House of Commons

European Scrutiny Committee

Twenty-seventh Report of Session 2008–09

Documents considered by the Committee on 21 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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1 Internet Governance

(30708) 11222/09 COM(09) 277	Commission Communication: *Internet governance: the next steps*

Legal base	—
Document originated	18 June 2009
Deposited in Parliament	23 June 2009
Department	Business, Innovation and Skills
Basis of consideration	EM of 9 July 2009
Previous Committee Report	None; but see (27466) 8841/06 HC 41–xxi (2006–07), chapter 15 (9 May 2007)
To be discussed in Council	To be determined
Committee's assessment	Politically important
Committee's decision	Not cleared; further information requested

Background

1.1 On its website, the Internet Corporation for Assigned Names and Numbers (ICANN) explains that "to reach another person on the Internet you have to type an address into your computer — a name or a number. That address has to be unique so computers know where to find each other. ICANN coordinates these unique identifiers across the world. Without that coordination we wouldn't have one global Internet."

1.2 ICANN was formed in 1998 by the US Administration. It is a not-for-profit public-benefit corporation with participants from all over the world. It coordinates and oversees the day-to-day management of the domain name system (the DNS) of unique identifiers for communicating on the Internet. It says it is:

> "dedicated to keeping the Internet secure, stable and interoperable. It promotes competition and develops policy on the Internet's unique identifiers. ICANN doesn't control content on the Internet. It cannot stop spam and it doesn't deal with access to the Internet. But through its coordination role of the Internet's naming system, it does have an important impact on the expansion and evolution of the Internet."[1]

The Commission Communication

1.3 The Communication provides an analysis of progress on Internet governance in the last 10 years, the public policy issues involved — from finding ways to ensure that citizens can benefit fully from the Internet's potential as well as dealing with inappropriate content, consumer protection and jurisdiction in an increasingly global world — and the role of governments in the process, where "users will inevitably turn to their governments if there

1 See http://www.icann.org/ for full information on ICANN.

is any major national disruption to their Internet service, and not to the various Internet governance bodies."

1.4 It identifies three basic factors in the success of the Internet's rapid development:

— An *open and interoperable architecture*, based on the origins of the Internet in research and academia;

— *Private sector leadership*, which facilitated the move of the Internet from academia to society at large and which "continues to deliver important policy objectives and needs to be maintained and supported";

— *The multi-stakeholder model*, which has led to "processes to initiate and develop consensus in Internet governance policies".

1.5 Nonetheless, the Internet's growing importance for society as a whole "increasingly requires governments to be more actively involved in the key decision-making that underlies the Internet's development". But "private sector initiative must be maintained […] Private sector leadership and effective public policies are not mutually exclusive".

1.6 The Commission then reviews its involvement since 1998 in Internet governance, including the development of ICANN, and most recently in the World Summit on the Information Society. The Commission then seeks to identify a number of public policy principles and proposes an approach for moving forward international discussions on these matters, with calls for more transparency and multilateral accountability in the governance of the Internet.

1.7 These technical aspects are summarised and analysed in his 9 July 2009 Explanatory Memorandum by the Minister for Communications, Technology and Broadcasting (Lord Carter) as follows:

> "This Communication anticipates the expiry in September 2009 (without renewal) of an agreement known as the Joint Project Agreement (JPA) between ICANN and the US Department of Commerce that has provided the National Telecommunications and Information Administration (NTIA) with oversight of ICANN's affairs. The expiry of the JPA does not affect the US Government's oversight of changes to the root zone file[2] managed by the Internet Assigned Numbers Authority — IANA (which is part of ICANN).
>
> "The Communication rightly attributes the success of the Internet over the last 20 years, as a critical resource for global communications, economic growth and social well-being, to private sector leadership and unhindered innovation at the edge, rather than through any central command structure. It therefore argues that this private sector leadership should continue, but should also be underpinned by the

2 According to the Internet Society, DNS root name servers "are a small but essential part of the Internet Domain Name System (DNS) […]. The root zone file is at the apex of a hierarchical distributed database called the Domain Name System (DNS). This database is used by almost all Internet applications to translate worldwide unique names like www.isoc.org into other identifiers; the web, e-mail and many other services make use of the DNS. The root zone file lists the names and numeric IP addresses of the authoritative DNS servers for all top-level domains (TLDs) such as ORG, COM, NL and AU". For further information see http://www.isoc.org/briefings/019/

multi-stakeholder processes of engagement and consultation with the technical community, business, civil society, academia and governments across the globe which ICANN has successfully instituted.

"This private sector-led, bottom up model for Internet governance is consistent with Paragraph 48 of the Declaration of Principles by the UN World Summit on the Information Society (WSIS, 2003–2005) which states that the '*international management of the Internet should be multilateral, transparent and democratic, with the full involvement of governments, the private sector, civil society and international organisations*.'[3] In addition to ICANN, the Communication also makes reference to the Internet Governance Forum (IGF) which was created by WSIS and announced by the UN Secretary General in 2005 as an annual multi-stakeholder forum for addressing Internet issues which, given the global nature of the Internet, it is not possible for any individual country or single group of stakeholders to address.

"The key issue at the heart of the Communication is the future role of governments in this process of ensuring the Internet remains secure, stable and interoperable as it undergoes some fundamental changes at a time when the final phase of the US Government's process of privatising ICANN with the ending of the JPA. These changes include expanding the domain names market by allowing applications for an unlimited number of generic domain names (gTLDs of which there are currently only 21 including the dominant player '.com'), the introduction of domain names in non-Latin scripts (IDNs), the switch to a new Internet protocol (IPv6) which will radically increase the available address space, and the deployment of new security measures (DNSSEC) in the top level (or root zone file) of the DNS architecture in order to prevent major denial of service attacks.

"While reaffirming that governments do not need to be involved in the day-to-day management of the Internet, the Communication argues that private sector bodies like ICANN need to be made accountable to the international community for their actions, and outlines the following limitations with the model in this regard

— "ICANN's Governmental Advisory Committee (GAC) is not representative of all governments (membership is currently over 100) and its advisory role to a private sector organisation is an inappropriate and ineffective mechanism for informing and influencing ICANN's policy developments processes so that they fully reflect public policy concerns;

— "ICANN's lack of 'external accountability' to Internet users who do not participate in ICANN's activities — it meets in open forum three times a year in continental rotation — in contrast to the ongoing 'unilateral accountability' to the US Government on the management of the root zone file (the IANA function).

3 (27466) 8841/06: see HC 41–xxi (2006–07), chapter 15 (9 May 2007) for the Committee's consideration of the Commission Communication: *Towards a global partnership in the information society: follow-up to the Tunis phase of the World Summit on Information Society (WSIS)*: see headnote.

> "In considering responses to these concerns, the Communication rightly notes that there is no international consensus for creating a new inter-governmental organisation that would undertake oversight and external accountability. However, as part of an evolutionary approach to ICANN, the Communication recommends:
>
> — "a mechanism for 'multilateral accountability' in place of the current US oversight of the root zone;
>
> — "the securing of public policies based on 'multilateral intergovernmental cooperation.'
>
> "The Commission argues for the EU to take a leadership role in this evolutionary process."

The Government's view

1.8 The Minister then says that UK policy relating to Internet governance, the means for governments to address Internet-related public policy issues, including stability, security, competition, diversity and multilingualism, is "to support the private sector-led, bottom-up multi-stakeholder model as uniquely providing the means to act quickly and globally to secure public policy goals", which he says "reflects the European consensus that any proposed recourse to wholly inter-governmental oversight would be contrary to the WSIS outcomes."

1.9 The Minister goes on to say that:

> "While the Communication helpfully underscores this principle, it also argues that the existing mechanism for securing governmental inputs into ICANN's policy development processes are insufficient and ineffective in securing its future accountability to the global Internet community. Moreover, the Commission's proposal for a new mechanism for external intergovernmental oversight will likely play into the hands of some members of the International Telecommunication Union (ITU) who are seeking to extend its inter-governmental mandate to include Internet public policy issues .

1.10 Instead, the Minister says:

> "it is preferable to build upon the ten year experience of the Governmental Advisory Committee (GAC), and further strengthen its membership, working methods and ways of influencing ICANN's policy processes. The resumption of the active participation of China, the country with the largest number of Internet users, in the work of the GAC at its most recent meeting in June in Sydney and the presence of Russia as invited guest at that and two previous GAC meetings, are very positive signs of the increased acceptance of the GAC as the governmental forum representing over 90% of the world's Internet users, for discussing public policy issues related to Internet Governance. The UK will continue to work with ICANN in extending the reach of the GAC to those governments not yet engaged in the process."

1.11 He concludes his comments thus:

"It will be important for the Council to agree a common European position on a successor arrangement to the US Joint Project Agreement for ensuring that ICANN fulfils its mandate as the unique multi-stakeholder, private sector-led organisation for coordinating the technical functions related to the management of the Internet's domain name system, with the full support of all stakeholders including governments, and without risk of capture by any specific interests. This will continue to be a matter for discussion between the Commission and the High Level Internet Governance Group (HLIG) of senior policy experts from European administrations (including the UK), at its next scheduled meeting in September 2009.

"The UK will work with the Presidency and other Member States to secure that any Council conclusions on the Communication reflect this position."

Conclusion

1.12 **The Minister sets out clearly — and in our view persuasively — the difference between his preferred approach and that of the Commission. At this stage, which approach will prevail is still in the balance.**

1.13 **We shall therefore retain the Communication under scrutiny, and ask the Minister to write to us after the next HLIG meeting with his assessment of how matters then stand, and the chance of the Council agreeing to the sort of common European position that he advocates.**

2 The Internet of Things

(30709) 11223/09 COM(09) 278	Commission Communication: *Internet of Things — An action plan for Europe*

Legal base	—
Document originated	18 June 2009
Deposited in Parliament	23 June 2009
Department	Business, Innovation and Skills
Basis of consideration	EM of 9 July 2009
Previous Committee Report	None; but see (30001) 13737/08: HC 16–xxxiii (2007–08), chapter 6 (29 October 2008); (28475) 7544/07 : HC 41–xxi (2006–07), chapter 10 (9 May 2007); and (27466) 8841/06 HC 41–xxi (2006–07), chapter 15 (9 May 2007)
To be discussed in Council	To be determined
Committee's assessment	Politically important
Committee's decision	Not cleared; further information requested

Background

2.1 In the executive summary to its 2005 Report "The Internet of Things", the ITU (International Telecommunications Union) said:

> "We are standing on the brink of a new ubiquitous computing and communication era, one that will radically transform our corporate, community, and personal spheres … one in which the increasing 'availability' of processing power would be accompanied by its decreasing 'visibility' [and] 'the most profound technologies are those that disappear…they weave themselves into the fabric of everyday life until they are indistinguishable from it'. Early forms of ubiquitous information and communication networks are evident in the widespread use of mobile phones: the number of mobile phones worldwide surpassed 2 billion in mid-2005. These little gadgets have become an integral and intimate part of everyday life for many millions of people, even more so than the internet.
>
> "Today, developments are rapidly under way to take this phenomenon an important step further, by embedding short-range mobile transceivers into a wide array of additional gadgets and everyday items, enabling new forms of communication between people and things, and between things themselves. A new dimension has been added to the world of information and communication technologies (ICTs): from anytime, any place connectivity for anyone, we will now have connectivity for anything"[4]

The Commission Communication

2.2 The Commission says that the idea of "Internet of Things" (IoT) — An action plan for Europe" was first announced in the RFID Communication;[5] takes account of the initial position outlined by the Commission;[6] has since received input from the RFID Expert Group,[7] the EESC and the EU Presidential Conferences of Berlin, Lisbon and Nice;[8] and "comes in response to the invitation made by the Council to "*deepen the reflection on the development of decentralised architectures and promoting a shared and decentralised network governance*" for the Internet of Things.

2.3 In its introduction, the Commission describes this major next step in the development of the Internet as "to progressively evolve from a network of interconnected computers to a

4 See the ITU 2005 report www.itu.int/dms_pub/itu-s/opb/pol/S-POL-IR.IT-2005-SUM-PDF-E.pdf

5 (28475) 7544/07: see HC 41–xxi (2006–07), chapter 10 (9 May 2007) for the Committee's consideration of the Commission Communication on *"Radio Frequency Identification Devices (RFID) in Europe; steps towards a policy framework"*; see headnote.

6 (30001) 13737/08: see HC 16–xxxiii (2007–08), chapter 6 (29 October 2008) for the Committee's consideration of Commission Communication: *"Future networks and the internet"* and the Commission staff working documents: *"indexing broadband performance"* and *"early challenges regarding the "Internet of Things"*.

7 In June 2007, the Commission established an RFID Expert Group which, according to the Commission website, "would, amongst other things, advise on the elements to be included in an upcoming Commission legal instrument on the implementation of privacy, data protection and information security principles in applications supported by RFID." See http://europa.eu/rapid/pressReleasesAction.do?reference=MEMO/08/145&format=HTML&aged=0&language=EN&guiLanguage=en for further information about RFID issues.

8 See http://www.internet2008.eu/spip.php?article9 for full information on the "Ministerial Conference On The Internet Of The Future" held in Nice, under the French Presidency, on 6 and 7 October 2008.

network of interconnected objects, from books to cars, from electrical appliances to food, and thus create an 'Internet of things'" Three points highlight the IoT's complexity:

— it will not be an extension of today's Internet, but will be new independent systems that operate with their own infrastructures;

— it "will be implemented in symbiosis with new services";

— it covers both things-to-person communication and thing-to-thing communications, including Machine-to-Machine (M2M) communication, with connections that can be established in restricted areas ('intranet of things') or made publicly accessible ('Internet of things').

2.4 Its advent is taking place in an ICT environment affected by several major trends:

— *Scale*: the number of connected devices is increasing, while their size is "reduced below the threshold of visibility to the human eye".

— *Mobility*: "objects are ever more wirelessly connected, carried permanently by individuals and geo-localisable".

— *Heterogeneity and complexity*: "IoT will be deployed in an environment already crowded with applications that generate a growing number of challenges in terms of

— Interoperability".

2.5 The Commission then looks at the *Governance of the Internet of Things*. It says that these technical advances will happen, and will usher in their own set of challenges:

> "Simply leaving the development of IoT to the private sector, and possibly to other world regions is not a sensible option in view of the deep societal changes that IoT will bring about. Many of these changes will have to be addressed by European policy-makers and public authorities to ensure that the use of IoT technologies and applications will stimulate economic growth, improve individuals' well-being and address some of today's societal problems."

2.6 The Commission then refers to EU's role as a "key contributor" to the "international consensus" reached at the World Summit on the Information Society, saying that:

> "WSIS recognised the responsibility of governments for public policy issues: public authorities cannot shirk their responsibilities towards their citizens. In particular, the governance of the IoT must be designed and exercised in a coherent manner with all public policy activities related to Internet Governance."[9]

2.7 After proposing 14 lines of action (see paragraph 2.9 below), the Commission concludes by noting that "IoT is not yet a tangible reality, but rather a prospective vision of

9 The Commission refers to "The Tunis Agenda for the Information Society", one of the main outcome documents of WSIS, which is available at http://www.itu.int/wsis/docs2/tunis/off/6rev1.pdf Also see (27466) 8841/06 HC 41–xxi (2006–07), chapter 15 (9 May 2007) for the Committee's consideration of the Commission Communication Commission Communication: *Towards a global partnership in the information society: follow-up to the Tunis phase of the World Summit on Information Society (WSIS).*

a number of technologies that, combined together, could in the coming 5 to 15 years drastically modify the way our societies function." By adopting what the Commission calls "a proactive approach", it says Europe "could play a leading role in shaping how IoT works and reap the associated benefits in terms of economic growth and individual well-being, thus making the *Internet of things* an *Internet of things for people*." By contrast, it sees failing to do as being to miss an important opportunity that "could place Europe into a position where it is forced to adopt technologies that have not been designed with its core values in mind, such as the protection of privacy and personal data." So, "by launching a number of actions and reflections, the Commission intends to be a driving force behind this effort and it invites the European Parliament, the Council and all concerned stakeholders to work jointly to achieve these ambitious yet achievable objectives."

The Government's view

2.8 In his Explanatory Memorandum of 9 July 2009, the Minister for Communications, Technology and Broadcasting at the Department for Business, Innovation and Skills (Lord Carter) says that the Government's view is "mainly one of support for the EU Commission work in this policy area." The Commission is "right to view this technology as a potential economic and social enabler." But "as highlighted in the Communication there are a number of policy challenges around data/protection, governance and fully supporting research and development into Internet of Things technologies like RFID and other near-field communication technologies." The Minister then explains that RFID itself is:

> "an identification and logging technology. RFID systems use tiny chips, also known as 'tags', which contain and transmit pieces of identifying information to the reader (scanner) that, in turn, interfaces with a computer. RFID tags are currently used in applications such as prepaid smartcards, for monitoring livestock, keeping track of bags at airports, and even to combat counterfeiting. They are also increasingly also be used by supermarkets to track stock levels and improve productivity."

2.9 The Minister then analyses and comments on each of the Commission's proposed "14 Lines of Action" as follows:

> "Line of Action 1 — The Commission propose to look into defining a set of principles underlying the governance of the IoT, with 'architecture' to allow sufficient decentralised management of the day-to-day systems and processes of IoT. The UK Government would in principle accept that the governance of the IoT needs to be looked at, but would have concerns if there were a too rigid structure put in place that would stifle the innovation that will flow from the many varying applications that are expected from future IoT technologies.
>
> "Line of Action 2 — The Commission on 12 May 2009, published its Recommendation on 'the implementation of privacy and data protection principles in applications supported by radio frequency identification (RFID)'. The Recommendation did not create any new legal obligations but clarified how existing legislation should be enforced. The UK Government would support the ongoing monitoring of the privacy and data protection implications of the IoT, particularly given the need for adequate safeguards to mitigate potential misuse. The UK Information Commissioner's Office (ICO) has issued guidance on the use of privacy

impact assessments (PIAs) and how these should be carried out. A PIA is a practical tool to help organisations assess and identify privacy risks at an early stage of a proposal, ensure accordance with data protection principles and adequate safeguards are in place, and address any concerns early on the process. Applying this approach to the development of the IoT would be valuable. We welcome the Commission's consultation of the Article 29 Data Protection Working Party as necessary, and the commitment to provide guidance on the correct interpretation of the EU legislation.

"Line of Action 3 — The recent Commission Recommendation on data protection issues surrounding the use of RFID has specific implications for the retail sector as they are increasingly using RFID and other near-field communication technology as an aid to stock control and other back-office functions which can generate considerable cost efficiency savings for retail businesses. The Recommendation suggests retailers conduct a PIA. If the PIA indicates any privacy risks or potential processing of personal data, the retailer should remove or deactivate the RFID tag at the point of sale. If no risk to an individual's privacy is identified then a retailer will not need to remove the electronic RFID tag at the checkout (unless a customer specifically asks). Under the Recommendation, retailers will have to provide a kiosk in store for tags to be removed but they have told the UK Government that they are content to do so. Smaller retailers are excluded from the scope of the Recommendation because they will not meet the description of RFID operators.

"Line of Action 4 —The UK Government are following the European Network and Information Security Agency (ENISA) work on identifying emerging risks relating to trust and security of future IoT applications. It is too early to judge on what measures may follow from this body of work.

"Line of Action 5 — The UK Government share the Commission's view that within 10 years IoT will start to have an impact on society in general with innovative applications coming on stream from ehealth applications to intelligent transport systems to home energy-efficiency systems to name a few. Likewise, businesses in a number of sectors will increasingly use near-field communication technology to increase their efficiency and profits. The UK has already been at the forefront in raising awareness of RFID technology — with two regional RFID centres being set up in Halifax and Camberley, which have the remit to promote take-up and use of RFID technology in their locality.

"Line of Action 6 — The UK Government view is that Standards will play an important role in the uptake of IoT, and that existing standards for RFID technology should be adapted and built on where necessary. It is imperative that future IoT standards are interoperable, accessible and cost efficient. The UK Government are currently considering its policy on deployment of IPv6 addresses within the UK, but generally think that the market should decide when individual businesses start using IPv6 addresses. The current uptake of IPv6 addresses in the UK is low.

"Line of Action 7 — The UK Government fully supports the Commission's proposals to continue to finance 7th Framework Programme (FP7) research projects relating to IoT technologies, as targeted research will find technical solutions to some

of the policy challenges like those on privacy , where "privacy enhancing technologies" (PETs) are currently being looked at.

"Line of Action 8 — Again, the UK Government supports the Commissions push to ensure that the benefits of IoT technologies are realised in the future, especially around personal transportation, energy efficiency both in business and home environment's and in smart manufacturing plants.

"Line of Action 9 — The UK Government supports the proposed pilot projects that will provide societal benefits in the fields of e-health, e-accessibility and bridging the digital divide.

"Line of Action 10 — As highlighted in the response to Action Line 5 — the UK is already head of the curve in raising awareness of the potential of IoT technologies. However, the UK Government agrees that European institutional awareness could be greatly enhanced, to ensure that a true picture of the potential and policy challenges of IoT technologies can be realised. The involvement of the Article 29 Data Protection Working Party is particularly important to ensure that the privacy and data protection implications of the IoT are identified and addressed as the understanding and use of IoT is developed.

"Line of Action 11— The Commission already has a lighthouse project status on RFID with the US Government and are looking at gaining similar agreements with China, Japan and South Korea, which the UK Government support to aide dialogue around particular issues of global standards, harmonised spectrum and R&D.

"Line of Action 12 — The UK Government will closely look at the Commission's study on the difficulties surrounding recycling RFID tags. In general RFID tags do have a part to play in waste management in the future, especially around white goods and electronic equipment — as the tags attached to such equipment can store data on where and when the goods were sold, and what hazardous components that the product may contain.

"Line of Action 13 — The UK Government fully supports the Commission's proposal to start collecting data on the use of RFID technologies, as these are a bellwether on judging the take-up of such technologies, which is currently hard to come by, apart from private sector sources.

"Line of Action 14 — The UK Government supports the general thrust of the Commission's proposal that a multi-stakeholder mechanism should be put in place to monitor the evolution of the IoT, but think that a specific Member State Working Group on IoT should be convened to look and discuss the issues more rigorously in the future."

2.10 Finally, looking ahead, the Minister says that, the Communication having been circulated to the Council, the European Parliament and the Economic and Social Committee, the Swedish Presidency is hosting a conference on the "Future Internet" in Stockholm on 23 and 24 November 2009, and that "it is not envisaged that this particular Communication will progress to Council Conclusions at the end of the year".

Conclusion

2.11 **We shall not be able to reach a view on the Commission's Communication without clarification of the following points in the Minister's Explanatory Memorandum:**

- **In commenting on the Communication, the Minister agrees that there are "a number of policy challenges around data/protection, governance and fully supporting research and development into Internet of Things technologies like RFID and other near-field communication technologies.". We should like him to say what they are.**

- **Under *Line of Action 1* — we ask the Minister to explain what is meant by "a set of principles underlying the governance of the IoT, with "architecture" to allow sufficient decentralised management of the day-to-day systems and processes of IoT". And what he means by "a too rigid structure […]. that would stifle the innovation that will flow from the many varying applications that are expected from future IoT technologies." And to explain what his concerns are, and how he sees them being headed off.**

- **Under *Line of Action 2*, the Minister says that on 12 May 2009 the Commission published its Recommendation on "the implementation of privacy and data protection principles in applications supported by radio frequency identification (RFID)". We ask the Minister tells us when this was deposited for scrutiny; and, if appropriate, explain why it was not.**

- **Also, we ask the Minister to explain what the Article 29 Data Protection Working Party is (its role and composition), and what the EU legislation is to which he refers.**

- **Under *Line of Action 3*, we ask the Minister to explain what he means by his penultimate sentence: if retailers will have to provide a kiosk in store for tags to be removed, are they genuinely content, or if they have agreed under sufferance?**

- **Under *Line of Action 6*, we ask the Minister to say what he means by "existing standards for RFID technology should be adapted and built on where necessary", and to explain what IPv6 addresses are, and thus what the Government's policy is beyond "that the market should decide when individual businesses start using IPv6 addresses", given the implication that this is in some way in conflict with the views of the Commission.**

- **Under *Line of Action 11,* we ask the Minister to explain what "lighthouse project status on RFID" is, and thus the significance of the Commission already having this with the US Government and why it is "looking at gaining similar agreements with China, Japan and South Korea".**

2.12 **We should be grateful for further information on these points. Meanwhile, we shall retain the document under scrutiny.**

3 Marketing standards for poultrymeat

(29727) 10351/08 COM(08) 336	Draft Council Regulation amending Regulation (EC) No. 1234/2007 establishing a common organisation of agricultural markets as regards marketing standards for poultrymeat

Legal base	Article 37EC; consultation; QMV
Document originated	28 May 2008
Deposited in Parliament	10 June 2008
Department	Environment, Food and Rural Affairs
Basis of consideration	EM of 16 July 2008, and Minister's letters of 21 May 2009 and 16 July 2009
Previous Committee Report	None
To be discussed in Council	See para 3.7 below
Committee's assessment	Politically important
Committee's decision	Not cleared; further information awaited

Background

3.1 Council Regulation (EC) No 1234/2007[10] establishes a common organisation of agricultural markets, and the various provisions relating to specific commodity areas include marketing standards which define the conditions which must be met by fresh, frozen and quick-frozen poultrymeat respectively.

The current document

3.2 In May 2008, the Commission put forward a proposal which would amend this Regulation in the following two respects:

- it would amend the definition of poultrymeat so as to make it compatible with a separate proposal on the authorisation of certain substances to remove surface contamination from poultry carcases, with the caveat that this amendment would be withdrawn if that other proposal is not adopted; and
- it would extend its scope to include poultrymeat in brine and poultrymeat preparations and products, and it would at the same time amend the definitions applying to fresh and frozen produce, thereby preventing a product being sold as fresh if it had at any time previously been frozen or quick-frozen.

The Government's view

3.3 In his Explanatory Memorandum of 16 July 2008, the then Minister (Lord Rooker) said that the UK supported the aims of the proposal, but that further consideration was

10 OJ No L 299, 16.11.07, p.1.

required of the implications, costs and benefits for producers, processors and consumers, and that this would be carried forward in consultations. He added that an Impact Assessment would be submitted by October 2008, and, in view of this, we decided to await that information before considering the proposal further.

3.4 Despite the Department having been sent several reminders, we heard nothing until we received a letter of 21 May 2009 from the then Minister (Jane Kennedy), indicating that, following the near unanimous rejection by the Council of the separate proposal on the treatment of poultry carcases, the amendment linked to that proposal had been deleted. However, she went on to say that, on the other aspects of the current document extending the marketing provisions to poultrymeat preparations and products, the UK had raised concerns about their clarity, safety and legality, but had received limited support from other Member States. As a result, an amended text — which remained unacceptable to the UK — was likely to go to the Council later that month.

3.5 However, she gave no indication of the basis for the UK's concerns, or of the implications of the changes which had apparently been made to the original proposal; and nor, despite strongly criticising the absence of a Commission Impact Assessment, had the Government provided its own promised Assessment. In view of this, our Chairman wrote on 3 June, indicating that, as things stood, there was no way we could consider — still less clear — the proposal, and asking for further information, including some indication of the likely costs and benefits so far as the UK is concerned.

Minister's letter of 16 July 2009

3.6 We have now received a letter of 16 July from the Minister of State at the Department for Environment, Food and Rural Affairs (Jim Fitzpatrick) indicating that the UK intervened in the Special Committee on Agriculture on 7 July to stress once more that the proposal was inconsistent with the Community trend of rationalising marketing standards, flouted best practice in its failure to be accompanied by an Impact Assessment, made poor policy sense by a prohibiting a safe, profitable business practice, and made poor sense politically since it had now antagonised major trading partners.

3.7 He adds that the UK remains opposed to the proposal, and had argued that the Commission should extend the transitional period provided for until 1 April 2011, both to smooth transition and to accommodate concerns of third countries. However, the Presidency had concluded that there continued to be a qualified majority in favour of the text, with only the UK against the measure, and that the dossier would go to the Agriculture and Fisheries Council in the autumn as a false B point.

3.8 The Minister says that the poultry industry has estimated that preventing previously frozen poultrymeat preparations being sold as chilled could cost it in excess of £160m in sales, although the economic cost would be mitigated by consumers shifting to other meat categories. He adds that his officials are continuing to work with the industry to assess the full impact of the proposal, and will provide an Impact Assessment in the autumn.

Conclusion

3.9 **This document raises a number of concerns, including the lack of a Commission Impact Assessment, and the fact that the other Member States seem willing to agree to a proposal on which the UK has such strong criticisms, and which appears to have such adverse consequences so far as the industry is concerned. Our concerns are compounded by the way in which the document has been handled by the Government, where it has signally failed to deliver its promise to provide its own Impact Assessment last autumn, and has supplied us with information only slowly and when pressed to do so. As such, its performance in this case only underlines the concerns we have expressed previously over the way in which this Department's scrutiny operation is conducted.**

3.10 **As things stand, we can do no more than register these concerns, but we will return to the subject once we have received the Impact Assessment which the Minister now says will be provided in the autumn. In the meantime, we are drawing this unsatisfactory situation to the attention of the House.**

4 Aviation security charges

(30645) 9864/09 + ADDs 1–2 COM(09) 217	Draft Directive on aviation security charges

Legal base	Article 80(02) EC; co-decision; QMV
Department	Transport
Basis of consideration	Minister's letter of 15 July 2009
Previous Committee Report	HC 19–xxi (2008–09), chapter 2 (24 June 2009)
To be discussed in Council	Possibly 8–9 October 2009
Committee's assessment	Politically important
Committee's decision	Not cleared; further information requested

Background

4.1 Regulation (EC) No 300/2008 updated legislation establishing common standards for civil aviation security and creating a system of inspections.[11] During the conciliation procedure before adoption of the Regulation the European Parliament requested that the Commission report on the principles of financing the costs of civil aviation security measures, and on adoption of the Regulation the Commission undertook to do this. In

11 (26861) 12588/05: see HC 34–viii (2005–06), chapter 4 (2 November 2005), HC 34–xv (2005–06), chapter 2 (18 January 2006) and HC 34–xxi (2005–06), chapter 1 (8 March 2006) and *Stg Co Deb*, European Standing Committee, 7 March 2006, cols 3–16.

February 2009 the Commission published such a Report and indicated that it would continue preparing a legislative proposal based on the assessment in it.[12] In March 2009 Directive (EC) No 12/2009 on airport charges in general (the Airport Charges Directive) was adopted. However the question of security charges was not addressed during the negotiation of this Directive, as the findings of the Commission's Report were still awaited.[13]

4.2 In May 2009 the Commission presented this draft Directive on aviation security charges which would require:

- airport managing bodies to provide each user annually with information on the components serving as a basis for determining the level of all security charges levied at an airport;
- Member States to undertake impact assessments for all new and current measures that are more stringent (referred to as More Stringent Measures) than the standard Community-wide requirements;
- Member States to ensure that security charges are used exclusively to meet security costs; and
- Member States to nominate or establish an independent body to ensure the correct application of these measures.

4.3 The Airport Charges Directive sets out principles for how airports should set airport charges and their relationship with airports. It covers many of the same areas mentioned in the draft Directive, such as non-discrimination, consultation requirements, providing information about underlying costs and how charges are set and a right of appeal to a regulator. However, the draft Directive differs from the Airport Charges Directive in a number of ways, including that:

- the Airport Charges Directive only covers airports with an annual traffic of five million or more passenger movements, but there is no size threshold in this proposal; and
- the Airport Charges Directive allows multi-annual agreements whereas this proposal requires annual agreements.

4.4 When we considered this document in June 2009 we noted that:

- the Government welcomed the broad thrust of the Commission's Report on aviation security charges;
- it was still considering the policy and operational implications of the draft Directive, including whether it conformed to the subsidiarity principle;

12 (30429) 6074/09: see HC 19–xi (2008–09), chapter 14 (18 March 2009).

13 (28346) 5887/07 + ADDs 1–2: see HC 41–xi (2006–07), chapter 3 (28 February 2007), HC 16–ii (2007–08), chapter 4 (14 November 2007) and HC 16–iv (2007–08), chapter 22 (28 November 2007).

- however, it already had concerns about some of the provisions in the draft Directive;
- it would be seeking clarification from the Commission on the various issues and the views of stakeholders to inform its negotiating position; and
- it was still analysing the Commission's impact assessment and considering the financial implications for the UK.

4.5 We concluded that although the matter of aviation security charges clearly had to be addressed, this draft Directive presented some problems. So we asked, before considering it further, to hear from the Government about developments on:

- its view of subsidiarity;
- More Stringent Measures;
- the differences between the Airport Charges Directive and this proposal;
- the potential impact on small airports;
- separately identified security charges;
- the Government's analysis of the Commission's impact assessment and of the financial implications of the proposal; and
- its consultations.

Meanwhile the document remained under scrutiny.[14]

The Minister's letter

4.6 The Parliamentary Under-Secretary of State, Department for Transport (Paul Clark), writes now, because, as the Swedish Presidency continues to seek a General Approach on the proposal at the October 2009 Transport Council, he wishes to give us as much information as he could at this stage. The Minister first reports that at the June 2009 Transport Council, during discussion following a Commission presentation on the draft Directive, the Government outlined its wishes for the proposal:

- the charging elements of the proposed Directive to match those in the Airport Charges Directive as closely as possible;
- to be sure that Member States' ability to swiftly impose More Stringent Measures when the situation demands it is in no way restricted; and
- to make sure the proposal is line with subsidiarity and proportionality principles and would not cause unnecessary administrative burdens on public authorities and private businesses.

14 See headnote.

4.7 The Minister continues that, at an initial presentation of the proposal by the Commission to the Council Aviation Working Group on 2 July 2009:

- it was clear that many Member States are, at present, unenthusiastic about aspects of the proposal; and
- the Government flagged up some key questions about what the costs and benefits of the proposal would be and whether it would be more appropriate to amend the existing Airport Charges Directive.

4.8 The Minister then tells us about the Government's consideration of the detail of the proposal, saying that:

- the Government is working closely with the Civil Aviation Authority and involving other industry stakeholders and the Devolved Administrations;
- it is seeking detailed views from UK stakeholders through a public consultation over the 2009 summer;
- in the meantime its approach at the next Working Group meetings will be to continue to ask key questions and pursue in more detail the headline messages that the Government gave at the June 2009 Transport Council; and
- the Government considers it important to continue to emphasise that "the user pays principle" applies to aviation security measures.

4.9 Turning to costs and impact assessment the Minister says that:

- it is not possible to quantify the security requirements imposed on the aviation industry in financial terms;
- that said, the Government recognises that security measures must be proportionate to the changing threat, which is why they are subject to continuous review and why it continues to consult the aviation industry to ensure that measures are proportionate and appropriate;
- the Government is finalising an initial, partial impact assessment as part of the public consultation package; and
- it expects, however, that a fuller understanding of the exact impacts will not be possible until the consultation is underway.

Conclusion

4.10 **We are grateful for the Minister's interim account of where matters stand on this draft Directive. However we will not be able to give more detailed attention to the document until he is able to respond more fully to the points we raised in our earlier report. Meanwhile the document continues to remain under scrutiny.**

5 Statistics

(30664) 10343/09 COM(09) 238	Draft Council Decision on the allocation of financial intermediation services indirectly measured (FISIM) for the establishment of the gross national income (GNI) used for the purposes of the European Communities' budget and its own resources

Legal base	Article 269 EC; consultation; unanimity
Department	HM Treasury
Basis of consideration	Minister's letter of 14 July 2009
Previous Committee Report	HC 19–xxii (2008–09), chapter 4 (1 July 2009)
To be discussed in Council	Not known
Committee's assessment	Politically important
Committee's decision	Not cleared; further information requested

Background

5.1 "Financial intermediation services indirectly measured" (FISIM) is an estimate of the value of the services provided by financial intermediaries, typically banks, for which no explicit price is charged — rather these services are paid for as part of the margin between rates applied to savers and borrowers. The allocation of FISIM within the Community system of national and regional accounts (the European System of Accounts 1995, ESA 95) in order to establish gross national income (GNI) was defined in Council Regulation (EC) No. 448/98 and was implemented from 1 January 2005 by Commission Regulation (EC) No. 1889/2002. However, for the purposes of the Communities' budget and own resources[15] the allocation of FISIM is not automatically applied, instead:

- adoption of a Council Decision modifying ESA 95 is required under Article 8(1) of Council Regulation (EC) No. 448/98; and
- if it is established that the allocation of FISIM constitutes a significant change in GNI, the Council shall decide, under Article 2(7) of the Own Resources Decisions (ORDs) of 29 September 2000 and 7 June 2007, that such modifications apply for the purposes of both the ORDs.

5.2 In May 2009, in presenting this draft Decision the Commission:

- considered that allocation of FISIM in establishing GNI used for the purposes of the Communities' budget and own resources would have a significant impact on Member States' estimated own resources contributions and would also modify the ceilings for payments and commitments as established under the ORDs;

15 There are four sources of Community revenue, or "own resources" — customs duties including those on agricultural products, sugar levies, contributions based on VAT and GNI-based contributions.

- noted that Commission Regulation (EC) No. 1889/2002 required Member States to allocate FISIM in their annual ESA 95 data transmissions and that this requirement had not been complied with fully until the transmission of ESA data in September or October 2008; and
- noted that, as the requirement had now been complied with, the Commission was able to put forward this proposal.

5.3 The draft Decision is intended to allocate FISIM for establishing GNI used for the purposes of own resources by modifying ESA 95 in accordance with Council Regulation (EC) No. 448/98 and to apply the modification in accordance with the ORDs. The proposal would enter into effect retrospectively to 1 January 2005, in line with the entry into effect of Commission Regulation (EC) No. 1889/2002 (and so affect own resource calculations made under the first ORD).

5.4 When we considered this proposal earlier this month we:

- said that, clearly, FISIM would have to be taken into account in calculating GNI for the purposes of assessing the own resources liabilities of Member States;
- noted, however, the Government's seemingly well-founded caution on the timing of the proposal;
- said, therefore, that before considering the draft Decision further we wanted to hear the outcome of the Government's attempt to secure a cautious approach to the matter; and
- asked also to hear about the clarification being sought of the possible financial impact of the proposal.

Meanwhile the document remained under scrutiny.[16]

The Minister's letter

5.5 The Economic Secretary to the Treasury (Ian Pearson) tells us that there was an initial discussion of the proposal in the Council's Own Resources Working Group on 6 July 2009. The Minister says that at this meeting:

- a number of Member States, notably the Netherlands, Germany and Ireland, shared the Government's concerns over the timing of the proposal;
- other Member States voiced concerns about the proposal being retrospective; and
- no conclusions were formed, although it was suggested to the Commission that a better time to deal with the issue would be as part of any change to the own resources system resulting from decisions on the next Financial Perspective and from the next change to the ESA, both of which are due in 2014.

16 See headnote.

5.6 The Minister adds that there will be further meetings of the Working Group in September and October 2009 and that the Commission has undertaken to provide Member States with data on the financial implications of the proposal before the first of those meetings.

Conclusion

5.7 **We are grateful to the Minister for this interim report and look forward to hearing about both further developments on the timing of the proposal and the Commission's promised information on the possible financial impact of the proposal.**

5.8 **Meanwhile the document continues to remain under scrutiny.**

6 Accreditation of Forensic Science Laboratories

(30720) 10964/09 + ADD 1	Draft Council Framework Decision on the accreditation of forensic science laboratory activities
—	Explanatory Memorandum

Legal base	Articles 30(1)(c), 30(a), 31 and 34(2)(c) EU; consultation; unanimity
Deposited in Parliament	30 June 2009
Department	Home Office
Basis of consideration	EM of 15 July 2009
Previous Committee Report	None
To be discussed in Council	October 2009
Committee's assessment	Legally and politically important
Committee's decision	Not cleared; further information requested

Background

6.1 Article 34(2) of the EU Treaty authorises the Council of Ministers, acting on the initiative of either a Member State or the Commission, to adopt legislation on police and judicial cooperation in criminal matters for which Title VI of the EU Treaty provides the legal base. This Framework Decision is proposed by Sweden and Spain.

6.2 ISO/IEC 17025 sets out general requirements for the competence of testing and calibration laboratories. The requirements apply to, for example, the laboratory's quality management system, the competence of the staff and the quality of the equipment. Accreditation of a laboratory to the ISO standard ensures that the methods the laboratory uses are valid, the equipment is appropriate for the method, the staff performing the

analysis are competent and the organisation has the capacity to maintain the quality of its results.

The document

6.3 In their explanatory memorandum about the draft Framework Decision, the proposers (Sweden and Spain) say that, with the growth in the volume of information exchanged between Member States for the purposes of police and judicial cooperation in criminal matters, it is becoming increasingly important to ensure that the quality of the data is sufficiently high; this applies as much to forensic evidence as to other data.

6.4 Article 1 says that the measure's objective is to ensure that the results of the laboratory activities in one Member State are recognised as being equivalent to the results of laboratory activities in other Member States. The objective is to be achieved by ensuring that all laboratory activities are accredited to comply with ISO 17025 (see paragraph 6.2 above).

6.5 The draft Framework Decision:

- applies to "laboratory activities" related to DNA and fingerprints;
- defines laboratory activities as any measure taken when handling, developing, analysing or interpreting forensic evidence;
- requires every Member States to ensure that laboratory activities in its area are tested by the national accreditation body for compliance with ISO 17025;
- requires Member States to comply with the Framework Decision by January 2012; and
- requires the Commission to make a report on the implementation of the Framework Decision before the beginning of 2014.

The Government's view

6.6 In his Explanatory Memorandum of 15 July 2009, the Parliamentary Under-Secretary of State at the Home Office (Mr Alan Campbell) tells us that the commercial forensic science laboratories in England and Wales and Forensic Science Northern Ireland are already accredited to ISO 17025. The Scottish Police Service Authority is accredited for DNA analysis and has applied for accreditation for fingerprint analysis. In England, Wales and Northern Ireland, the police forces are responsible for most of the work on fingerprints and are not accredited to ISO 17025.

6.7 The Minister tells us that the Association of Chief Police Officers broadly accepts the need for accreditation but has reservations about the additional cost to police forces.

6.8 The Minister also says that the Government supports the proposed use of the ISO for DNA and fingerprint evidence. He adds, however that the Government:

> "will take care to ensure that these provisions do not require the UK to accept the results of laboratory activities carried out in other Member States to be recognised as admissible for evidential purposes in UK courts […]."[17]

Conclusion

6.9 **Article 30(a) and 31 of the EU Treaty are cited as legal bases for the Framework Decision. We question this because the Treaty does not contain an Article 30(a) and because Article 31 goes far wider than the provisions of the draft Decision. Article 31 covers judicial cooperation for purposes such as extradition and preventing conflicts of jurisdiction and it requires the Council to encourage cooperation through Eurojust.**

6.10 **Article 1 of the draft Framework Decision clearly states the objective of the measure: mutual recognition by all Member States of forensic evidence about DNA and fingerprints emanating from laboratories which have been accredited to ISO 17025 wherever they are located in the EU. The Minister says that the Government supports the use of ISO 17025 but also says that it will ensure that the requirements for mutual recognition will not apply in the UK. We do not understand why the Government appears to oppose the objective of the Framework Decision. We also wonder whether the measure would be consistent with the principle of subsidiarity if, as the Government appears to wish, it did no more than require Member States to ensure that the relevant laboratory activities comply with ISO 17025.**

6.11 **We should be grateful for the Minister's comments on these points. Pending his reply, we shall keep the document under scrutiny.**

17 Minister's Explanatory Memorandum, paragraph 21.

7 Agency for the management of JHA databases

(a) (30736) 11709/09 COM(09) 292	Commission Communication: *Legislative package establishing an Agency for the operational management of large-scale IT systems in the area of freedom, security and justice*
+ ADDs 1–2	Commission staff working documents: impact assessment and summary of assessment
(b) (30737) 11722/09 COM(09) 293	Draft Regulation establishing an Agency for the operational management of large-scale IT systems in the area of freedom, security and justice
(c) (30738) 11726//09 COM(09) 294	Draft Council Decision conferring upon the Agency established by Regulation XX tasks regarding the operational management of SIS II and VIS in application of Title VI of the EU Treaty

Legal base	(a) — (b) Articles 62(2)(a), 62(2)(b)(ii), 63(3)(b) and 66 EC; co-decision; QMV (c) Articles 30(1)(a) and (b) and 34(2)(c) EU; consultation; unanimity
Document originated	(All) 24 June 2009
Deposited in Parliament	(All) 3 July 2009
Department	Home Office
Basis of consideration	(All) EM of 14 July 2009
Previous Committee Report	None
To be discussed in Council	No date set
Committee's assessment	Politically important
Committee's decision	(a) cleared (b) and (c) not cleared; further information requested

Background

7.1 The EC has or is developing three large Justice and Home Affairs (JHA) databases:

- ***EURODAC***, which stores asylum seekers' fingerprints and is used to help Member States decide which of them is responsible for deciding an asylum application;

- ***SIS II***, which will contain information about, for example, people wanted for arrest and extradition, third country nationals to be denied entry to any of the Schengen states, missing people and stolen property. Its purpose is to help participating states enforce the provisions of the Schengen *acquis* on the free movement of people and on police and judicial cooperation in criminal matters; and

- ***VIS*** (the Visa Information System), which will store records of all Schengen visa applications received in participating Member States' missions overseas, together with the applicant's photograph and fingerprints. VIS will make it easier for Member States to exchange visa information so as, for example, to detect visa fraud. VIS may be consulted not only by immigration authorities but also by Europol and Member States' law enforcement authorities for the purposes of the prevention and detection of terrorist and other serious offences.

7.2 The Commission is responsible for the operational management of EURODAC. It is also responsible for completing the development of SIS II and VIS and will then be responsible for the operational management of both systems for a transitional period of five years. When approving the legislation to establish SIS II and VIS, the Council of Ministers and the European Parliament invited the Commission to present proposals for legislation to make an agency responsible for the management of the systems.

7.3 Title IV of the EC Treaty provides that, in pursuit of the progressive establishment of an area of freedom security and justice, the Council of Ministers should adopt measures on visas, asylum, immigration and other policies related to the free movement of people within the EU. Article 69 of the Treaty and Protocol 4 provide that the UK is not to take part in the adoption of any Title IV measure, or be bound by it, unless the UK has expressly opted into the measure.

7.4 Title VI of the EU Treaty provides that the EU's objective is to provide citizens with a high level of safety in an area of freedom, security and justice. The objective is to be achieved by preventing and fighting crime through closer cooperation between Member States' law enforcement and judicial authorities.

7.5 Title IV of the EC Treaty provides the legal bases for the legislation on EURODAC and for the legislation on SIS II and VIS relating to visas, asylum and immigration. Title VI of the EU Treaty provides the legal base for legislation on the use of SIS II and VIS for the purposes of police and judicial cooperation in criminal matters.

The documents

7.6 Document (b) is the draft of a Regulation to create an Agency to be responsible for the operational management of SIS II, VIS and EURODAC. It also provides for the Agency to develop and manage other large-scale information technology systems for which Title IV of the EC Treaty provides the legal base.

7.7 Document (c) is the draft of a Decision to make the Agency responsible for managing the parts of SIS II and VIS for which Title VI of the EU Treaty provides the legal base (police and judicial cooperation in criminal matters).

7.8 The Agency would be an EC body with its own legal personality. It would be funded by contributions from the EU budget and the Member States. Article 9 of the draft Regulation lists the powers of the Management Board. They include appointing the Agency's Executive Director, approving the annual work and agreeing the annual estimates of revenue and expenditure. The Management Board would comprise one representative of each Member State and two representatives of the Commission. Europol and Eurojust

would have observer status at the Board when matters relevant to their functions were discussed and would be represented on the Agency's SIS II and VIS advisory groups. The Agency would be established in 2011 and take over the management of the databases in 2012. It would employ 120 staff. The Agency's total start-up costs between 2010 and 2013 would be €113 million.

7.9 Document (a) is a Commission Communication which summarises the proposals and the case for them.

7.10 Insofar as it relates to SIS II and VIS, the Regulation builds on provisions of the Schengen *acquis* in which the UK does not take part. To that extent the UK cannot take part in the Regulation. This is confirmed in recital 26. But, to the extent that the Regulation does not build on those parts of the Schengen *acquis*, the UK may participate if it decides to opt into the Regulation. It would also be open to the Government to opt into the Regulation insofar as it applies to EURODAC because the UK has opted into the EURODAC Regulation of December 2000.[18]

7.11 Recital 8 of the draft Decision says that:

- because the Decision, insofar as it applies to VIS, is a development of the Schengen *acquis* in which the UK does not participate, the UK is not taking part in the adoption of the Decision and will not be bound by it; but
- the UK is taking part in the Decision so far as its provisions relate to SIS II (for the purpose of police and judicial cooperation in criminal matters).

The Government's view

7.12 In his Explanatory Memorandum of 14 July 2009, the Minister of State at the Home Office (Mr Phil Woolas) tells us that the UK's starting point in the negotiations on documents (b) and (c) is that the UK's involvement in the proposed Agency should reflect the UK's current participation in the JHA databases. The UK is connecting to SIS II for the purposes of police and judicial cooperation in criminal matters. It also participates in EURODAC. The UK is currently excluded from VIS. But the Government is challenging in the European Court of Justice the exclusion of the UK from the Council Decision[19] which give law enforcement authorities access to VIS. The outcome of that case will affect whether the UK could take part in document (c).

7.13 The Government has not yet decided whether to opt into the draft Regulation. The Minister says that there appears to be some merit in bringing together the management of the JHA databases. But the Government is still considering the details of the proposals, such as the financial consequences for the UK of participation in the Agency and the adequacy of the proposals for data protection and security arrangements.

18 Regulation (EC) No. 2725/2000: OJ No. L 316, 15.12.00, p.1.

19 Decision2008/633/JHA: OJ No. L 218,13.8.08, p.129.

Conclusion

7.14 **We recognise the potential benefits of creating a single Agency to manage SIS II, VIS, EURODAC and other large JHA systems. But it is too soon for us to go beyond that tentative view because the negotiations on the draft Regulation and Decision have not yet begun; the Government is still considering the details of the proposals; the Government has not yet decided whether to opt into the Regulation; and it will remain uncertain whether the UK could participate in the proposed Decision until the European Court of Justice decides the UK's challenge to its exclusion from the Council Decision on the access of law enforcement authorities to VIS.**

7.15 **We ask the Minister to give us progress reports on the negotiations and on the Government's further consideration of the proposals. Meanwhile, we have decided to clear document (a) — the Commission Communication — and to keep documents (b) and (c) under scrutiny.**

8 Transfer of criminal proceedings

(30729) 11119/09 —	Draft Council Framework Decision on Transfer of Proceedings in Criminal Matters
+ ADD 1	Draft Council Framework Decision on Transfer of Proceedings in Criminal Matters — Explanatory Report

Legal base	Articles 31(1)(a) and 34(2)(b) TEU; consultation; unanimity
Deposited in Parliament	2 July 2009
Department	Justice
Basis of consideration	EM of 16 July 2009
Previous Committee Report	None
To be discussed in Council	July 2009
Committee's assessment	Legally important
Committee's decision	Not cleared; further information requested

Introduction

8.1 The draft Framework Decision is an initiative of 15 Member States[20] to establish a common set of rules within the EU for the transfer of criminal proceedings between Member States. The Presidency aims to reach political agreement on it at the JHA Council on 30 November.

20 Belgium, Bulgaria, Czech Republic, Denmark, Estonia, Greece, Spain, France, Lithuania, Latvia, Hungary, Netherlands, Romania, Slovenia, Slovakia.

Background

8.2 The Council's "Explanatory Report" states that Member States of the EU are "increasingly confronted" with situations where two or more Member States have jurisdiction to investigate "the same or related criminal offences". Examples include offences which are committed in more than one Member State, such as people trafficking, or where one Member State has jurisdiction because the suspect is a national of that Member State, and another because the offence was committed on its territory. Where criminal proceedings for the same or related offences are brought in two different Member States, the Explanatory Report states "in the light of the general aim of the EU to create a common area of freedom, security and justice it would in many situations be more appropriate to concentrate proceedings to one Member State."

8.3 The Explanatory Report refers to relevant existing legislation. A Council of Europe Convention on the Transfer of Proceedings in Criminal Matters was adopted in 1972, but only 13 EU Member States have ratified it. The UK is not one of them. Since 2000 all EU Member States have been party to the Convention on Mutual Assistance in Criminal Matters, which supplements the 1959 Council of Europe convention on mutual assistance in criminal matters in the EU. States rely on this heavily for the purposes of transferring evidence to assist each other in bringing criminal proceedings. There is also an agreement on the transfer of criminal proceedings between EU Member States that was signed in 1990, before the third pillar of the EU was established. This never came into force through lack of ratifications. The Explanatory Report concludes: "There is, however, no common legal framework on the procedure of transfer of proceedings with, e.g., criteria for requesting transfer, a procedure following request, reasons for refusing a request and effects of transfer. In line with the aim of creating a common European area of freedom, security and justice, it thus becomes necessary to take action so as to eliminate the deficits [sic] of the existing legal framework".

Draft Framework Decision

Chapter 1 General Provisions

8.4 Article 1 defines the objectives of the instrument as being to increase efficiency in criminal proceedings and improve the proper administration of justice. These will be accomplished by establishing rules on transfer of criminal proceedings between authorities of Member States, "taking into account the legitimate interests of suspects and victims". Article 2 states that the Framework Decision complies with fundamental rights, and Article 3 defines "offence", "transferring authority" and "receiving authority". Article 4 gives Member States flexibility in determining competent authorities for the transfer of proceedings, and is consistent with similar provisions in other Framework Decisions.

8.5 Article 5 addresses competence to prosecute when proceedings are transferred between Member States and is far-reaching:

> "(1) For the purpose of applying this Framework Decision, any Member State shall have competence to prosecute, under its national law, any offence to which the law of another Member State is applicable.

> "(2) The competence conferred on a Member State exclusively by virtue of paragraph 1 may be exercised only pursuant to a request for transfer of proceedings."

8.6 The Council's Explanatory Report provides the following rationale for this Article (emphasis added):

- "In order for proceedings to be transferred, wherever the interests of a proper administration of justice so require, it is *essential* to confer competence on the Member State of the receiving authority in cases where that Member State would not otherwise have competence.
- "Competence can be conferred by giving a request for proceedings an *automatic effect of making the criminal law of the Member State of the receiving authority applicable.*
- "In order to avoid conflict with the principle of *nulla poena sine lege* another method has been chosen, in conformity with the corresponding provision of the 1972 [Council of Europe] Convention [on transfer of criminal proceedings]. Article 5(1) thus provides for applicability of the criminal law of each Member State to any offence to which the criminal law of another Member State is applicable. *This implies that the Member State in question was already competent at the time the act was committed.*
- "The above mentioned extension of competence should, for obvious reasons, remain limited to what is necessary for the purposes of the transfer.
- "The competence conferred in accordance with this provision is subsidiary in application and can be exercised only if the Member State having original jurisdiction is unable to exercise it or waives its right to do so.

8.7 Article 6 provides for the Member State having original jurisdiction to waive or discontinue the proceedings in favour of a Member State identified as being in a better position to prosecute. The Explanatory Report states that this Article is devised for Member States which have legal systems based on the "principle of legality" of proceedings, i.e. the obligation to prosecute an offender. Without the provision these Member States may be bound by their national law to initiate their own proceedings.

Chapter 2 Transfer of proceedings

8.8 Article 7 gives a Member State, which is competent to prosecute an offence, the possibility (rather than obligation) of requesting another Member State to institute proceedings against the suspect "if that would improve the efficient and proper administration of justice", and if at least one of several criteria is met. The criteria are alternatives, not cumulative, and the list is exhaustive. They are linked to Article 12 which sets out the cases in which the receiving authority may refuse the request. The criteria for transfer are as follows:

- If the offence has been committed wholly or partly in the territory of the other Member State, or a substantial part of the damage caused by the offence was sustained in the territory of the other Member State.

- The suspect is ordinarily resident in the other Member State.
- Most of the evidence is located in the other Member State.
- There are ongoing proceedings against the suspected person in the other Member State; or there are ongoing proceedings in respect of the same or related facts involving other persons, in particular in respect of the same criminal organisation, in the other Member State.
- The suspected person is serving or is to serve a sentence involving deprivation of liberty in the other Member State.
- Enforcement of the sentence in the other Member State is likely to improve the prospects for social rehabilitation of the person sentenced or serve other benefits.
- The victim is resident in the other Member State or has another significant interest in having the proceedings transferred.

8.9 The Explanatory Report states that the criteria are not listed in order of importance and none has overriding importance for the aims of the Framework Decision; they are all intended to achieve the overriding objective, that of a better administration of justice.

8.10 Article 8 ("informing the suspected person") concerns the effect of a decision to transfer proceedings on the suspect. The transferring authority is required "where appropriate and in accordance with national law" to inform the suspect and if the suspect "presents an opinion on the transfer" the transferring authority shall inform the receiving authority of its contents. The Explanatory Report confirms that the objective of this Article is to "confirm the individual's right to defend himself, since the decision could affect the outcome of the criminal proceedings."

8.11 Article 9 deals with the "rights" of victims. The competent authorities shall give due consideration to victims' rights under the national law before a transfer request is made, in particular to the right to be informed about an intended transfer.

8.12 Article 10 concerns the procedure for making a request and indicates which documents must accompany the request. Paragraph (1) provides the possibility for the competent authorities to consult before a request is made when it is likely that a transfer is likely to be refused for one of the reasons set out under Article 12. Paragraph (2) gives flexibility when it comes to the procedure for consultation. If appropriate, the transferring authority may use a standard form for providing the information necessary. Paragraph (4) concerns the actual request for transfer, stipulating that the request shall be accompanied by the "criminal file or relevant parts thereof" and the use of the form in cases where it has not already been used during the consultation procedure. The Explanatory Report comments that "[u]ltimately, it is for the receiving authority to judge which information is necessary in each particular case and, where appropriate, ask the transferring authority for the additional information needed." A copy of relevant legislation, or a statement of relevant law, should also accompany the request. This is because of the double criminality requirement in Article 11. Paragraph (6) provides that the right of prosecution will revert to the transferring authority if it withdraws the request at any time before the receiving authority has informed it of a decision to accept transfer of proceedings under Article 13.

8.13 The requirement of double criminality is set out in Article 11:

> "A request for transfer of proceedings can be complied with only if the act underlying the request for transfer constitutes an offence under the law of the Member State of the receiving authority".

8.14 The Explanatory Report states that the principle of double criminality *in abstracto,* as opposed to *in concretu,* has been chose in conformity with other EU instruments. "This means that the act underlying the request for transfer has to fit the definitions of the requirements of an offence in both Member States." The provision should, however, be read in conjunction with the grounds for refusal in Article 12.

8.15 The reasons for which a transfer may be refused are listed in Article 12, and are to some extent consistent with the grounds for refusal already familiar from other Framework Decisions. Subparagraph 1(g) entitles the receiving authority to dispute the factual or legal reasons given by the transferring authority to justify its request for transfer. This provision relates to the criteria listed in paragraphs in Article 7. Other reasons include if the double criminality test in Article 11 is not met; if taking the proceedings would be contrary to the *ne bis in idem* principle; if the suspect is too young to be tried or benefits from immunity; or if the prosecution is statute-barred or the offence is covered by a national amnesty. The receiving authority can also refuse transfer of proceedings in cases where its competence to prosecute is exclusively based on Article 5 of the Framework Decision if it disputes the assessment of the overriding requirement in Article 7, that a transfer "would improve an efficient and proper administration of justice". Before deciding to refuse transfer on this ground the receiving authority shall, however, in accordance with paragraph (3), consult with the transferring authority.

8.16 Article 13 provides that the receiving authority will determine "without undue delay" whether to accept the transfer. The Explanatory Report adds that "[n]othing in the Framework Decision should be interpreted as interfering with any prosecutorial discretion provided for in national law and there is no obligation to prosecute in a case that has been transferred. Article 15 contains information on the possibility to request assistance by Eurojust or by the European Judicial Network. However, this provision is without prejudice to the Eurojust Decision.

Chapter 3 Effects of the transfer

8.17 Articles 16 and 17 deal with the effects of a transfer. Article 16(1) stipulates that the proceedings in the Member State of the transferring authority shall be suspended or discontinued, at the latest upon notification of the receiving authority's decision to accept transfer. The Explanatory Report adds that "this provision aims to prevent parallel proceedings". The proceedings in the transferring State can be re-instituted if the receiving authority then decides to discontinue the proceedings.

8.18 Article 17(1) makes it clear that the law of the Member State to which the proceedings have been transferred is to be applied once the proceedings have been transferred, which includes what action is to be taken in a case that has been transferred. Article 17(2) lays down the rule of the equivalence of steps by specifying that procedural steps lawfully taken in the Member State which made the request for transfer have "the same validity" in the

Member State to which the proceedings have been transferred, provided that they are compatible with the law of the latter Member State. The same effect is awarded to acts interrupting or suspending the period of limitation in the transferring State. Article 17(4) makes clear that a complaint legally filed in the Member State which made the request for transfer has the same validity as a lawful complaint in the Member State to which the proceedings have been transferred, even if the rules differ between the Member States. "Complaints" refer to authorisation to bring proceedings. However, private prosecutions are excluded from the scope of the Framework Decision (see also Article 16(4)).

8.19 Article 17(6) deals with the law applicable for the purposes of determining the sanction regarding an offence underlying a request for transfer. The sanction shall be determined by the law of the Member State to which the proceedings have been transferred. If, however, the competence is based on transfer of competence under Article 5, "the sanction pronounced shall be no more severe than that provided for in the law of the other Member State."

Chapter 4 Final provisions

8.20 Article 19 stipulates the obligation for the transferring authority to provide a translation of the form and the relevant parts of the criminal file, which is in conformity with other Framework Decisions. Article 21 governs the relationship with the Council of Europe Convention of 1972 (paragraph (1)) and, with regard to existing or future conventions or agreements, clarifies that the Member States may apply and/or agree upon instruments which go beyond the goals of the proposal (paragraphs (2) and (3)). Articles 22 and 23 contain provisions on the implementation and entry into force of the Framework Decision.

The Minister's Explanatory Memorandum of 16 July 2008

8.21 The Parliamentary Under-Secretary of State at the Ministry of Justice (Lord Bach) has set out his initial assessment of the draft Framework Decision in his Explanatory Memorandum of 16 July.

8.22 For States that have ratified the 1972 Council of Europe Convention, or adopted formal transfer procedures, the Minister comments that this Framework Decision will be seen "largely as a co-ordination exercise, bringing together a number of different instruments that deal with the same subject area". As the UK has never ratified the 1972 convention and does not have a formal mechanism for transferring criminal proceedings to other Member States, this Framework Decision has wider ramifications. It would require a change in the way the UK deals with transferring proceedings and, as currently drafted, would widen the UK's principle of territorial jurisdiction. The Government has therefore not co-sponsored this Framework Decision.

Chapter 1 General Provisions

8.23 Although this Chapter deals with general provisions it touches upon a number of areas that cause the Government concern. Article 3 contains definitions which, whilst not contentious in themselves, do not define what is meant by "transfer of proceedings". The

Government believes it is important to understand what is meant by transferring proceedings as this is central to properly understanding the scope of the Framework Decision.

8.24 The Minister states that the Government has strong reservations about the automatic transfer of jurisdiction under Article 5 “as UK jurisdiction is generally based on where the offence was committed (territorial jurisdiction) and the exercise of extra territorial jurisdiction by the UK is more limited than by many other Member States”. By contrast, the Minister comments, most other Member States have much broader rules on jurisdiction, including jurisdiction generally based on “active personality” (the nationality of the perpetrator) or “passive personality” (nationality of the victim). Article 5 would run contrary to the UK’s normal approach to jurisdiction.

Chapter 2 Transfer of Proceedings

8.25 Article 7 articulates a two-stage process for requesting transfer: the requesting state must demonstrate i) that transferring the proceedings would improve an efficient and proper administration of justice, and ii) that one of the specified criteria is met. The Minister comments that, as currently drafted, the criteria are too wide: the Government believes that it is important that strong reasons for requesting a transfer are demonstrated.

8.26 Article 8 is about informing the suspect of transfer. Current drafting provides discretion for the transferring authority to determine the appropriateness of informing the defendant and whether it would be in accordance with national law. The Government welcomes this provision and the pragmatic approach it takes. Article 9 states that the rights of the victim shall be given due consideration and those rights under national law will be fully respected. The Government agrees that any rights granted to the victim should accord with national law.

8.27 Article 10 sets out the procedure to be followed when requesting a transfer of proceedings, including a standard form for completion**.** The Government places importance on the role of consultation between Member States and whilst the Government would not want an onerous and prescriptive administrative burden created, it is important that there is early and appropriate communication before a request is made. This should be given greater emphasis in the Framework Decision.

8.28 Article 12 sets out the grounds on which a Member State can refuse a transfer. The Minister comments that the specific grounds are not contentious although narrow in scope. The Government believes that the grounds for refusal should give a Member State adequate control over the cases it accepts and that the current criteria would need to be adapted to ensure this. “Grounds for refusal are important in ensuring this Framework Decision is used appropriately and only in cases where it would improve the efficient and proper administration of justice.”

Chapter 3 Effects of the Transfer

8.29 This chapter deals with the practicalities of ceasing proceedings in the State that has successfully transferred proceedings and starting proceedings in the State that has accepted transfer. Article 17 (1) is important as it explicitly says that transferred proceedings shall be

governed by the Member State to which transfer has been effected and 17(3) that upon acceptance a Member State may apply any procedural measures permitted under its national law. The Government supports this Article as it is important that domestic criteria can be applied upon acceptance of a transfer — a receiving State must have total freedom to act within its own law.

Chapter 4 Final Provisions

8.30 This chapter deals with a number of issues such as translation and costs. Article 19 asks for the form that will be used to transfer proceedings and relevant parts of the criminal file to be translated into the language of the receiving Member State. The Minister comments that there is difficulty with the term criminal file (the UK does not have a criminal file in the same sense as some other Member States) and clarification is needed as to where the costs of translation fall.

Conclusion

8.31 **We limit our comments to initial concerns that have not been raised by the Minister in his Explanatory Memorandum of 16 July.**

Need for legislation

8.32 **The introduction to the Council's Explanatory Report talks of EU Member States being "*increasingly confronted* [our emphasis] with situations where two or more Member States have jurisdiction to investigate and bring to trial the same or related criminal offences". We would be grateful to be provided with the details of the assessment undertaken by Member States that demonstrates that the status quo is unsatisfactory and that EU legislation on the transfer of criminal proceedings is therefore necessary.**

Overlap with Framework Decision on conflicts of jurisdiction in criminal proceedings

8.33 **We would be grateful if the Minister could clarify precisely the distinction between this Framework Decision and the recently adopted Framework Decision on the conflicts of jurisdiction in criminal proceedings, given that this Framework Decision also legislates for transfer of proceedings in cases of double jeopardy, or *ne bis in* idem;[21] and also why it was thought that two Framework Decisions were necessary — from our perspective it appears as if both pieces of legislation were conceived almost in isolation.**

8.34 **We would also be grateful for the Minister's opinion on how appropriate he considers it to have different consultation procedures between Member States in these two Framework Decisions. In our view, the use of EU third pillar cooperation**

21 See for example Articles 12(1)(b) and 16(1). The former refers to *ne bis in idem* as a ground for refusal; the latter, which deals with the discontinuance of proceedings in the requesting State, aims to prevent "parallel proceedings" according to the Explanatory Report.

procedures by law enforcement and prosecution authorities would be better achieved by keeping the rules simple; not by creating different rules for consultation in closely overlapping fields of activity.

Transfer of competence to prosecute

8.35 **Article 5 is both novel and far-reaching: it gives national courts competence to try a criminal offence that is not prescribed by UK law — or, put another way, that the Government has not proposed nor Parliament agreed should be a crime. Instead, jurisdiction comes from the EU Member State that is transferring the proceedings.**[22] **The Council's Explanatory Report states that this transfer of competence is taken from the 1972 Council of Europe Convention on the transfer of Criminal Proceedings. We note, however, that the UK did not ratify this convention. We would be grateful for an explanation why.**

8.36 **The Minister's comment in his Explanatory Memorandum relates only to the unwelcome extension of jurisdiction caused by Article 5. We note that he is assessing the legislative impact of the proposal and ask him to say whether in his view the transfer of competence envisaged by Article 5 is consistent with, firstly, principles of national criminal law and, secondly, with the requirement for double criminality in Article 11 of the draft Framework Decision.**

8.37 **Beyond questions of legal principle, we would be grateful to the Minister for an explanation of how, in practice, he envisages a prosecutor would apply national rules on drafting an indictment to an offence derived from a foreign jurisdiction; how the elements of the offence would be defined; and what status the case law of that foreign jurisdiction (most likely to be civil rather than common law) concerning the offence would have. And similarly, we would be grateful for an explanation as to how the sentence range for the offence would be set, and by whom. These are but an example of practical problems that would ensue.**

8.38 **Suffice it to say at this stage that we find it hard to conceive of situations in which transferring jurisdiction to prosecute from one Member State to another in the manner prescribed by this Article would "improve the efficient and proper administration of justice".**

Defence rights

8.39 **In Article 8 we think it should be obligatory for the national authority to inform a suspect that a request for transfer of proceedings has been made. We also think that the suspect's rights should be set out more fully. As we have stated before, it is important that defence rights are clearly set out in the operative part of any Framework Decision that may have an impact on a defendant's right to a far trial. We also note that Article 9 is entitled "rights of the victim"; for reasons of parity Article 8 should be entitled "rights of the suspected person", rather than the current drafting of "informing the**

22 In this regard note should be taken of the decision of the House of Lords in *R v Jones and Milling* [2007] 1 AC 136 that the crime of aggression, albeit with elements of the offence definable under international law, could not amount to a common law crime without the approval of Parliament.

suspected person". We are also unclear as to what is meant in Article 8 by "if the suspected person *presents an opinion*" and how this will be implemented, and would be grateful for clarification from the Minister.

Deposit of EU documents

8.40 **Finally, we ask the Minister to explain why the Council's Explanatory Report, which originated on 3 July and explains the legislative intent behind each of the Articles in the Framework Decision, was only deposited, after the Committee's prompting, on 20 July, the day before the Committee's meeting on 21July.**

9 Industrial emissions

(a) (29313) 5223/08 COM(07) 843	Commission Communication: *Towards an improved policy on industrial emissions*
(b) (29348) 5088/08 COM(07) 844 + ADDs 1–2	Draft Directive on industrial emissions (integrated pollution prevention and control) [Recast]

Legal base	(a) — (b) Article 175EC; co-decision; QMV
Department	Environment, Food and Rural Affairs
Basis of consideration	Minister's letter of 14 July 2009
Previous Committee Reports	HC 16–x (2007–08), chapter 1 (30 January 2008) and HC 19–xix (2008–09), chapter 3 (10 June 2009)
Discussed in Council	25 June 2009
Committee's assessment	Politically important
Committee's decision	Cleared

Background

9.1 According to the Commission, the largest industrial installations account for a considerable share of total emissions of key atmospheric pollutants, and have other important environmental impacts. Emissions from such installations have therefore been subject to Community-wide legislation for some time, notably Directive 96/61/EC[23] concerning integrated pollution, prevention and control (IPPC). However, because the

23 OJ No. L 257, 10.10.96, p.26.

Commission considered that insufficient progress had been made, it put forward in December 2007 these two documents, which we described at some length in our Report of 30 January 2008, together with an account of the Government's initial reactions. That Report also noted that the Government would be carrying out an Impact Assessment, and we therefore said that we would reserve judgement until we had seen that.

9.2 As we subsequently reported on 10 June 2009, we received from the then Minister for Sustainable Development, Climate Change Adaptation and Air Quality at the Department for Environment, Food and Rural Affairs (Lord Hunt) a supplementary Explanatory Memorandum of 2 May 2009, summarising the progress to date, and indicating that the Presidency would be seeking political agreement at the Environment Council on 25 June. This was followed at our request by a letter of 5 June from the Minister indicating in more detail the state of play on individual aspects of the proposal, and providing an Impact Assessment, based on certain assumptions as to the outcome of the Council.

9.3 In the light of this information, we commented that this was evidently an extremely complex proposal, dealing with a range of activities with significant health, environmental and cost implications, and which sought to cover in a single instrument a number of existing measures. We added that it had proved difficult for us to obtain a clear view of its implications, but we noted that many of the detailed aspects of the proposal would not give rise to increased costs in the UK. We also noted that, as a result of the discussions which had taken place in Brussels, the Government was hopeful that the Council would agree to amendments which would for the most part maintain the current position for the time being, and that the Government now estimated that the annual costs of the proposal to the UK would be reduced to some £214 million, with benefits of some £178 million.

9.4 Given that the Council had yet to confirm the changes which the Government foresaw, and that the UK was still pressing for further flexibilities in certain areas, we said that we did not feel able at that stage to clear the document. However, we recognised that the Government might well be anxious to sign up to a political agreement at the Environment Council on 25 June, in order to consolidate the gains it had secured to date (or indeed any further improvements it managed to secure). Consequently, we said that, if such a deal were to be on offer, we would be willing in this instance to exercise our discretion under paragraph 3(b) of the Scrutiny Resolution to enable the UK to agree to it, notwithstanding the absence of scrutiny clearance: but we added that this was on the understanding that, if it did so, we would expect to consider the matter further on the basis of a report from Minister on the outcome.

Minister's letter of 14 July 2009

9.5 We have now received from the Minister of State at the Department for Environment, Food and Rural Affairs (Jim Fitzpatrick) a letter of 14 July 2009, confirming that political agreement was reached by the Council on 25 June very much along the lines previously indicated, though he adds that the costs and benefits would now be re-assessed on the basis of the agreed text.

Conclusion

9.6 **We are grateful to the Minister for this confirmation of the basis on which the Council has reached political agreement on the proposed recast of Directive 96/61/EC, and, although we note that the Government will now be re-assessing the costs and benefits of this measure, we understand that these are not expected to differ significantly from those we reported on 10 June (and that, insofar as they do differ, the balance between the two is expected to be more favourable). In view of this, we are now clearing these two documents.**

10 EU-Syria relations

(30288) 17487/08 + ADDS 1–4 COM(08) 853	Draft Council Decision on the signature and provisional application of certain provisions of a Euro-Mediterranean Association Agreement between the European Community and its Member States and the Syrian Arab Republic Draft Council Decision on the conclusion of a Euro-Mediterranean Association Agreement between the European Community and its Member States and the Syrian Arab Republic

Legal base	Articles 300 and 310 EC; unanimity
Document originated	12 December 2008
Deposited in Parliament	22 December 2008
Department	Foreign and Commonwealth Office
Basis of consideration	EM of 15 July 2009
Previous Committee Report	None
To be discussed in Council	15 September 2009 General Affairs and External Relations Council
Committee's assessment	Politically important
Committee's decision	Cleared, but further information requested

Background

10.1 Signature and conclusion of a Euro-Mediterranean Association Agreement would form the legal basis for the EU's relations with Syria. The agreement sets out the general principles governing the relationship between the EU and Syria. These include political dialogue, human rights, counter proliferation, trade and migration. The Agreement also establishes an Association Council to oversee implementation. This would complete the Euro-Mediterranean Free Trade Area in 2010 as set up in the 1995 Barcelona Declaration

(which aimed at strengthening economic, security and social relations with Tunisia, Morocco, Algeria, Egypt, Israel, the Palestinian Territories, Jordan and Lebanon).[24]

The Government's view

10.2 In her Explanatory Memorandum of 15 July 2009, the Minister for Europe at the Foreign and Commonwealth Office (Baroness Kinnock of Holyhead) notes that talks began on an Association Agreement (AA) between Syria and the EU in 1998, "although these progressed slowly." Moving to 2003, the Minister says:

> "the main disagreements were on human rights and non-proliferation, particularly as language on non-proliferation had only become standard in November that year. The Commission and Syria finally initialled the draft text of the AA on 17 October 2004 and the agreement then required signature. However due to the political context at the time, including Syrian involvement in Lebanon, the EU decided that a further deepening of the EU/Syria relationship needed to wait for a positive Syrian contribution to regional stability."

10.3 This took some five years; however:

> "Since 2008 Syria has taken positive steps which go some way to address previous political considerations. These include beginning indirect peace talks with Israel, establishing diplomatic relations with Lebanon and sending an Ambassador to Baghdad. Consequently, under the French Presidency, efforts were made to re-open negotiations with Syria on the text of the AA. This followed President Sarkozy's decision to invite President Assad Bashar to the Union of the Mediterranean Summit in July 2008 and to visit Damascus in September 2008. After several meetings between Commission and Syrian negotiators, a revised AA text was initialled in December 2008."

10.4 The Minister then describes the agreement thus:

> "The proposed revised Association Agreement (AA) between the EU and Syria will **establish a closer relationship within the context of the Euro-Mediterranean partnership** launched by the 1995 Barcelona Declaration. The proposed AA is similar in pattern to other Euro- Mediterranean Association Agreements. It contains far-reaching and substantial provisions in a number of areas including: non-proliferation, counter-terrorism, comprehensive tariff dismantlement on agricultural products, technical barriers to trade, sanitary and phyto-sanitary measures, trade facilitation, right of establishment and services, government procurement, intellectual property rights and trade dispute settlement mechanisms. The provisional application of trade and trade related provisions is also foreseen.
>
> "Through signature of the draft Association Agreement, the EU can **signal its intent to engage constructively with Syria**. It will help to build confidence, develop dialogue and will encourage further positive steps by Syria. This progress will be facilitated by **regular political dialogue** at all levels and co-operation across the full

24 See http://www.emwis.net/overview/fol101997/doc208943 for the full background to the Barcelona Declaration.

range of political, environmental, economic and social issues, including on terrorism. This can additionally contribute to peace and security in the region and will also enable the EU and Syria to discuss all topics of mutual concern, including human rights and democratic principles, terrorism and non-proliferation. An EU-Syria Association Council will be established to take all appropriate measures to facilitate cooperation and is aimed at supporting economic and political reform in Syria, preparing Syria for integration into the world economy and promoting regional peace and integration.

"In addition to this political signal, the agreement will also benefit the UK and the EU in general. The proposed agreement will **stimulate trade and economic** relations between Syria, the EU and our Mediterranean partners, through the progressive establishment, over a maximum period of twelve years, of a free-trade area between the European Community and Syria. Inclusion of Syria will be the last piece in building the Euro-Mediterranean Free Trade Area in 2010 as set up in the Barcelona Declaration. The Barcelona Declaration underlines the EU's priority to strengthen its security, economic and social relations with the partners of the southern Mediterranean Basin. Agreements with Tunisia, Morocco, Algeria, Egypt, Israel, the Palestinian Territories (PLO), Jordan and Lebanon have already been signed.

"Finally, the text on the two **essential element clauses on non-proliferation and human rights** has also been agreed. Respect for the principles of democracy and human rights will constitute an essential element of the Agreement. Additionally, in line with the Council Decision of 17 November 2003 on the fight against the proliferation of weapons of mass destruction, the Agreement also contains as an essential element a commitment to fulfilling existing obligations under disarmament and non-proliferation instruments. If Syria does not fulfil its obligations in either of these two areas the EU can decide — if all Member States agree — to suspend part or all of the Association Agreement.

"As a result of the steps taken by Syria, a number of other States, including the UK, have begun to increase engagement with Syria. Following a series of meetings between the Foreign Secretary and the Syrian Foreign Minister, the Syrian Foreign Minister visited London in October 2008 and the Foreign Secretary visited Syria in November 2008. UK policy is to urge Syria to act as a force for stability across several regional issues of concern: Lebanon, arms transfers, counter-proliferation, counter-terrorism, Middle East Peace Process and human rights. Our continued engagement with Syria remains primarily directed at encouraging further substantial progress on these issues. The Association Agreement is part of this."

10.5 On the key consideration of human rights, the Minister says:

"Respect for the democratic principles and fundamental rights established by the Universal Declaration of Human Rights is an essential element of the proposed agreement, breach of which by one party would allow the other party to the agreement to take action to suspend or terminate the agreement. It is envisaged that the agreement should lead to improvements in the human rights position in Syria."

10.6 Finally, looking ahead, the Minister says that, following translation and technical examination of the draft Agreement by Jurist Linguists, the earliest date for possible signature of the draft Association Agreement (AA) by all Member States and Syria is likely to be the 14 September 2009 General Affairs and External Relations Council; that after signature, the trade aspects of the draft AA will come into force; and that the political elements will do so once all 27 Member States have ratified the agreement.

Conclusion

10.7 **No questions arise about the nature of the Agreement or the process, but we are nonetheless reporting these developments to the House because of the importance of the political context.**

10.8 **We now clear the documents. However, the Minister says nothing about how the Agreement will be ratified in this country, or when she expects this to take place. Nor does she indicate whether continuation of the improvements in Syrian behaviour is likely to determine the timing of ratification, or whether she sees this as essentially a bureaucratic process. We should accordingly be grateful if the Minister would write to us to clarify these matters, once signature of the Agreement has taken place.**

11 Hague Protocol on the Law Applicable to Maintenance Obligations

(30473) 6996/09 + ADD 1 COM(09) 81	Draft Council Decision on the conclusion by the European Community of the Protocol on the Law applicable to Maintenance Obligations.

Legal base	Articles 61(c), 300(2) and 300(3) EC Treaty
Document originated	23 February 2009
Deposited in Parliament	6 March 2009
Department	Ministry of Justice
Basis of consideration	Minister's letter of 9 July 2009
Previous Committee Report	HC 19–xv (2008–09), chapter 4 (29 April 2009)
To be discussed in Council	No date fixed
Committee's assessment	Legally and politically important.
Committee's decision	Cleared. Further information requested

Background

11.1 The Hague Protocol on the Law Applicable to Maintenance Obligations was concluded in November 2007. It establishes a basic rule that the applicable law of

maintenance claims would be that of the habitual residence of the maintenance creditor. Similar rules were originally included in the proposed EU Regulation on Maintenance. However, due to UK opposition the rules were removed from the Regulation and a compromise was agreed which allowed Member States to apply the rules in accordance with the Hague Protocol.

The Document

11.2 Documents 6996/09 and 6996/09 ADD 1 set out a proposal for a Council Decision for the European Community to conclude the Hague Protocol on the Law Applicable to Maintenance Obligation. The latter is annexed to and forms the substance of the Council Decision.

11.3 Article 24 of the Protocol allows the Community to sign, accept, approve or accede to the Protocol. Document 6996/09 includes a number of declarations to be made by the European Community to approve the Protocol, including that the Community exercises competence over the matters governed by the Protocol and that Member States shall be bound by it by virtue of its conclusion by the Community; that the Protocol will apply provisionally from 18 June 2011, the date of application of the related relevant Council Regulation, if it has not entered into force on that date (in accordance with Article 300(2) of the Treaty establishing the European Community); and that in the Community it shall also apply to maintenance claimed in the Member States relating to a period prior to the entry into force or provisional application of the Protocol in situations where proceedings are instituted, court settlements approved or concluded and authentic instruments are established after the date of application of the Regulation. The latter declaration ensures consistency with the Regulation.

11.4 The Government made clear during the negotiations of the Regulation that it did not intend to apply the Protocol. Therefore Recital 9 and Article 2 of the proposed Council Decision anticipate the fact that the United Kingdom will not be opting into this proposal. We agreed with the Government's decision not to opt in to the measure, largely because of the additional costs associated with the application of foreign law in the British courts. When the Minister (Lord Bach) last wrote to us, we agreed that the only principal remaining concern appeared to relate to the issue of the Community's exclusive competence in this area. The Minister indicated that the Government would seek an amendment designed to clarify that the Community's exclusive external competence would only apply in relation to Member States who participate in the Decision to ratify the Protocol. We expressed support for the Government's position and encouraged the Minister to secure appropriate changes to the text.

The Minister's Letter

11.5 The Minister has now written again and in his letter of 9 July informs us as follows:

> "In your Committee's Seventeenth Report published on 8 May 2009 you confirmed that you were content for the United Kingdom not to opt in to this proposal and you agreed that we should ensure that the text reflected the fact that the Community's

exclusive external competence relating to applicable law will extend only to those Member States participating in the Decision.

"I can confirm that the Commission and all delegations have recently agreed to amend recital 5 to say:

"The Community has exclusive competence over all matters governed by the Protocol. This does not affect the positions of the Member States which are not bound by this Decision or subject to its application as referred to in Recitals 9a and 10.

"Recital 10 relates to the position of Denmark. Recital 9a says:

"In accordance with Article 3 of the Protocol on the position of the United Kingdom and Ireland, annexed to the Treaty on European Union and to the Treaty establishing the European Community, the United Kingdom is not taking part in the adoption of this Decision and is not bound by it or subject to its application.

"I believe that these changes have resolved the matter satisfactorily."

Conclusion

11.6 **We thank the Minister for this news. We welcome the Government's success in securing an amendment to ensure that the Community's exclusive competence does not affect the position of Member States which will not be bound by the Decision ratifying the Hague Protocol. At the same time we remain slightly concerned about the legal justification for the Community's assertion of its exclusive competence as regards the external application of the internal powers established by this measure. Given the Government's decision not to opt into the measure we are happy to clear the proposal from scrutiny. This notwithstanding we ask the Minister to explain why the effective exercise of the Community's internal powers established by the proposed measure might require the Community's exclusive competence in all matters concern the external application of the Protocol.**

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

(30730) 11286/1/09 + ADD 1 COM(09) 281	Commission Communication on the Report on the functioning of Regulation No. 139/2004.
(30747) 11696/09 COM(09) 336	Commission Report on the application of Regulation (EC) No. 2006/2004 of the European Parliament and of the Council of 27 October 2004 on cooperation between national authorities responsible for the enforcement of consumer protection laws (the Regulation on consumer protection cooperation).

Department for Energy and Climate Change

(30722) 11448/09 + ADDs 1-2 COM(09) 284	Commission Communication on Demonstrating Carbon Capture and Geological Storage (CCS) in emerging developing countries: Financing the EU-China Near Zero Emissions Coal Plant project.
(30742) 11598/09 COM(09) 327	Draft Council Decision on the signing and provisional application of the Statute of the International Renewable Energy Agency (IRENA) by the European Community.
(30743) 11593/09 COM(09) 326	Draft Council Decision on the conclusion of the Statute of the International Renewable Energy Agency (IRENA) by the European Community and on the exercise of its rights and obligations.

Department for Environment, Food and Rural Affairs

(30733) 11548/09 COM(09) 231	Draft Council Regulation amending Regulation (EC) No. 73/2009 establishing common rules for direct support schemes for farmers under the common agricultural policy and establishing certain support schemes for farmers, amending Regulations (EC) No. 1290/2005, (EC) No. 247/2006, (EC) No. 378/2007 and repealing Regulation (EC) No. 1782/2003.

(30740) 11572/09 + ADD 1 COM(09) 282	Commission Report on the implementation of Council Regulation (EEC) No. 259/93 of 1 February 1993 on the supervision and control of shipments of waste within, into and out of the European Community — Generation, treatment and transboundary shipment of hazardous waste and other waste in the Member States of the European Union, 2001-2006.
(30744) 11611/09 COM(09) 314	Commission Report on the operation of the agreements concluded in the framework of the GATT Article XXVIII procedure in the rice sector.

Department of Health

(30739) 11533/09 + ADDs 1–3 COM(09) 328	Draft Council Recommendation on smoke-free environments.

Home Office

(30782) 11421/09 + COR 1 —	Council Decision setting up a European Crime Prevention Network (EUCPN) and repealing Decision 2001/427/JHA.

HM Treasury

(30754) 11561/09 COM(09) 337	Preliminary draft amending budget No. 8 to the general budget 2009 — Statement of expenditure by section — Section III — Commission.

Department for Work and Pensions

(30751) 11738/09 + ADD 1 COM(09) 283	Commission Report concerning the implementation by Bulgaria and Romania of Council Directive 98/49/EC of 29 June 1998 on safeguarding the supplementary pension rights of employed and self-employed persons moving within the Community — (Situation at 1 September 2008).

Formal minutes

Tuesday 21 July 2009

Members present:

Mr Adrian Bailey	Keith Hill
Mr David S. Borrow	Kelvin Hopkins
Mr William Cash	Mr Bob Laxton
Jim Dobbin	Angus Robertson

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 be the Twenty-seventh Report of the Committee to the House.

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

[Adjourned to a day and time to be fixed by the Chairman.

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*)