is “to further the objectives of the European Union by making long-term finance available for sound investment”; its task being “to contribute towards the integration, balanced development and economic and social cohesion of the EU Member States.” To this end, the EIB “raises substantial volumes of funds on the capital markets which it lends on favourable terms to projects furthering EU policy objectives”. The EIB “continuously adapts its activity to developments in EU policies.”

7.2 It offers four main services to clients:

- Loans: granted to viable capital spending programmes or projects in both the public and private sectors; counterparties range from large corporations to municipalities and small and medium-sized enterprises;
- Technical Assistance: expert economists, engineers and sectoral specialists to complement EIB financing facilities;
- Guarantees: available to a wide range of counterparties, e.g. banks, leasing companies, guarantee institutions, mutual guarantee funds, special purpose vehicles and others;
- Venture Capital.

7.3 The EIB is active both inside and outside the European Union. According to its website, the majority of EIB lending is attributed to promoters in the EU countries (87% in 2007) supporting the continued development and integration of the Union; while outside the Union, EIB lending is governed by a series of mandates from the European Union in support of EU development and cooperation policies in partner countries — in the enlargement area in southern and eastern Europe; in the Mediterranean Neighbourhood; in Russia and the Eastern Neighbourhood; in the African, Caribbean and Pacific (ACP) countries; in South Africa; in Asia; and in Latin America.¹⁸

7.4 A Community guarantee aims to prevent such operations, which often bear a significantly higher level of risk than the EIB's operations within the EU, from affecting the credit standing of the Bank, and thereby to allow the EIB to maintain attractive lending rates outside the EU. The Commission says that this 13% of overall EIB lending amounted to €6.4 billion in 2007, of which €3.7 billion was under Community guarantee.

7.5 The Commission describes that EIB's operations in third countries as “a crucial complement to limited EU budget funds to increase the effectiveness and the visibility of the EU's external action.” While the Community budgetary external assistance is focused on lower income countries and support to the social sectors, “EIB operations are of particular relevance in middle-income countries and in infrastructure, financial and commercial sectors.” The EIB having originally been set up and structured financially to operate within the EU, “the mandates under Community guarantee cover represent the key tools which allow the EIB to carry out operations outside the EU, by providing the necessary political and financial backing by the Community for countries and projects which would not normally fit within the EIB's standard guidelines and criteria.”¹⁹

The Council Decision

7.6 As the Minister of State at the Department for International Development (Mr Gareth Thomas) explained in his 3 February 2009 Explanatory Memorandum, this proposal — to provide a Community guarantee to EIB operations in non-EU countries under the External Lending Mandate (ELM) of the Bank — was originally adopted by the Council in December 2006 to cover the renewal of the ELM that expired on 31 January 2007. However, he explained, following an action brought by the European Parliament:

¹⁸ See <http://www.eib.org/> for full information.

¹⁹ COM(08) 910, page 4.

- the European Court of Justice annulled this Council Decision, ruling that it should have been adopted on the basis of Articles 179 (Development Cooperation) and 181a (Economic, Financial and Technical Cooperation with Third Countries) of the EC Treaty as opposed to Article 181a only;
- the Court allowed a grace period of 12 months to enable the Council Decision to be replaced by one adopted under the dual basis of both Articles;
- the main practical difference resulting from the amendment was that the new legal basis would be adopted as a co-decision of the Council and European Parliament.

7.7 The Minister further explained that the proposal clarified the exact nature of the guarantee and extended the coverage to loan guarantees made by the EIB, as well as loans; it also comprehensively covered the EIB for losses on operations with the public sector (national and local/regional) or public sector guaranteed operations, and for operations falling outside of the public sphere, against specific political risk only.

7.8 The Minister also noted that the proposal:

- included articles setting the size of the regional ceilings,²⁰ putting the size of the whole ELM at €27.8 billion (£26.5 billion), including a €2 billion (£1.9 billion) optional mandate to be decided by the European Parliament and the Council and based on the outcome of the mid-term review of the ELM, due to be produced by 30 June 2010;
- set out which countries were eligible and how countries could become eligible;
- included articles relating to the consistency of EIB actions with EU policy, cooperation with other International Financial Institutions (IFIs), reporting and accounting standards and recovery of payments made by the Commission under the guarantee.

7.9 The Minister went on to say that amending the current legal base to encompass Development Cooperation would enable the Government “to emphasise its policy of promoting an EIB that focuses on the development impact of its operations (particularly in terms of the value they add), rather than the quantity”: although the content of the Decision remained the same, “the new base gives an explicit link to development in the EIB’s lending outside the Union [which] will strengthen the UK’s position in pushing for greater developmental impact of EIB activities”

7.10 The Minister regarded renewal of the ELM as helping to improve the development impact of the EIB by promoting:

- improved quality of EIB development investments;
- a more unified EU development package comprising a balanced mix of grants, loans and equity;
- a more coherent and clear role for EIB within the international development architecture.

²⁰ See COM(08) 910, page 7, for the regional breakdown.

7.11 The Minister also highlighted a number of features in the Mandate that he believed should help improve EIB's effectiveness (details of which are in our previous Report).

Our assessment

7.12 In October 2006 and January 2007 the Committee considered the proposal adopted by the Council in December 2006. In between these two occasions, a process of negotiation had been undertaken. As with all such negotiations, not everything had been achieved. But it was plain to us that the outcome was a considerable improvement on the original proposal; in particular:

- the focus of 80% of the €25.8 million committed expenditure would be on the EU's Neighbourhood and the Pre-Accession countries;
- the €5.1 billion increase was only half that originally proposed;
- there was to be a mid-term review of the new mandate in 2010, with input from external experts;
- €2 billion of that was subject to further consideration in the light of the mid-term review.

We were accordingly glad to note that these key features remained in the present proposal.

7.13 When, in January 2007, we cleared the original Council Decision, we noted that the question of value added was central to the ELM mandate renewal, and that the four short paragraphs on "Value added of the EIB" in the Commission's voluminous accompanying report did not amount to a great deal.

7.14 We also considered an assessment of an EIB "regional fund": FEMIP (Fund for Euro-Mediterranean Investment and Partnership), which was created in October 2002 to stimulate economic growth and private sector development in the Mediterranean region and combined EIB loans with EU budget resources to provide technical assistance, interest rate subsidies for environmental projects and risk capital. Agreement had been reached on improvements that — if effectively implemented — were judged as enabling FEMIP better to achieve its key objective of SME development, with two clear targets — doubling the private sector percentage of FEMIP lending, and more effective cooperation from partner governments, particularly with regard to the issuing of bonds in local currencies (a problem). There, as here, a mid-term review, with outside expert participation, was planned for 2010, which would assess how well cooperation was working between the EIB and the Commission. We suggested that it should also assess the level and effectiveness of cooperation of partner governments (this having been a further problem highlighted in the assessment); and that a way should be found of involving the Court of Auditors in both this and the ELM mid-term review — they being extremely experienced in assessing the effectiveness of the Community's development assistance.

7.15 The Minister, rightly, talked about adding value and effectiveness. But he made no mention of this suggestion. We therefore asked him to confirm that he saw no difficulty with taking it forward.

7.16 As, according to the Minister, the Commission did not plan to put the proposal formally to the Council and the European Parliament until after the summer break, in the meantime we retained the document under scrutiny.

The Minister's letter of 26 March 2009

7.17 The Minister began by explaining that, subsequently, there had been both a first and then a second change to the timetable of discussion on the Proposal in Brussels. He noted that the first of these — that the European Parliament would look at the Proposal in the week of the 23 March and the Council shortly afterwards — was discussed on 5 March with the Committee, when it was agreed that he would reply in good time for the Committee to consider his response before then; however, his officials were subsequently informed on the evening of 11 March that a vote was to be taken on the Proposal in the Committee of Permanent Representatives (COREPER) on the morning of 12 March; they had attempted to postpone the agenda item given our outstanding Reserve; but the Presidency had said that it could not be delayed as they needed a general approach on the dossier to take it to the Parliament's Plenary session on the 23 March and that there would not be another opportunity for COREPER to discuss it before then, due to the European Council on the 19–20 March. Though there was still a Scrutiny Reserve on the dossier, he was unable to postpone the Qualified Majority Voting process, and so the UK Representative was instructed to abstain during the vote and communicated the Minister's frustration with the changing timeframe to the Commission and the Presidency.

7.18 The Minister then turned to the questions raised by the Committee concerning the mid-term review of the Facility for Euro-Mediterranean Investment and Partnership (FEMIP) planned for 2010 and its observation, in clearing the original Commission Decision in January 2007, that the Commission had not adequately covered the issue of the added value of the EIB. He confirmed that FEMIP's mid-term review would be carried out within the framework of the overall mid-term review of EIB's external mandate. He undertook to discuss the Committee's suggestion with the Bank that the FEMIP Review should assess the level and effectiveness of the cooperation of partner governments and ensure that this suggestion was fed in to the independent evaluation team. He understood that the Council had not retained any role for the European Court of Auditors in the reviews. But he agreed with the Committee that some involvement by the Court in the reviews would have been valuable, given its experience of assessing the effectiveness of the Community's development assistance. He would therefore investigate whether there was any scope for the evaluation team to keep the Court informed as the reviews were taken forward. The Minister also confirmed that “the added value of the EIB remains a central concern to the UK”, and that he would “use the review of the Mandate, due to report back in June 2010, to identify how the EIB can ensure this is demonstrated in its operations. “ The UK would then “press for the review's recommendations on value added to be taken into account in the new mandate.”

7.19 The Minister went on to explain that, because the European Parliament was “fast-tracking the legislation, it was “demanding that the Commission's current proposal be regarded as a ‘transitional’ arrangement, only valid until May 2011”; and also “that the Commission should present a new proposal by 15 October 2009 which the new Parliament would then deal with”; this later decision “would also take into account the mid-term

review of the EIB.” Aside from the timing issues, the Minister said that “in general, HMG welcomes this EP proposal and believes it could further improve the development aspects of the Mandate, but with one serious reservation” — that if the mid-term review was to report by October 2009, this would not give the reviewers adequate time to produce a thorough review as the process had only recently begun. He and other Member States were therefore “pushing for the review to report back by April 2010; that the ‘transitional’ arrangement be regarded as being valid until December 2011; and that the new Commission proposal be presented as soon as it is able to take account of the findings of the mid-term review in 2010.”

Our assessment

7.20 Though regretting any over-ride of scrutiny, the Committee nonetheless accepted that, in this instance, it was in no way of the Minister’s making and that, once he was presented with what was effectively a *fait accompli*, he had acted appropriately. We had also already noted the improvements in this Council Decision compared with its predecessor. We accordingly cleared it from scrutiny.

7.21 In so doing, however, we shared the Minister’s concern about the European Parliament’s latest proposal. Like him, we were concerned that any new proposal be informed by a proper review of both the ELM mandate and the FEMIP. We were disappointed that (for reasons that the Minister did not explain) the Council had failed to involve the Court of Auditors formally in the process, which we hoped did not indicate that it was not taking the review process as seriously as we, and seemingly he, would wish; we hoped that he would nonetheless still be able to find a way of involving the Court..

7.22 We also said that, whatever the claimed improvements of the new proposal might be, they could not be so urgent that they could not await, so as to incorporate, the lessons of a proper review of both the ELM mandate and FEMIP — particularly since the latter was to focus on SME development and the level of cooperativeness of partner governments — which would be forestalled by a rushed process. We accordingly endorsed the Minister’s endeavours to rein in the Parliament’s enthusiasm, and asked that he write to us in due course about the outcome of these discussions and his views on the implications for his and our concerns.²¹

The Court of Auditors’ Special Report

7.23 As the Report Summary notes, three types of banking measures are financed under the MEDA²² Regulations or the previous protocols from the EU budget and implemented by the EIB: technical assistance through the FEMIP Support Fund, interest rate subsidies for certain EIB loans and risk capital operations.

21 (30361) 5444/09: HC 19–xiii (2008–09), chapter 7 (1 April 2009); see headnote.

22 Cooperation between the EU and non-member Mediterranean countries started some 30 years ago and has gradually developed over the years. The framework for financial and technical measures (*Mésures d’Accompagnement*, or MEDA) aimed to reinforce political stability and democracy, create a Euro-Med free-trade area and develop economic and social co-operation in the Mediterranean region. The MEDA programme lasted from 1996 until 2006 and amounted to €8.7 billion (£8.09 billion). MEDA gives bilateral and regional aid to help partner countries modernise and achieve economic and social reform. The European Commission’s EuropeAid office manages it. MEDA was replaced by the new European Neighbourhood and Partnership Instrument (ENPI) in 2007, which is the financing instrument for the new European Neighbourhood Policy (ENP).

7.24 The Court audited the banking measures under the MEDA programme and the previous protocols to determine whether the ongoing projects were being adequately monitored by the Commission and the EIB and whether the projects had achieved their objectives. Having set out its findings and recommendations, the Commission's responses and the Ministers views, we drew this Report to the attention of the House because of the correlation between the issues revolving around the review of the EIB's ELM mandate and those highlighted in the Court of Auditors' Report. We emphasised the importance of monitoring and evaluation, and the necessity of ensuring that the new European Neighbourhood Partnership Instrument (ENPI) — almost €12 billion of EU taxpayers' money in 2007–2013 — implemented the Court's recommendations effectively, and accordingly looked to him to report on this when, in due course, he submitted any ENPI evaluation reports for scrutiny.²³

The Minister's letter of 4 July 2009

7.25 The Minister of State at the Department for International Development (Mr Gareth Thomas) recalls his concern about the European Parliament's proposal that the mid-term review of the EIB's External Lending Mandate be brought forward to October 2009 and says that he is "pleased to report that a compromise was reached between the European Council and the European Parliament on this point". He continues as follows:

"The new legislation will still, as pressed for by the Parliament, include what is in effect a sunset clause. This will require the Commission to produce a new legislative proposal for an External Lending Mandate, but this must be completed by April 2010 rather than October 2009 as the Parliament originally requested. The new legislation must then complete its passage through the European Council and European Parliament within 18 months.

"I believe that this is a good outcome. The sunset clause provides an opportunity to improve the Mandate of the EIB, in particular making it more development-focused, whilst allowing enough time for the new mandate to be informed by a substantive review of the old one.

"Further, given the negotiations, I am satisfied that the Council is taking this review seriously. In particular it has insisted on an adequate timeframe for the review, which includes the Fund for Euro-Mediterranean Investment and Partnership (FEMIP) as well as the other External Lending Mandates. There will also be an external evaluation, which is expected to produce a report by the end of 2009. This is being overseen by a Steering Committee of 'Wise Persons', which includes a UK member who was formally a Director-General of DFID and, more recently, Chair of the OECD-Development Assistance Committee. The Committee will also produce its own report by the end of 2009 (or early 2010)."

23 (30509) 8051/09 HC 19–xiv (2008–09), chapter 10 (22 April 2009); see headnote.

Conclusion

7.26 We agree that the Minister has achieved a good outcome, and look forward to hearing from him in due course about the outcome of the reviews and the “Wise Persons” report.

7.27 We continue to hope that, in some way, the extensive experience of the Court of Auditors in assessing this activity can also be brought to bear on the review process.

7.28 We also take this opportunity to remind the Minister of our expectations concerning any review or evaluation of the ENPI — the common denominator of all this activity being to ensure the efficient, economical and effective use of almost €12 billion of EU taxpayers’ money.

8 Breaches of the Cotonou Agreement by Republic of Guinea

(30721) 11429/09 COM(09) 320	Draft Council Decision concerning the conclusion of consultations between the EU and Guinea under Article 96 of the Cotonou Agreement
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<i>Legal base</i>	Articles 9 and 96 of the Cotonou Agreement; QMV
<i>Department</i>	Foreign and Commonwealth Office
<i>Basis of consideration</i>	EM of 7 July 2009
<i>Previous Committee Report</i>	None; but see (26227) 16041/04, (29544) 7499/08 and (30446) 6543/09: HC 19–x, chapters 7 and 8 (11 March 2009)
<i>Discussed in Council</i>	27 July 2009 General Affairs and External Relations Council
<i>Committee’s assessment</i>	Politically important
<i>Committee’s decision</i>	Cleared, but further information requested

Background

8.1 The Cotonou Agreement²⁴ provides the framework for relations between the EU and 77 countries of Africa, the Caribbean and the Pacific (ACP). It is based on five interdependent pillars:

— a comprehensive political dimension;²⁵

24 See http://ec.europa.eu/development/geographical/cotonouintro_en.cfm for full information on the Cotonou Agreement.

25 Reproduced at Annex 1 of this chapter of our Report.

- participatory approaches;
- a strengthened focus on poverty reduction;
- a new framework for economic and trade cooperation;
- a reform of financial cooperation.

8.2 Article 96 provides for consultations between the EU and an ACP State if the ACP State is considered to be in breach of an “essential element” of the agreement (respect for human rights and fundamental freedoms, as set out in Article 9 of the Agreement). If no remedy is found, “appropriate measures” may be taken including, as a last resort, total or partial suspension of the Agreement.

8.3 On 30 March 2004 the EU decided to open Article 96 consultations with the Government of Guinea (GOG). This decision (which our predecessors cleared on 17 December 2003) was taken because of the deterioration of democracy and the rule of law, failure to respect human rights and fundamental freedoms and the lack of good economic governance, culminating in the December 2003 presidential elections, held in contentious conditions and without real electoral competition — so much so that the regional African body, ECOWAS, refused to monitor them in order to avoid giving them legitimacy.

8.4 Subsequent developments are set out in our consideration of two subsequent Council Decisions, which in 2005 began and in 2008 further extended a process of extended political dialogue and progress monitoring. At the beginning of this process, the GOG gave certain undertakings including:

- i) a return to democracy through resumption of dialogue with the traditional opposition and civil society, including revision of the electoral arrangements; and holding local and parliamentary elections based on the new electoral arrangements in June 2005 and June 2007 respectively;
- ii) upholding the Constitution and the law, so guaranteeing respect for human rights and fundamental freedoms, including the rights of political parties to organise, meet, demonstrate and speak in public; launching discussion on a legal framework for liberalisation of the airwaves;
- iii) promoting decentralisation; and
- iv) enhancing macroeconomic management and implementing sectoral reforms.

8.5 The 12-month extension resulted from decidedly mixed political progress in the intervening years. Then last December the then Minister for Europe reported that the reform agenda continued to be stalled, particularly with regard to fulfilling the key undertaking given by the Guinea authorities — to arrange free and fair parliamentary elections — and noted that the next monitoring mission would be in February 2009.²⁶

²⁶ See headnote: (26227) 16041/04 and (29544) 7499/08.

8.6 In her Explanatory Memorandum of 4 March 2009, the then Minister for Europe at the Foreign and Commonwealth Office (Caroline Flint) outlined a Commission Communication concerning the opening of consultations with the Republic of Guinea under Article 96 of the Cotonou Agreement following the bloodless military coup d'état of 23 December 2008, saying that:

- this took place following the death of President Conté after a long illness, when a military junta calling itself the National Council for Democracy and Development (CNDD) seized power and its leader, Captain Moussa Dadis Camara, declared himself President of Guinea;
- the CNDD had suspended the Constitution, dissolved the National Assembly and banned all political and trade union activity;
- the coup had received widespread popular support in Guinea. Following 24 years of President Conte's rule many sought change. In justifying its actions the CNDD has promised to root out corruption, update the Constitution and manage elections before the end of 2010;
- the coup had however been strongly condemned by the majority of the international community;
- the EU Presidency had immediately issued a statement on 23 December calling on all parties to respect the Guinean Constitution in the interests of the people and country in order to ensure a peaceful transition and the rapid organisation of free and transparent elections;
- on 31 December the UK supported a further EU Presidency statement which had condemned all seizure of power by force and called for:
 - presidential and legislative elections in Guinea by June 2009;
 - a civilian interim government to be set up and led by a civilian Prime Minister exercising full executive power;
 - the CNDD to become more representative of society, acting as an advisory body only, and to disband at the elections;
 - CNDD members not to stand in elections; and
 - teams already in place at the Ministry and National Independent Electoral Committee responsible for arranging elections to remain in their positions.
- the EU had also expressed its support for the positions of the African Union (AU) and Economic Community of West African States (ECOWAS), both of whom had suspended Guinea from their memberships.

8.7 The Communication outlined the results of the 14–16 January 2009 EU Monitoring Mission. It recalled that, before the coup, the EU had been monitoring Guinea's progress against a number of benchmarks agreed by the previous regime during Article 96 consultations concluded in 2005. The mission had met with senior figures in the interim

government and CNDD, including the self-declared President, as well as with members of political parties, trade unions, civil society, and the Independent National Electoral Commission. It reported mixed progress on the EU's calls of 31 December: an end-June date for elections did not look promising but the prospects for elections by the end of 2009 were better; the junta had appointed Mr Kabiné Komara, a civilian international banker, as the new interim Prime Minister on 30 December; however, as Mr Komara's selection of Ministers for the transitional government comprised one third military personnel, many in key dossiers and members of the CNDD, it was clear that the CNDD continued to hold the reins of power. The Mission believed that international engagement could result in changes. However, the Prime Minister seemed weak and lacking influence on many of the "transition parameters". The slow registration of voters was worrying and reflected a lack of capacity. Political parties and unions remained banned.

8.8 The monitoring mission recommended:

- opening new Article 96 consultations before the end of March 2009
- pressing for a roadmap for elections during continued reinforced dialogue
- incorporating in the consultations certain consensual benchmarks such as:
 - creating an international contact group on Guinea including the EU, AU, ECOWAS and UN;
 - reinforcing EU and member states' technical and financial assistance to the electoral process and to evaluate the Independent Electoral Commission's capacities;
 - ensuring macroeconomics respect the good governance criteria and coherence with the benchmarks of the Poverty Reduction and Growth Facility.

8.9 In her accompanying letter, the then Minister described the military coup as a serious; Article 96 had been put in it to deal with just these sorts of cases and there was no alternative to opening new Article 96 consultations as a matter of urgency if it the EU wanted the Cotonou provisions to be taken seriously. The UK had asked that language on elections be put at the forefront of the list for the transition road map, which needed to be detailed and specific, and that language also included pointing out that updating the legal framework should not delay elections. Article 96 consultations would allow the EU to put pressure on the Guinean leadership to restore constitutional order and ensure a peaceful democratic transition. The EU had made its position clear, which she supported — that elections should take place this year. Notwithstanding the Article 96 talks the EU should make it clear that it stood ready to help fund the elections to a significant degree. Looking ahead, the then Minister said that the EU was a member of the International Contact Group for Guinea (ICG-G), which was set up during the AU Summit in February and included, among others, members from the AU, ECOWAS, EU and UN; and the transition road map the Commission proposed to discuss with the Guinean authorities during Article 96 consultations reflected the ICG-G position.

Our assessment

8.10 The Committee noted its particular interest in the Article 96 process in Guinea because the undertakings given by the GOG were all in areas in which success, or failure, might well have much wider lessons, or repercussions, and not just for the Cotonou Process but also European Security and Defence Policy; a number of other countries in the region were similarly challenged, against a background in which the inter-relationship between development, security and good governance was now widely acknowledged.

8.11 As we had noted elsewhere, the Cotonou Agreement was clear: respect for human rights, democratic principles and the rule of law are essential elements of the partnership, with the Commission characterising the revision of the political components in 2005 as “strengthening the political dimension by placing greater emphasis on effective dialogue and results”; against the yardstick set out in those last four words, we found it difficult to find much persuasive evidence that the Article 96 process had, to use the Minister’s words, led to the Cotonou provisions being taken seriously — after over 5 years of Article 96 engagement, Guinea seemed to be no nearer than it was then to a functioning democratic and law-based society.²⁷

8.12 Time alone would tell whether the apparently wider process now being established would be any more successful. In the fullness of time, we assumed that, as before, a Council Decision would be forthcoming on concluding these consultations, with the adoption of further benchmarks and monitoring. However, before then, we asked for a report from the then Minister, before the summer recess, on what had been agreed and what progress had been made; we asked particularly like to know if elections were put at the forefront of a detailed and specific transition road map (including that updating the legal framework would not delay elections) and how many of the mission’s recommendations had been implemented.

8.13 We then cleared the document.²⁸

The Council Decision

8.14 In her Explanatory Memorandum of 7 July 2009, the Minister for Europe at the Foreign and Commonwealth Office (Baroness Kinnock of Holyhead) explains that this Council Decision proposes the closing of the Article 96 consultations and contains a draft letter which — if the Council adopts the Decision — will be sent from the EU to the Republic of Guinea, informing the interim authorities of the conclusion of consultations and setting out that the commitments specified have been adopted as “appropriate measures” under Article 96(2)(c) of the Cotonou Agreement.

8.15 The Minister reports that the Article 96 consultations were duly opened in Brussels on 29 April; in line with the letter to the interim authorities, the talks focused on the transition roadmap with a view to agreeing appropriate measures for the EU to assist the transition:

- Organisation of free and transparent presidential and legislative elections in 2009;

27 (26227) 16041/04 and (29544) 7499/08; see headnote.

28 (30446) 6543/09; see headnote.

- Agreement of all parties (CNDD, interim government, political parties, trade unions and civil society) on the stages of the transition;
- Establishment of a National Council for the Transition (CNT);
- Updating of the appropriate legal framework (constitution and electoral laws) without creating delays to the planned elections;
- A timetable for each stage of the roadmap;
- Respect for rule of law and human rights during the transition.

8.16 The Minister then says that, following discussions, Guinea confirmed its commitment to the following undertakings linked to a transition roadmap adopted by the President of the CNDD on 28 March:

- A return to constitutional order following the parliamentary elections on 11 October 2009 and the presidential elections on 13 and 27 December 2009;
- The giving of formal commitments by the President, the members of the CNDD and the Prime Minister not to stand for election;
- Effective establishment of the National Transition Council;
- Presentation of a detailed budget for each electoral activity to the International Contact Group on Guinea;
- Adoption of measures guaranteeing respect for the principles of the rule of law, human rights and good governance.

8.17 In response to these undertakings, the Minister says that:

“Broadly encouraged by these undertakings the Commission has set out 4 appropriate measures closely tied to key stages of this roadmap. As Guinea completes each stage the Commission proposes that the EU lifts incrementally the precautionary measures it has applied since the coup on existing European Development Fund (EDF) assistance, with a view to gradual resumption of co-operation in order to assist with the transition.”

8.18 She describes “the four appropriate measures” as follows:

Establishment by Guinea of the National Council for the Transition, with a mandate, powers and composition agreed by the stakeholders of the transition in Guinea — Lifting by EU of precautionary measures adopted for ongoing projects and programmes under the 9th and earlier EDFs, excluding projects for the rehabilitation of public buildings and to support decentralisation.

Publication by Guinea of the electoral roll and the decree setting the dates for the election and for the official opening of the electoral campaign — Lifting by EU of all precautionary measures under the 9th and earlier EDFs.

Official closing by Guinea of nominations for the presidential election (confirming that members of the CNDD and the Prime Minister of the transitional government are not standing) — Clearance by the EU of arrears to the European Investment Bank (EIB) on loans from the EDF by mobilising the 10th EDF ‘B’ envelope, subject to continuation of the IMF programme and resumption of the debt relief process under the Heavily Indebted Poor Countries (HIPC) initiative.

The holding by Guinea of free and transparent parliamentary and legislative elections and appointment of the elected members — Signing by the EU of the updated and renegotiated 10th EDF CSP/NIP.

8.19 The Minister also notes that the ICG-G, jointly led by the AU and Economic Community of West African States (ECOWAS), with the EU participating through the Presidency and the Commission, has been influential in securing commitment from Guinea on this transition roadmap and in mobilising international donor support for the elections.

8.20 Looking ahead, the Minister says that the Commission proposes that the EU continues to monitor the situation in Guinea closely over a period of 24 months, with a regular review at least once every six months, and reserves the right to amend these appropriate measures depending on how Guinea progresses on the implementation of its commitments.

The Government’s view

8.21 The Minister says that:

- it is important that the EU plays a constructive role in assisting Guinea’s transition to constitutional order and democracy;
- she supports the Commission’s proposal;
- the four measures complement the ICG-G endorsed transition roadmap and are designed to encourage the interim authorities of Guinea to make further progress implementing it;
- the measures “usefully set out how the EU will provide assistance for the transition as the process moves forward”;
- the letter to Guinea sets out a detailed and specific transition roadmap;
- she agrees, however, that “the EU is wise to reserve the right to amend the measures by a further Council Decision depending on progress and that a 24 month monitoring period is appropriate”;

8.22 The Minister then says she is “concerned that two months on from the Article 96 consultations in April the broadly encouraging undertakings offered by Guinea then have not been followed up by action”, noting that:

- The first stages of the roadmap have yet to be completed with voter registration currently suspended and

- the National Council for the Transition (CNT) has not been established
- the UK has suggested that the letter to Guinea in the Council Decision is updated to include language reflecting the ICG-G’s most recent communiqué of 27 June expressing concerns over the lack of progress implementing the roadmap and pressing Guinea to create the CNT.

8.23 The Minister says that she is:

“also concerned that the interim authorities in Guinea need to do more on their commitments to guarantee respect for the principles of the rule of law, human rights and good governance. In six months of military rule we have seen increasing lawlessness, arbitrary arrests and detentions, and a non-functioning judiciary. Political party activity remains heavily curtailed. We welcome the language in the letter to Guinea expressing EU concerns over these issues. The UK has suggested that the third appropriate measure in the annex to the letter contains additional language on ensuring that political parties have freedom of assembly and may exercise right to campaign in public.”

8.24 The Minister concludes by recalling the mixed nature of the Cotonou Agreement — political relations along with development assistance and trade — and the focus of the Article 96 process on breaches of an “essential element” of the Agreement, such as respect for human rights, democratic principles or the rule of law; that if no remedy to the situation is found, cooperation with the State concerned may be suspended, in whole or in part; and that “the military coup in Guinea on 23 December 2008 was considered to constitute a serious breach of the essential elements of Cotonou.”

8.25 Finally, the Minister says that Commission’s proposal was discussed at the ACP Working Group in Brussels on 1 and 3 July 2009; will pass to COREPER on 23 July 2009; and then to the Council on 27 July 2009.

Conclusion

8.26 **There is, sadly, nothing surprising in what the Minister has to say about the continuing failure of the interim authorities to live up to commitments and, in the meantime, the increasing lawlessness, arbitrary arrests and detentions, the non-functioning judiciary and the heavy curtailment of party political activity. Past performance suggests that the first six-monthly review will produce more of the same.**

8.27 **In the meantime, we have no wish to hold up this further attempt to encourage the interim authorities to prove the doubters wrong, and clear the document.**

8.28 **But we note what the Minister has to say about strengthening the language in the proposed letter and the third “appropriate measure”, and ask that she writes to us after the Council to let us know what was decided on the text of each of these documents.**

Annex 1: The political dimension of the Cotonou Agreement

“Emphasis on the key role of political dialogue

Dialogue should allow ACP and EC to address all issues of mutual concern and to ensure consistency and increased impact of development cooperation.

It will be conducted in a flexible manner: within and outside the institutional framework, at national, regional or ACP level.

Peace-building policies, conflict prevention and resolution

Dialogue and cooperation strategies will address peace-building policies and conflict prevention. The partnership will focus in particular on regional initiatives and the strengthening of local capacities.

Essential Elements

Respect for human rights, democratic principles and the rule of law are essential elements of the partnership.

A new procedure has been drawn up to deal with violations. It puts more emphasis on the responsibility of the State concerned and allows for greater flexibility in the consultation process. In cases of special urgency — serious violations of one of the essential elements — measures will be taken immediately and the other party notified.

Good governance

Commitment to good governance as a fundamental and positive element of the partnership, a subject for regular dialogue and an area for active Community support.

The EC and the ACP have also agreed on a new specific procedure to be launched in serious cases of corruption. This is a real innovation, both in the EC-ACP context and in international relations. It is not confined to EC activities. It will be applied in cases of corruption involving EDF money and more widely, in any country where the EC is financially involved and where corruption constitutes an obstacle to development. This is a very important aspect, as public finance constitutes a whole, regardless of the source of finance; corruption involving other sources of financing therefore indirectly affects EDF funding. The EC and the ACP States are together sending a clear and positive signal to European taxpayers and investors, and legitimate beneficiaries of aid.”

9 EU and Georgia: EU Monitoring Mission

(30749)	Council Joint Action amending and extending Joint Action
—	2008/736/CFSP on the European Union Monitoring Mission in
—	Georgia, EUMM Georgia

<i>Legal base</i>	Articles 14 EU; unanimity
<i>Department</i>	Foreign and Commonwealth Office
<i>Basis of consideration</i>	EM of 8 July 2009
<i>Previous Committee Report</i>	None; but see (29944) —: HC 16–xxx (2007–08), chapter 18 (8 October 2008)
<i>To be discussed in Council</i>	27 July 2009 General Affairs and External Relations Council
<i>Committee’s assessment</i>	Politically important
<i>Committee’s decision</i>	Cleared

Background

9.1 Nine months ago, the then Minister for Europe at the Foreign and Commonwealth Office (Mr Jim Murphy) began his 12 September 2008 Explanatory Memorandum on what became the present Joint Action by noting that:

“on 7 August Georgian Armed Forces attacked Tshskinvali [sic], the de facto ‘capital’ of South Ossetia. Russian armed forces reacted with massive force, widely condemned as disproportionate, including by the EU, NATO and G7 Foreign Ministers. Fighting continued between 8 and 12 August, when the EU and Organisation for Security and Co-operation in Europe (OSCE) brokered a ceasefire.”

9.2 He went on to say that the ceasefire, known as the 6-point Agreement, contained the principles that:

- The parties not to resort to the use of force;
- The parties to stop all military actions for good;
- The parties to allow free access for humanitarian aid;
- Georgian armed forces to return to their places of usual permanent deployment;
- Russian armed forces to withdraw to the line they occupied before the start of military actions. Until such time as an international mechanism is created, Russian peacekeeping forces to implement additional security measures;
- The parties to engage in international discussions on the modalities of security and stability in Abkhazia and South Ossetia.

9.3 The then Minister noted, however, that:

“Despite this plan, on 26 August Russia unilaterally recognised the independence of South Ossetia and Abkhazia, and refused to withdraw its forces from Georgia. The European Council on 1 September unanimously condemned this, and expressed its grave concern about the consequences of the conflict and Russia’s disproportionate military action.”

9.4 He then noted that, on 8 September, President Sarkozy, EU Commission President Barroso and EU High Representative Solana travelled to Moscow “to press Russia to abide by its commitments.” He says that:

“They secured agreement to a supplementary set of commitments to the six point Agreement, giving detail on implementation and specifying timelines. The EU committed to deploying at least 200 observers into the areas adjacent to South Ossetia and Abkhazia by 1 October. Russia would then have 10 days to withdraw its forces to their positions prior to the outbreak of hostilities.”

Joint Action 2008/736/CFSP

9.5 Against this background, this Joint Action established a civilian European Security and Defence Policy (ESDP) monitoring mission in Georgia, called EUMM Georgia. The then Minister explained that the mission established would:

- monitor the Parties’ actions, including full compliance with the 6-point Agreement and subsequent implementing measures;
- deploy on a country-wide basis throughout Georgia, and aim to contribute to stabilisation, normalisation and confidence-building;
- also help to inform European policy in support of a durable political solution for Georgia;
- begin deployment in September, with the operational phase beginning no later than 1 October, in line with the 8 September agreement.;

9.6 The Mission’s tasks would, he said, include:

- Stabilisation: monitoring, analysing and reporting on compliance with the 6-point Agreement, including troop withdrawals, freedom of movement and violations of human rights and international humanitarian law;
- Normalisation: monitoring, analysing and reporting on the normalisation of civil governance, including the rule of law, public order, security of transport links, energy infrastructure and utilities, and return of Internally Displaced Persons and refugees;
- Confidence-building: contributing to reducing tensions, including through liaison and facilitation of contacts between parties;
- Informing the EU’s role in connection with the negotiations that will start in Geneva on 15 October on future international presences in Georgia.

9.7 The then Minister welcomed the Joint Action and endorsed its tasks. He explained that Member States were clear that the mission should deploy throughout Georgia, including South Ossetia and Abkhazia; the initial priority was to meet the EU’s commitment to put 200 monitors into the zones adjacent to South Ossetia and Abkhazia, but the mission will expand its area of deployment as soon as possible; co-ordination with other international actors would be important — the OSCE had 8 military monitors deployed to South Ossetia, and was negotiating on the deployment of a further 100, while the UN Observer Mission to Georgia (UNOMIG) — an unarmed military observation mission of around 150 personnel — was the lead international presence in Abkhazia and in the adjacent area as defined under its mandate; the EU mission would bring civilian monitoring expertise.

9.8 With regard to the *Financial Implications*, the then Minister explained that funding for common costs (mission headquarters, in-country transport, office equipment etc) would be met from the Common Foreign and Security Policy budget, to which the UK currently contributed approximately 17%; with a projected budget for the first 12 months of € 31.5 million, the UK would contribute approximately €5.4 million (then £4.3 million); plus 20 personnel, the funding for which would come from the Whitehall Peacekeeping Budget.

9.9 Finally, the then Minister said that the Joint Action would be adopted at the General Affairs and External Relations Council on 15 September.

9.10 In an accompanying letter of 12 September 2008, the Minister explained that the need to deploy the 200 EU monitors by 1 October to the zones adjacent to South Ossetia and Abkhazia, as agreed in Moscow on 8 September had obliged him to over-ride Parliamentary scrutiny in this instance. We accepted the Minister’s explanation on this occasion and in these circumstances, and cleared the document.

9.11 The wider purpose of the then Minister’s letter, however, was to update the Committee “on events over the summer in Georgia [and] set out the UK’s role.” We regarded it of sufficient importance to set it and the annex to it out in full, at the Annex to that chapter of our Report, and to forward this latter to the Foreign Affairs Select Committee.

9.12 The letter also noted that, at the Extraordinary European Council meeting on 1 September, in response to Russian actions, the Council had suspended negotiations with Russia on the new EU Partnership and Co-operation Agreement (PCA) and decided to conduct a comprehensive review of EU-Russia relations, which would continue up to the next EU-Russia Summit in Nice on 14 November 2008, and would “allow us to take a considered decision about the future of EU-Russia relations.”²⁹

The revised Joint Action

9.13 The current mission mandate expires on 15 September 2009. This Joint Action extends the mandate for 12 months until 14 September 2010. It will also increase the mission’s financial reference amount, currently proposed to be € 12.5 million, making the

29 (29944) —: HC 16–xxx (2007–08), chapter 18 (8 October 2008); see headnote.

budget for the full EUMM Georgia operation to 14 September 2010 a total of € 49.6 million.

The Government's view

9.14 In her Explanatory Memorandum of 8 July 2009, the Minister for Europe at the Foreign and Commonwealth Office (Baroness Kinnock of Holyhead) comments as follows:

“In the last few months, the international community’s footprint in Georgia has been significantly diminished. The OSCE monitoring mission has now ceased operations following Russia’s refusal to join consensus on renewing the mandate. In June, Russia vetoed the renewal of the mandate of the UN Monitoring Mission in Georgia (UNOMIG) and it is now in the process of drawing down. This leaves EUMM as the only remaining international monitoring mission in Georgia, with implications for its future security and operations.

“The UK considers that the recently changed circumstances in Georgia regarding the other international missions make it even more important that the mission remains. This is both as a means to reduce tensions between all parties to the August 2008 conflict and as a sign of engagement from the international community. As the only international mission, EUMM’s presence is vital to ensure that the parties abide by the Sarkozy/Medvedev agreement. This supports the UK objective of conflict prevention.

“The Government has successfully argued that the mission’s mandate should be renewed largely unchanged as it is both comprehensive and flexible, leaving the option for EUMM to adjust operations to cover tasks previously carried out by UNOMIG, as appropriate.

“EUMM Georgia has had a positive impact since deployment on 1 October 2008. The mission has carried out more than 3000 patrols, including night patrols, monitoring incidents and maintaining visibility along the administrative boundary lines with South Ossetia and Abkhazia.

“This work has helped to defuse tensions and prevent a return to large-scale conflict. It has been successful in building confidence, including negotiating two Memoranda of Understanding with the Georgian Ministries of Interior and Defence to increase transparency and to limit the number of forces and weapons in the areas neighbouring the two breakaway regions. The mission has also put resources into building a strong relationship with the Georgian community and has helped to create the conditions for the return of around 30,000 Internally Displaced Persons.

“The mission continues to engage as far as possible with the Russian government and the de facto South Ossetian and Abkhaz authorities. This has had some success, especially through the establishment of local Incident Prevention and Response Mechanisms, as mandated by the Geneva talks.

“However, the mission has still not been granted access to the breakaway regions of South Ossetia and Abkhazia and this impedes the ability of the mission to carry out

its mandate in full. The UK continues to press Russia and the breakaway regions to allow the mission access throughout the territory of Georgia.”

9.15 Turning to the *Financial Implications*, and recalling that the mission is funded from the CFSP budget, to which the UK contributes approximately 17%, the Minister says:

“This covers the mission’s running costs (HQ, in country transport and office equipment etc) to support the Sarkovy/Medvedev agreement to have at least 200 monitors on the ground. Joint Action 2008/736/CFSP provided a financial reference amount of €37,100,000 to cover the expenditure related to the Mission until 14 September 2009.

“It has been proposed that the additional funds required by EUMM Georgia to cover operational expenditure until 14 September 2010 be added to the above commitment: this addition, covering a period of 12 months, amounts to €12.5 million, making the budget for the full EUMM Georgia operation to 14 September 2010 a total of €49.6 million. This additional commitment should be made in two stages, with €9 million to be committed after the adoption of the related Joint Action and the remaining amount in 2010, subject to proof of the financial needs for the operation. The proposed financial reference amount is currently being discussed in Brussels.

“The UK has 11 secondees in the mission, funded through the Tri-departmental (FCO, MOD and DfID) Conflict Prevention Pool.”

9.16 Finally, the Minister says that this Joint Action is planned to be adopted at the General Affairs and External Relations Council on 27 July 2009.

Conclusion

9.17 By the time of the November 2008 EU-Russia Summit, the Council had decided to resume negotiations on the PCA, though the then Minister for Europe (Caroline Flint) told the Committee that this did not denote “business as usual” or “a turning of the page on Georgia”; she said that the Government would “continue to insist on full implementation of the ceasefire agreements and their cooperation in the ceasefire talks”.

9.18 We considered the outcome of the most recent EU-Russia Summit on 1 July.³⁰ As we noted then, the past six months seem to have been a case of a different sort of “business as usual”, with large parts of the EU deprived of energy supplies in the height of winter and, latterly, Russia welcoming the new US President by staging the largest military exercise in the north Caucasus since the end of the cold war. A PCA presupposes the possibility of “win/win”; Russia instead continues to see relations on the basis of zero sum and “divide and rule”, with some EU Member States seemingly only too happy to oblige if it guarantees them energy supplies. In this particular context, EUMM Georgia has fallen foul of this wider context of power politics.

30 See (26607) 8799/05 and (30107) 15299/08 and (30108) 15300/08 HC 19–xxii (2008–09), chapter 10 (1 July 2009).

9.19 But it is, as the Minister says, nonetheless the only show in a volatile town. We now clear the document.

10 EU and Georgia: EU Special Representative and the independent international fact-finding mission on the conflict

(a)	
(30755)	Council Joint Action extending the mandate of the European Union's Special Representatives for the crisis in Georgia
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(b)	
(30756)	Council Decision amending and extending Council Decision 2008/901/CFSP concerning the independent international fact-finding mission on the conflict in Georgia
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<i>Legal base</i>	(a) Articles 14, 18(5) and 23(2) EU; QMV (b) Articles 13(3) and 23(1) EU; QMV
<i>Department</i>	Foreign and Commonwealth Office
<i>Basis of consideration</i>	EMs of 9 July 2009
<i>Previous Committee Report</i>	(a) None; but see (30377) —: HC 19–vi (2008–09), chapter 14 (4 February 2009) (b) None; but see (30270) —: HC 19–iii (2008–09), chapter 16 (14 January 2009)
<i>To be discussed in Council</i>	27 July 2009 General Affairs and External Relations Council
<i>Committee's assessment</i>	Politically important
<i>Committee's decision</i>	Cleared, but further information requested

Background

10.1 The background is set out in chapter 9 of our report, where we consider a separate draft Joint Action extending the mandate of the EU civilian ESDP monitoring mission, EUMM Georgia, which was set up in the aftermath of the conflict that erupted in Georgia in August 2008.³¹

³¹ See (30749) — at chapter 9 of this Report.

Joint Action 2008/760/CFSP

10.2 Against this background, this Joint Action established a Special Representative for the Crisis in Georgia, in September 2008, to ensure coordination and consistency of external EU actions in the region. The mandate for EUSR for the Crisis in Georgia is renewable every 6 months, rather than the standard 12, to reflect the exceptional circumstances in Georgia. The incumbent, Ambassador Pierre Morel, already held, and still holds, a concurrent mandate as EUSR for Central Asia.

10.3 The EUSR's mandate is based on the objectives established by the conclusions of the extraordinary European Council meeting in Brussels on 1 September 2008 and the Council conclusions of 15 September on Georgia. The EUSR's role is to enhance the effectiveness and visibility of the EU in helping to resolve the conflict in Georgia.

The draft Joint Action

10.4 We cleared the last extension on 4 February, along with those of five other EUSRs, including Ambassador Morel's mandate in his other capacity. At the time, the then Minister for Europe (Caroline Flint) reported that Ambassador Morel had worked well with the other EUSRs, relevant partners and international organisations (e.g. the OSCE, UNOMIG) in the region; had promoted good governance and respect for human rights in an unpromising situation; had proposed an Incident Resolution Mechanism; had demonstrated his support for and personal commitment to the Geneva Talks as a long-term process; and enjoyed good relations with Russian Deputy Foreign Minister Karasin.

The Government's view

10.5 In her first Explanatory Memorandum of 9 July 2009, the Minister for Europe at the Foreign and Commonwealth Office (Baroness Kinnock of Holyhead) says that she supports Ambassador Morel's reappointment, and continues as follows:

“he continues to play a key role in support of the Geneva talks, and maintains strong relations with the other international organisations working on the region (particularly OSCE and UN). EUSR Morel has continued to maintain access to the separatist regions of Abkhazia and South Ossetia, and has been instrumental in establishing an Incident Prevention and Resolution Mechanism for the separatist regions. We wish him to remain beyond September 2009 to signal the EU's continued serious commitment to these issues.

“Not renewing Morel's mandate would risk causing uncertainty about EU commitment to Georgia when the Geneva process continues to face difficulties, and when the EU is the only major international presence in Georgia, with the OSCE and UN mandate renewals having been vetoed by Russia.”

10.6 The Minister then recalls the background of tensions between Russia and Georgia, dating back to the post-independence conflicts in the early 1990s, which in 2008 “rose significantly over Russian declarations of support for the separatist regions of Abkhazia and South Ossetia and Russian shooting down a Georgian Unmanned Aerial Vehicle over Abkhazia”. She describes the immediate aftermath as follows:

“In the days preceding 7 August, clashes in South Ossetia between Georgian troops and South Ossetian irregulars increased in intensity. On 7 August, the Georgian Armed Forces attempted to take and hold Tskhinvali, significantly compounding successive breaches by all parties of international arrangements for the region. Russian armed forces reacted with massive force. This was widely condemned as disproportionate, including by the EU, NATO and G7 Foreign Ministers. Fighting raged between 8 and 12 August between Russian and Georgian troops leaving large numbers dead and over 100,000 people displaced. During the fighting, Russian forces encroached deep into Georgian territory beyond South Ossetia and Abkhazia, and threatened Tbilisi itself.

“The EU, led by the French Presidency, brokered a ceasefire between Presidents Medvedev and Saakashvili on 12 August, which was reinforced by an implementing agreement on 8 September. As part of these agreements, the EU committed to provide a 200-strong monitoring mission to oversee the implementation of the ceasefire by all parties. This was fully deployed by 1 October. The internationally chaired Geneva talks were also established. The presence of three international monitoring missions, from the UN, OSCE and EU, has helped to defuse tensions and prevent a return to large scale conflict. Russia recognised the ‘independence’ of South Ossetia and Abkhazia on 26 August 2008, and has subsequently pursued a strategy of presenting the situation in the two separatist regions as ‘post conflict’. Russia vetoed the continuation of the UN and OSCE monitoring missions in June 2009.”

10.7 Finally, the Minister says that approximately 50% of the current budget agreed for the year has been spent, and that the Council Secretariat assesses that the remaining funds will be sufficient for planned expenditure.

Council Decision 2008/901/CFSP

10.8 The mandate of the Independent International Fact Finding Mission on the conflict in Georgia is defined by the Council’s Decision of 2 December 2008 (2008/901/CFSP). The aim of the fact-finding mission is to investigate the origins and the course of the conflict in Georgia, including with regard to international law, humanitarian law and human rights, and the accusations made in that context. The geographical scope and time span of the investigation were made sufficiently broad to determine all the possible causes of the conflict.

10.9 Also on 2 December 2008, the EU appointed Ambassador Heidi Tagliavini, who served as the UN Secretary General’s Special Representative in Georgia from 2002 to 2006, to head the Mission.

10.10 At the time of the Mission’s establishment, the then Minister said that the budget to 31 July 2009 would be €1.6 million (then £1.2 million), which would be met from the CFSP budget, to which the UK currently contributes approximately 17%.

The draft Council Decision

10.11 This Decision extends the duration of the Mission for a further two months until 30 September 2009.

The Government's view

10.12 In her second Explanatory Memorandum of 9 July 2008, the Minister for Europe rehearses the same background to Ambassador Tagliavini's appointment. She recalls that the Government welcomed the establishment of the Mission, and says that it has offered our full support to Ambassador Tagliavini and her team. The Minister says that the Government "believe that the Mission's final report will provide useful clarity on the origins of the conflict and the attitudes of the respective parties to international law during the conflict" and "agrees with the no-cost extension of the Mission in order that it can have sufficient time to prepare its report, considering all the evidence available to it."

Conclusion

10.13 **The extension of these mandates raises no questions *per se*. We accordingly clear the documents.**

10.14 **But we think that the House would have benefited, not from a rehearsal, twice over, of a well-known analysis of the events of last summer, but from an assessment of where matters presently stand on the Geneva process that went beyond noting that it "continues to face difficulties".**

10.15 **We accordingly ask the Minister to write to us with such an assessment and to outline how she sees matters developing between now and September, and particularly her expectations as to how fully the Mission is likely to be able to fulfil the extensive mandate given to it last December (c.f. paragraph 10.7 above).**

11 Financial management

(30710)	European Court of Auditors Special Report No. 5/2009 concerning
11263/09	the Commission's treasury management together with the
—	Commission's replies

<i>Legal base</i>	—
<i>Deposited in Parliament</i>	23 June 2009
<i>Department</i>	HM Treasury
<i>Basis of consideration</i>	EM of 7 July 2009
<i>Previous Committee Report</i>	None
<i>To be discussed in Council</i>	Not known
<i>Committee's assessment</i>	Politically important
<i>Committee's decision</i>	Cleared

Background

11.1 The Commission, in implementing the Community Budget, makes a considerable number of payments to third parties each year — in 2007, for example, approximately 1.5 million payments which amounted to €114 billion (£97 billion). Financial resources are required to be readily available to fund these payments and in outline the arrangements for availability are:

- the largest category of income is Own Resources, based on the calculation of value added tax and Member States' gross national income and each Member States' Own Resources contributions are paid monthly into a Commission account held in that Member State;
- the Commission holds bank accounts at central and commercial banks in order to execute payments and collect receipts of the other income category, that is non-Own Resources revenue;
- funds are transferred regularly from the Own Resources accounts to the accounts used for payments — sufficient funds are maintained in these payment accounts to ensure uninterrupted funding of Community activities; and
- the Commission has systems to manage its treasury operations, specifically cash flows (receipts and payments), the opening and running of bank accounts, cash forecasting and liquidity management.

11.2 The Commission's treasury activities take place within a legislative framework which:

- requires the Accounting Officer, amongst other duties, to be responsible for treasury management;
- empowers the Accounting Officer to manage cash and its equivalents;
- requires the Accounting Officer to ensure that the Commission has at its disposal sufficient funds to cover cash requirements arising from budgetary implementation and to set up cash management systems enabling the drawing-up of cash-flow forecasts; and
- in the context of Own Resources, sets out the funding framework within which the Commission must operate and defines the Commission's treasury management objectives.

Within the Commission two Directorates-General perform treasury management — the Directorate-General for the Budget, which is responsible for the entire budget managed by the Commission and the European Development Fund and the Directorate-General for Economic and Financial Affairs, which is responsible for other non-budgetary items and the investment of Community funds.

The document

11.3 This document is a special report from the European Court of Auditors on the Commission's treasury management and the Commission's responses. The main objective

of the audit was to assess the quality of the Commission's treasury management and in particular whether the Commission complied with the rules and regulations applicable to treasury management and whether it had established internal control systems that ensure sound treasury management. The Court focused on the financial years 2006 and 2007 and considered also developments in Commission practices in the first half of 2008. Audit evidence was collected through examination and assessment of existing rules and procedures, reviews of documentation, testing of controls and transactions and interviews.

11.4 The Court's main observations were that:

- overall, the Commission complied with the main provisions prescribed by the Own Resources Regulation and the Implementing Rules of the Financial Regulation;
- prudent cash management forecast procedures were in place to ensure availability of sufficient funds to cover cash requirements arising from budgetary implementation;
- significant balances are accumulated during the second half of the year because the Own Resources Regulation stipulates the transfer of Own Resources to the Commission's bank accounts on the basis of budget appropriations, but as the Amending Budget procedure takes considerable time excess funds are not released back to the Member States as quickly as they could be;
- the internal control procedure in place for execution of payments and bank accounts was effective overall. However, unlike the Directorate-General for Economic and Financial Affairs, the Directorate-General for the Budget did not document evidence of active management and monitoring of the risk arising from treasury activities nor were procedures in place to assess all aspects of its performances;
- application of the Commission's procedures to transfer funds between Member States' Own Resources accounts and to determine the need in the first months of the year for advanced call-ups of Own Resources to cover payments was not sufficiently documented or updated;
- checks were not made to confirm the accuracy of the estimates used to transfer funds between Member States' Own Resources accounts;
- the Commission's decision to split treasury management operations between the two Directorates-General meant that there was no unit with overall responsibility for the Commission's treasury management;
- there was a lack of coordination between the two Directorates-General in areas that required a common approach to issues, such as risk management and control. This led to limits on accounts for holding funds with commercial banks being established by Directorates-General without consideration for the Commission's overall risk exposure with each commercial bank;

- no clear rules for setting up fiduciary accounts were established and neither was there an overview of all the funds held by the financial institutions. Optimisation of interest generated was therefore not assured; and
- the value of the provisionally collected fines held in commercial bank current accounts has more than doubled over recent years to €5 billion (£4.3 billion). This approach exposes the Commission to risk of loss in the event of banking failure. An optimum approach to better managing the risks relating to the holding of these amounts has not been established.

11.5 The Court recommended that the Commission:

- analyse functioning of the system of Own Resources accounts so as to reduce balances over the second half of the year;
- improve documentation of its cash flow forecasting procedures and check the accuracy of estimates used for the transfers of Member States' Own Resources;
- establish procedures to improve the oversight of its treasury management and enhance coordination between the two Directorates-General concerned;
- improve the Directorate-General for the Budget's documentation of its risk management and the scope of its performance measurement;
- put in place a uniform policy and adequate guidelines for opening of fiduciary accounts and management of Commission funds held in these accounts; and
- conclude its search for a lasting solution for the treatment of provisionally collected fines as a matter of priority.

11.6 In response to the Court's observations and recommendations the Commission said that:

- it is bound by the requirement that Member States credit Own Resources to its accounts by means of monthly twelfths;
- since 2005, however, it has proposed a Preliminary Draft Amending Budget at the end of October updating the budget relative to the forecast of revenue and expenditure, which has resulted in year-end surpluses which reduce Member States' Own Resources contributions;
- the Court acknowledged this as good budgetary management in its 2007 annual audit report;³²
- the procedure for transfers between Member States' Own Resources accounts is formally documented and is complemented by detailed "step by step" instructions;

32 (30203) —: see HC 19–iii (2008–09), chapter 3 (14 January 2009) and *HC Deb*, 20 January 2009, cols. 654–679.

- cash flow reporting and forecasting procedures were redrafted at the end of 2008 with the aim of reviewing related reporting tools with an updated version due to be adopted from the end of March 2009;
- estimates used for the transfer of funds between Member States are made with the best possible accuracy and the current procedures have no significant impact on either the overall treasury operations or the relevant legislation;
- as the legislation on the Own Resources accounts and payments system has been revised with no significant change this suggests Council satisfaction with the functioning of the present system;
- its overview of the risks related to its treasury operations provides a clear and comprehensive summary of the risks it is exposed to, how such risks are managed, and the measures in place to control, minimise or counter them;
- existing procedures that contain measures to control or limit operational and financial risks will be cross-referenced into a single formal document of the Directorate-General for the Budget;
- it agreed to improve its monitoring of the different treasury management activities performed by the two Directorates-General, but the different nature of tasks between them somewhat limits the need for extensive coordination;
- regular meetings will be held between the Directorates-General to share information on risks, and to exchange experiences and best practices regarding treasury and asset management activities on a Commission-wide level;
- given the varied purpose of the funds held in trust accounts, which results in different cash flow patterns and holding periods, it is operationally difficult to optimise interest of funds held with one financial institution; and
- the current systems for provisionally collected fines were reviewed in 2008 with increased security as the main objective and the Directorate-General for the Budget issued a draft Commission Decision on the matter in early 2009.

The Government's view

11.7 The Economic Secretary to the Treasury (Ian Pearson) says that the Government welcomes the Court's report, which provides useful analysis and recommendations on how the Commission's treasury is managed and is helpful in highlighting areas for improvement in its management.

11.8 The Minister then comments that:

- the Commission's introduction in recent years of an Amending Budget proposal to re-address levels of expenditure and so reduce funding from Member States through the Own Resource system is a welcome improvement;

- the timing, however, means that the Amending Budget is not adopted in time for it to be introduced in the current financial year and is therefore not implemented until January, or even February, of the following year;
- the Government would, therefore, like to see the annual Budget set a more realistic level of execution at the outset, deploying the Amending Budget process to increase expenditure levels during the financial year if necessary;
- failing this, the Commission should examine expenditure execution levels earlier in the year to ensure that any Amending Budget to reduce expenditure, and Member States contributions, can be adopted and implemented in the year in question;
- the Government, however, fully acknowledges the Commission's effort in setting up systems to manage its treasury; and
- it urges the Commission to redouble its efforts in addressing areas identified by the Court as needing urgent attention.

Conclusion

11.9 Any effort to improve management of the Community's financial resources is to be welcomed. So, whilst clearing this document, we draw it to the attention of the House, as it shows both a degree of satisfactory performance of the Commission's treasury function and the scope for its improvement.

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

Department for Business, Innovation and Skills

- (30678)
10598/09
COM(09) 251
- Draft Council Decision on the conclusion, by the Commission, of the Agreement for co-operation between the European Atomic Energy Community and the Government of the Republic of India in the field of fusion energy research.
- (30757)
11078/09
COM(09) 271
- Draft Council Regulation imposing a definitive countervailing duty and collecting definitively the provisional duty imposed on imports of biodiesel originating in the United States of America.
- (30780)
11082/09
COM(09) 272
- Draft Council Regulation imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of biodiesel originating in the United States of America.

Cabinet Office

- (30694)
10940/09
+ ADD 1
COM(09) 254
- Draft Council Decision on the European Year of Volunteering (2011).

Department for Energy and Climate Change

- (30698)
11031/09
COM(09) 270
- Draft Council Decision on establishing the European Community position within the Ministerial Council of the Energy Community (Sarajevo, 26 June 2009).

Department for Environment, Food and Rural Affairs

- (30670)
10429/09
COM(09) 236
- Draft Council Decision concerning the approval on behalf of the European Community, of the Amendments of Annex II and Annex III to the Convention for the protection of the marine environment of the North-East Atlantic (OSPAR Convention) in relation to the storage of carbon dioxide streams in geological formations.

Foreign and Commonwealth Office

- (30697)
10973/09
COM(09) 256
- Commission Communication: Synthesis of the Commission's management achievements in 2008.
- (30719)
11411/09
COM(09) 287
- Draft Council Decision on the conclusion by the European Community of the interim agreement between the European Community, the European Coal and Steel Community and the European-Atomic Energy Community and Turkmenistan on trade and trade-related matters.
- (30752)
—
—
- Council Decision on support for OPCW activities in the framework of the implementation of the EU Strategy against Proliferation of Weapons of Mass Destruction.
- (30781)
—
—
- Council Decision concerning the signing and provisional application of the Agreement between the European Union and the Republic of Croatia on the participation of the Republic of Croatia in the European Union military operation to contribute to the deterrence, prevention and repression of acts of piracy and armed robbery off the Somali coast (Operation ATALANTA).

HM Treasury

- (30712)
11288/09
SEC(09) 827
- Preliminary draft amending budget No.7 to the general budget for 2009 — Statement of expenditure by section — Section III — Commission.
- (30717)
11289/09
COM(09) 308
- Draft Decision on the mobilisation of the EU Solidarity Fund.

Formal minutes

Wednesday 15 July 2009

Members present:

Mr Adrian Bailey
Mr William Cash
Jim Dobbin
Keith Hill
Kelvin Hopkins

Mr Lindsay Hoyle
Mr Bob Laxton
Angus Robertson
Richard Younger-Ross

In the temporary absence of the Chairman, Jim Dobbin was called to the Chair for the meeting.

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-sixth Report of the Committee to the House.

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

[Adjourned till Tuesday 21 July at 10.30am.]

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*)