



House of Commons
European Scrutiny Committee

**Eighth Report of
Session 2008–09**

Documents considered by the Committee on 11 February 2009,
including the following recommendations for debate:

EU enlargement: pre-accession finance

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).

Staff

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

Contacts

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

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1 EU enlargement: pre-accession finance

(a) (30162) 15620/08 COM(08) 705	Commission Communication: <i>Instrument for Pre-Accession Assistance (IPA): Multi-annual Indicative Financial Framework for 2010–2012</i>
(b) (30303) 17210/07 + ADD 1 COM(08) 850	Commission Report: <i>The 2007 Instrument for Pre-Accession Annual Report</i>

<i>Legal base</i>	—
<i>Document originated</i>	(a) 5 November 2008 (b) 17 December 2008
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<i>Department</i>	International Development
<i>Basis of consideration</i>	EM of 27 January 2009
<i>Previous Committee Report</i>	None; but see (29154) 14862/07: HC 16–xvi (2007–08), chapter 9 (19 March 2008) and HC 16–viii (2007–08), chapter 18 (16 January 2008); also see (28022) 15122/07: HC 41–ii (2006–07), chapter 16 (29 November 2006) and (27653–55) HC 34–xxxvii (2005–06), chapter 52 (11 October 2006)
<i>Discussed in Council</i>	(a) 16 December 2008 (b) 9 November 2008
<i>Committee’s assessment</i>	Politically important
<i>Committee’s decision</i>	Not cleared; for debate in European Committee B

Background

1.1 From 1 January 2007, all pre-accession assistance is now delivered by the Instrument for Pre-accession Assistance (IPA) — one of a small number of new Instruments for EU External Assistance (the other relevant ones being the European Neighbourhood and Partnership Instrument, the Development Cooperation Instrument and the Instrument for Stability) which replaced a plethora of instruments and budget lines. The IPA replaces PHARE (implementing the *acquis communautaire*, economic restructuring and political capacity-building), ISPA (environmental and transport projects) and SAPARD (agriculture and rural development). All involve a staged, quality-assured process, which, over time, ensures that candidate countries are prepared for and finally enabled to access post-accession funding effectively and efficiently on their own. This is called EDIS — Extended Decentralised Management System. Successive Court of Auditors’ Reports have shown that this process works.

1.2 The purpose of IPA is to provide financial support for countries seeking EU membership. It is available to candidates (Turkey, Croatia and Macedonia) and to pre-candidates (Albania, Bosnia and Herzegovina, Montenegro, Serbia and Kosovo under United Nations Security Council Resolution 1244). IPA assistance helps to strengthen democratic institutions and the rule of law, reform public administration, carry out economic reforms, promote respect for human, as well as minority rights and gender equality, support the development of civil society and advance regional cooperation, and contribute to sustainable development and poverty reduction. The IPA includes a number of different components, specifically:

I. *Transition Assistance and Institution Building*, aimed at financing institution-building measures and associated investment;

II. *Cross-Border Co-operation*, to support cross-border cooperation at borders between candidate/potential candidate countries and between them and the EU countries. It may also fund participation of beneficiary countries in Structural Funds' trans-national co-operation programmes and the European Neighbourhood and Partnership Instrument Sea Basins programmes, as appropriate;

III. *Regional Development*, which finances investments and associated technical assistance in areas such as transport, environment and regional competitiveness;

IV. *Human Resources Development*, designed to strengthen human capital and help combat exclusion; and

V. *Rural Development*, which emulates post-accession Rural Development programmes by financing rural development-type measures, similar in nature to these programmes, though smaller in scale.

Component I and II are open to all beneficiary countries. Components III, IV and V are open to candidate countries only, and are designed to mirror Structural, Cohesion and Rural Development funds in preparation for managing such funds upon accession, through a learning-by-doing process. This requires that the country has the administrative capacities and structures to take responsibility for the management of assistance. For potential candidate countries, regional, human resources and rural development-type measures will be implemented through the Transition Assistance and Institution Building component.

1.3 Components I and II are overseen by the IPA Management Committee (made up of Member State representatives), components III and IV by the Structural Actions Management Committee (COCOF), component IV by the European Social Fund Committee, and component V by the Rural Development committee.

1.4 The overall political priorities for pre-accession are set out in the Accession and European Partnerships, the annual progress reports and the enlargement strategy paper contained in the enlargement package presented to the Council and European Parliament each year.

1.5 The Multi-Annual Indicative Financial Framework (MIFF), which is established and presented annually to the Council and the European Parliament, in accordance with

Article 5 of IPA Regulation (EC) No 1085/2006, is a breakdown of the overall IPA envelope — €11.5 billion (£10.92 billion) over the financial perspective 2007–2013 — by country and by component, for a three year rolling period.

1.6 In determining the allocations between components, the Commission says that due account is taken of the readiness of the decentralised management systems necessary for the implementation of components III, IV and V in the current candidate countries.

1.7 The figures are subject to change, according to how countries move through the enlargement process towards accession. For example, as and when Croatia accedes to the EU, it would then receive Structural Funds rather than IPA, and Croatia’s allocation would be shared among the remaining IPA recipients.

Previous consideration

1.8 On 16 January 2008, we considered the second MIFF for the IPA, with funding allocations for 2009–2011 (details of allocations for 2007 and 2008 were included in the MIFF for reference). Allocations were set out for each country (in current prices and in euros) under each component, as well as allocations to regional programmes and to administrative costs. The main criteria used included:

- the Commission’s commitment to ensure that no country would receive less funding under IPA in 2007 than they did under previous instruments in 2006.
- for pre-candidate countries in the Western Balkans (in 2004 prices), the MIFF sets out to reach €23 (£16) per capita by 2010. As candidate countries, Croatia and Macedonia will receive at least €30 (£21) per capita by 2008.
- a gradual increase in per capita levels for Turkey over 2007–2011, taking into account the size of the country and the ability of its institutions to make good and timely use of IPA funding.

1.9 The MIFF also commented briefly on the allocations between different components. In particular, the document noted that allocations for components III-V had been determined taking account of countries’ progress towards implementing the necessary systems for managing these funds.

1.10 In his Explanatory Memorandum of 6 December 2007, the then Parliamentary Under-Secretary at the Department for International Development (Mr Gareth Thomas) welcomed the IPA’s objectives and the support provided to candidate and pre-candidate countries, and was content with the approach taken by the Commission on the basis for the allocations between countries and components.

1.11 He also noted, as “a key challenge in the region”, that many of the beneficiary governments were still in the process of developing the necessary systems to programme, spend and monitor IPA assistance. This, he said, had been taken into consideration by the Commission in preparing the MIFF; the IPA also provided support to governments to develop these systems and make effective use of IPA funding; he would continue to work with the Commission to ensure that IPA assistance was allocated and spent in order to achieve maximum impact.

1.12 For our part, we noted, as elsewhere in that same Report of 16 January 2008 (and several earlier ones), a theme common to a variety of development-related topics that we considered was the effectiveness of the assistance provided, which in turn depended not just on developing the necessary systems, but also on:

- a determination and capacity to make changes where experience showed this to be necessary; and
- ensuring that this overall process was subject to regular parliamentary scrutiny, since it is British and other European taxpayers’ money, as well as their expectations, that are at stake.

1.13 We looked forward to hearing from the Minister in due course on how this requirement would be met in the case of the IPA (and the other new financial instruments), and in the meantime cleared the document.

In line with our thoughts on other related documents in this Report, we also drew this Communication to the attention of the International Development Committee.¹

The Minister’s letter of 12 March 2008

1.14 The Minister provided information on “the specific issues of effectiveness, evaluation and future scrutiny”, as follows:

Effectiveness

Changes had been made to the IPA that built on the lessons learnt from previous instruments and addressed the concerns raised by the Court of Auditors, which should result in a significant improvement in the effectiveness of the instrument. Significant changes include:

- Better project design, monitoring, evaluation and lesson learning, to be scrutinised by an internal Quality Support Group;
- Increased recognition of the role of beneficiary governments; through greater involvement in the development of projects and supporting projects aimed at improving the policy and planning capacity of beneficiary governments, to ensure that they can make good use of assistance from the EU and other donors; and
- Increased emphasis on ensuring that IPA assistance complements rather than duplicates the work of other donors.

In response to EM 10984/06,² where the Committee had sought assurance that lessons had been learned on specific issues raised by the Court of Auditors — ‘ensuring sustainability’; ‘supporting co-financing’; ‘improving contracting rates’

1 See headnote: (29154) 14862/07: HC 16–viii (2007–08), chapter 18 (16 January 2008). Also see chapters 12–17 inclusive of that same Report.

2 European Court of Auditors’ Special Report on the PHARE programme in Bulgaria and Romania: (27641) 10984/06: see HC 34–xxxvi (2005–06), chapter 16 (19 July 2006).

and ‘promoting additionality and catalytic effects’: the design of the new instrument incorporated strengthened procedures on all these issues.

The UK would continue to work closely with the Commission to extend good practice and maximise the effectiveness of IPA assistance. The Commission’s commitment to improve donor coordination in-country and across the region was particularly welcome.

Evaluating the effectiveness of IPA

The IPA Implementing Regulation included a number of measures to promote monitoring, evaluation and lesson learning. Each year, the Commission would formally monitor their programmes and carry out audits and evaluations. For 2007, €5 million (£3.7 million) had been allocated to monitoring, audit and evaluation work. These programmes should promote effective implementation and evaluation of projects, as well as ensure appropriate external scrutiny. The evaluation reports would also be a vital basis for ensuring that lessons are learned for future projects.

The 2007 evaluation programme would include an evaluation of the IPA with a focus on the three year forward plans known as Multi-Annual Indicative Planning Documents. There would also be evaluations of a selection of projects funded under previous instruments in Albania, Bosnia and Herzegovina and in the wider region.

Future Reporting to Parliament

The UK would continue to work hard to support the Commission to improve the delivery of the IPA. This would include strengthening our presence in Brussels. The Commission would prepare annual reports on IPA, and the Minister’s accompanying Explanatory Memoranda would provide the Committee with “regular reports on the progress that has been made on the IPA, including the outcome of evaluations as these become available.”

1.15 In reporting the Minister’s letter to the House, the Committee observed that the challenges facing the IPA were in many ways more daunting than those handled by its predecessor financial instruments, in that those who were to be assisted included the first prospective Muslim member country and the war-torn and ethnically-riven countries of the western Balkans. The Committee also noted that there was much in the Minister’s letter that sounded encouraging, particularly the fact that €5 million had been allocated to monitoring, audit and evaluation (though it was not clear if that is for the IPA alone, or all the Commission’s technical assistance work) and that the UK presence in Brussels was to be strengthened in order to support the Commission in the delivery of the IPA. We looked forward to receiving the annual reports to which the Minister refers, and in the meantime drew his letter to the attention of the International Development Committee, as we had done on 16 January 2008 in relation to the Commission’s Communication.³

3 See headnote: (29154) 14862/07: HC 16–xvi (2007–08), chapter 9 (19 March 2008).

The Commission Communications

1.16 Commission Communication 17210/08 updates the IPA Multi-Annual Indicative Financial Framework (MIFF) to include the period 2010–2012. It includes a tabular breakdown of allocations for the whole of 2007–12 by country and component.

1.17 The Commission's IPA Annual Report for 2007 (15620/08) outlines how the money allocated to IPA 2007 will be spent in the beneficiary countries (with technical data in the addendum). It also describes the main developments in the December 2007 General Affairs and External Relations and European Council Conclusions concerning the enlargement process, which provides the IPA with its strategic framework.

1.18 The Communication also sets out the mechanisms for monitoring and evaluation. It notes that no monitoring of IPA projects was carried out during 2007, as the IPA 2007 programmes were generally only adopted at the end of the year and the actual implementation only started in 2008. There was correspondingly limited evaluation.

1.19 Finally, it looks at donor coordination with Member States bilateral programmes, the European Investment Bank and other International Financial Institutions, and notes that the main conclusions of a donor coordination meeting were:

- enhanced donor coordination is a priority on the agenda of the donor community: in particular, that coordination between the Commission, EU Member States and non-EU donors, to be effective, must be a two-way process, where stakeholders discuss their respective programmes and priorities;
- substantial progress on donor coordination had been achieved both in the beneficiary countries and on the European level, and the consultation process in the context of IPA, in particular at local level in the beneficiary countries, which was put in place in the course of 2007, was working increasingly better;
- ownership of assistance by beneficiary countries is vital in order to maximise the impact; and
- the capacities of the beneficiary countries to assume ownership needs to be strengthened.

The Government's view

1.20 In his Explanatory Memorandum of 29 January, the Parliamentary Under-Secretary at the Department for International Development (Mr Michael Foster) says that the fact that the pre-accession region now has a single coherent instrument that provides funding is “a huge step forward.” He continues as follows:

“However, as IPA was only launched in 2007 and encountered some delays in project development, the 2007 Annual Report was produced too early to judge the performance of IPA and remains therefore largely descriptive.

“The UK is working closely with the Commission and the recipient countries to ensure that the funds are put to the best possible use. DFID currently has four offices

in the Western Balkans, all of whom work closely with the Commission delegations. DFID has also created a new post based in UKREP Brussels devoted to monitoring IPA.

“We have encouraged the Commission to reduce the number of projects in each successive annual programme, as we expect that concentration on fewer larger projects will have more transformative impact. The trend has been positive in 2008 and looks set to continue in 2009.

“The prospective allocation of IPA funds shows a steady rise across all countries. The figures are calculated on the basis of per capita allocations, with all countries to receive €23 (£21.9) per head by 2010. This makes the EC by far the biggest donor to the region. The size of the EC budget makes it more important than ever for DFID country offices to engage actively with the Commission and for the UK to play an active role on the IPA Management Committee.”

Conclusion

1.21 There should be sufficient evidence regarding performance of the IPA by the time the next Annual Report is prepared for it to be analytical as well as descriptive. We shall then expect a somewhat more substantial Explanatory Memorandum, with a full assessment of how the outcomes compare with the template — what is going well and less well, and why; and what steps are being taken to address any failings.

1.22 The mechanisms are seemingly in place. The importance of ensuring that they work as intended is highlighted by the experience in Romania and, particularly, Bulgaria, which has been the subject of several Committee Reports and 3 European Committee debates in the past year.

1.23 In the meantime, in view of the experience hitherto, the degree of interest in the next stage of the enlargement process, the sums involved and the present economic challenges and budgetary pressures facing the Union, we feel that a debate in the European Committee would be appropriate.

1.24 We are also, as before, drawing this chapter of our Report and the documents to the attention of the International Development Committee.

2 Marketing of construction products

(29711) 10037/08 COM(08) 311	Draft Regulation laying down harmonised conditions for the marketing of construction products
+ ADD 1	Commission staff working document: <i>impact assessment of the proposal</i>
+ ADD 2	Commission staff working document: <i>summary of impact assessment</i>

<i>Legal base</i>	Article 95 EC; co-decision; QMV
<i>Department</i>	Communities and Local Government
<i>Basis of consideration</i>	Supplementary EM of 4 February 2009
<i>Previous Committee Report</i>	HC 16–xxv (2007–08), chapter 3 (25 June 2008)
<i>To be discussed in Council</i>	28–29 May 2009
<i>Committee’s assessment</i>	Politically important
<i>Committee’s decision</i>	Not cleared; further information requested

Previous scrutiny of the document

2.1 When we considered this draft Regulation last June, we noted that, in 1989, the Council adopted a Directive (“the Construction Products Directive”) which specified conditions for the marketing of products used in the construction of buildings and civil engineering works.⁴ The aim was to ensure that reliable information was presented about products and to help establish fair competition in the EC’s single market .

2.2 If a product is marked with “CE” (*conformité européenne*) consumers know that it has been assessed against a common European standard. CE marked products should be accepted onto the market anywhere in the European Economic Area. The CE mark indicates the characteristics of the product but does not guarantee that it is suitable for a particular purpose.

2.3 The Commission proposes the repeal of the Construction Products Directive and its replacement by this draft Regulation for two main reasons. First, the 1989 Directive has not succeeded in creating a single market for construction products partly because of differences in the way in which Member States have transposed the provisions into national law. For example, some Member States (including the UK) have voluntary CE markings whereas, in others, CE marking is compulsory. Second, the Commission wishes to make the requirements for the marketing of construction products easier to apply, more effective and less onerous for manufacturers (especially for small businesses).

4 Council Directive 89/106/EEC: OJ No. L 40, 11.2.89, p.12.

2.4 The main differences between the Construction Products Directive and the proposed Regulation are as follows:

- The Regulation would have direct effect. Member States would not need to transpose it. So there would be no room for Member States to apply the requirements differently in their national legislation (for example, the use of CE marking for construction products would become mandatory). The aim is to remove nationally-created obstacles to fair competition in a single market for construction products.
- The arrangements for assessing new and innovative products which are not covered by harmonised standards would be simplified and standardised.
- For unique products and products produced by “micro-enterprises” (that is, enterprises with fewer than 10 employees and an annual turnover of not more than €2 million) there would be a simplified process for the assessment and verification of the product’s performance using Standard Technical Documentation.
- The credibility of the assessment processes would be strengthened by the introduction of stricter criteria for the “notified bodies” which test and certify products.

2.5 In June 2008, the Parliamentary Under-Secretary of State at the Department for Communities and Local Government (Mr Ian Wright) told us that the greatest change for the UK, if the proposed Regulation were adopted, would be the introduction of mandatory CE marking. He said that an increasing number of UK manufacturers are already CE marking and so making the marking mandatory would have no effect on them. The effects would be felt especially by businesses which trade only on the domestic market and which are, therefore, less likely to be using the CE mark at the moment.

2.6 The Minister told us that the Government would consult manufacturers and other interested bodies (“the stakeholders”) about the draft Regulation and the position the UK might take on it. The Government would also have meetings with representatives of the stakeholders during the negotiations in the Council working group. Arrangements were being made, in particular, to obtain the views of small businesses.

2.7 We concluded that the aims of the proposal — simplification and clarification of the requirements for the marketing of construction products and the removal of barriers to the single market — seemed admirable. But the negotiations had only just begun, the Minister’s Impact Assessment of the proposal was not yet available and the Government’s consultations with the stakeholders would be important. We decided to keep the document under scrutiny and asked the Minister to send us a report on the consultations, a copy of the Impact Assessment and progress reports on the negotiations.

The Minister’s Supplementary Explanatory Memorandum of 4 February 2009

2.8 The Minister’s Supplementary Explanatory Memorandum provides the information we requested. It reports that there have already been eight meetings of the working group of officials to consider the draft Regulation; there will be two further meetings in February.

The Minister expected that, on 11 February, the European Parliament's Internal Market and Consumers Committee would vote on proposals for about 400 amendments to the draft Regulation and that the European Parliament would have its First Reading of the document on 1 April. The Council is due to consider it on 28–29 May.

2.9 The Minister says that there are differences of opinion between all the parties involved — Member States, the Commission and the European Parliament. Indeed, there is not even consensus about whether the main purpose of the proposed Regulation is to improve the functioning of the internal market for construction products or to bring greater consistency to the way Member States regulate the products.

2.10 During the negotiations, the Government has given broad support to the Commission's draft subject to some amendments. It has opposed changes proposed by the French Presidency and the European Parliament which, in the Government's view, risk creating extra burdens for industry and conflict with the principle of subsidiarity.

2.11 The Minister encloses with his Supplementary Explanatory Memorandum the final version of the Government's Impact Assessment. It takes account of the comments the Government received from the industry and others when it consulted them about a draft of the assessment. He tells us that the main findings of the final Assessment are as follows:

- the voluntary take-up of CE marking in the UK is likely to be about 60%;
- the move to mandatory CE marking would probably impose on UK manufacturers a one-off cost of £40 million and subsequent annual costs of £7 million;
- it has not been possible to quantify the potential benefits of the draft Regulation; and
- mandatory CE marking would have a disproportionately adverse effect on the manufacturers (mostly small businesses) of individual products made for a particular project.

2.12 The Government consultations on the draft Regulation lasted from July 2008 to January 2009. There were 52 written responses. The Department also had meetings with representatives of the industry and experts. A summary of the responses is attached to the Supplementary Explanatory Memorandum. Key points from the responses are:

- manufacturers who already use CE marking are in favour or neutral about the proposed move to mandatory marking, whereas those who do not are opposed to the move;
- there is strong and widespread opposition to the proposal for a simplified process for the assessment and verification of products made by micro-enterprises on the grounds that the proposals are unclear, could cause confusion and might provide insufficient checks on products which are safety-critical; and
- there is support for proposals which the respondents thought would clarify the existing requirements and opposition to changes which respondents thought unnecessary or over-complicated.

2.13 The Minister says that, in the remaining negotiations, the Government will accept a text of the Regulation which:

- would improve the single market for construction products through a system which is fair, proportionate and cost-effective for business; and
- would comply with the principle of subsidiarity.

In particular, the Government considers that the practical meaning of the proposed Articles on special arrangements for micro-enterprises is unclear and it remains to be convinced that the arrangements would offer any practical benefit to small businesses.

Conclusion

2.14 We are grateful to the Minister for his clear and comprehensive response to our request for further information. It is not apparent, at this stage, that the likely benefits of the proposed changes would justify the additional costs they would impose on manufacturers. There are still disagreements between Member States on some major questions. Moreover, it is by no means clear that the amendments the European Parliament is likely to propose would be acceptable. We have decided, therefore, to keep the document under scrutiny and to ask the Minister for a further progress report after the European Parliament's First Reading of the draft Regulation on 1 April.

3 European Investment Bank lending in non-EU countries

(30361) 5444/09 COM(08) 910	Draft Decision granting a Community guarantee to the European Investment Bank against losses under loans and loan guarantees for projects outside the Community
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Legal base	Art 179 and 181 a TEC; QMV; co-decision
Document originated	14 January 2009
Deposited in Parliament	20 January 2009
Department	International Development
Basis of consideration	EM of 3 February 2009
Previous Committee Report	None; but see (27643) 11003/06 and (27645) 11006/06: HC-xxxvii (2005–06), chapter 8 (11 October 2006) and HC 41–v (2006–07), chapter 10 (10 January 2007); also see (27924) 13558/06: HC 41–v (2006–07), chapter 9 (10 January 2007)
To be discussed in Council	To be determined
Committee’s assessment	Politically important
Committee’s decision	Not cleared; further information requested

Background

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

3.2 It offers four main services to clients:

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

3.3 The EIB is active both inside and outside the European Union. According to its website, the majority of EIB lending is attributed to promoters in the EU countries (87% in 2007) supporting the continued development and integration of the Union; while outside the Union, EIB lending is governed by a series of mandates from the European Union in support of EU development and cooperation policies in partner countries — in the enlargement area in southern and eastern Europe; in the Mediterranean Neighbourhood; in Russia and the Eastern Neighbourhood; in the African, Caribbean and Pacific (ACP) countries; in South Africa; in Asia; and in Latin America.⁵

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

3.5 The Commission describes that EIB's operations in third countries as “a crucial complement to limited EU budget funds to increase the effectiveness and the visibility of the EU's external action.” While the Community budgetary external assistance is focused on lower income countries and support to the social sectors, “EIB operations are of particular relevance in middle-income countries and in infrastructure, financial and commercial sectors.” The EIB having originally been set up and structured financially to operate within the EU, “the mandates under Community guarantee cover represent the key tools which allow the EIB to carry out operations outside the EU, by providing the necessary political and financial backing by the Community for countries and projects which would not normally fit within the EIB's standard guidelines and criteria.”⁶

The proposed Council Decision

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

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

⁵ See <http://www.eib.org/> for full information.

⁶ COM(08) 910, page 4.

3.7 The Minister further explains that the proposal clarifies the exact nature of the guarantee and extends the coverage to loan guarantees made by the EIB, as well as loans. The Minister says that it comprehensively covers the EIB for losses on operations with the public sector (national and local/regional) or public sector guaranteed operations, and for operations falling outside of the public sphere, against specific political risk only.

3.8 The Minister also notes that the proposal:

- includes articles setting the size of the regional ceilings,⁷ putting the size of the whole ELM at €27.8 billion (£26.5 billion), including a €2 billion (£1.9 billion) optional mandate to be decided by the European Parliament and the Council and based on the outcome of the mid-term review of the ELM, due to be produced by 30 June 2010;
- sets out which countries are eligible and how countries can become eligible; and
- includes articles relating to the consistency of EIB actions with EU policy, cooperation with other International Financial Institutions (IFIs), reporting and accounting standards and recovery of payments made by the Commission under the guarantee.

The Government's view

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

3.10 He regards renewal of the ELM as helping to improve the development impact of the EIB by promoting:

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

3.11 The Minister also highlights a number of features in the Mandate that he believes should help improve EIB’s effectiveness:

“It has been asked to strengthen the way it supports EU objectives and works with IFIs. This was particularly in response to past anecdotal evidence that the EIB had on occasions undercut other lending institutions on price and through less stringent conditionality.”

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

3.12 Other features the Minister notes are:

- “Maximising coordination between EIB financing and the EU’s grant resources (particularly through better links with EC’s grants-based country and regional strategies).
- Strengthening of cooperation with IFIs including through co-financing, risk sharing and coherent conditionality.
- The end of the so called Mutual Interest Clause for operations in Asia and Latin America. (This clause restricted EIB financing to projects involving EU companies.)
- A Mid-Term Review looking at all aspects of EIB lending outside Europe, to be fully informed by an independent evaluation. The preliminaries for this have now started.”

Conclusion

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

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

3.14 We are accordingly glad to note that these key features remain in the present proposal.

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

3.16 We also considered an assessment of an EIB “regional fund”: FEMIP (Fund for Euro-Mediterranean Investment and Partnership), which was created in October 2002 to stimulate economic growth and private sector development in the Mediterranean region and combined EIB loans with EU budget resources to provide technical assistance, interest rate subsidies for environmental projects and risk capital. Agreement had been reached on improvements that — if effectively implemented — were judged as enabling FEMIP better to achieve its key objective of SME development,

with two clear targets — doubling the private sector percentage of FEMIP lending, and more effective cooperation from partner governments, particularly with regard to the issuing of bonds in local currencies (a problem). There, as here, a mid-term review, with outside expert participation, was planned for 2010, which would assess how well cooperation was working between the EIB and the Commission. We suggested that it should also assess the level and effectiveness of cooperation of partner governments (this having been a problem highlighted in the assessment); and that a way should be found of involving the Court of Auditors in both this and the ELM mid-term review — they being extremely experienced in assessing the effectiveness of the Community's development assistance.

3.17 The Minister, rightly, talks about adding value and effectiveness. But he makes no mention of this suggestion. We are therefore drawing his attention to it, and asking him to confirm that he sees no difficulty with taking it forward. As, according to the Minister, the Commission do not plan to put the proposal formally to the Council and the European Parliament until after the summer break, we shall in the meantime retain the document under scrutiny.

4 Intelligent transport systems

(a) (30312) 17563/08 + ADDs 1–2 COM(08) 886	Commission Communication: <i>Action plan for the deployment of intelligent transport systems in Europe</i>
(b) (30313) 17564/08 + ADDs 1–2 COM(08) 887	Draft Directive laying down the framework for the deployment of intelligent transport systems in the field of road transport and for interfaces with other transport modes

<i>Legal base</i>	(a) — (b) Article 71(1) EC; co-decision; QMV
<i>Documents originated</i>	16 December 2008
<i>Deposited in Parliament</i>	12 January 2009
<i>Department</i>	Transport
<i>Basis of consideration</i>	EMs of 5 February 2009
<i>Previous Committee Report</i>	None
<i>To be discussed in Council</i>	(a) 29–30 April 2009 (b) Possibly 11–12 June 2009
<i>Committee’s assessment</i>	Politically important
<i>Committee’s decision</i>	(a) Cleared, but relevant to possible debate on (b) (b) Not cleared, further information requested

Background

4.1 Intelligent transport systems are information and communications technologies used to manage traffic and inform travellers. There has been a gradual increase in the use of technology in recent years in areas such as road safety, traffic management and tackling climate change. Examples of Community sponsored uses include development of the Single European Sky Air Traffic Management Research Programme (SESAR),⁸ the European Rail Traffic Management System (ERTMS)⁹ and the River Information Services (RIS).¹⁰ Shipping has already introduced SafeSeaNet and Vessel Traffic Monitoring and Information Systems (VTMIS) and is moving on an Automatic Identification System (AIS) and Long-Range Identification and Tracking (LRIT).¹¹ A number of provisions also exist in road transport, notably Directive 2004/52/EC on electronic toll collection, Regulation (EEC) 3821/85 on recording equipment in road transport and Directive 2007/46/EC on a

8 See http://www.eurocontrol.int/sesar/public/subsite_homepage/homepage.html.

9 See <http://www.ertms.com/>.

10 See <http://europa.eu/scadplus/leg/en/lvb/l24239.htm>.

11 See https://extranet.emsa.europa.eu/index.php?option=com_content&task=view&id=96&Itemid=162.

framework for the approval of motor vehicles and their trailers, and of systems, components and separate technical units intended for such vehicles.

The documents

4.2 The Commission presents this Communication, document (a), because it is concerned that recent technological developments have been too fragmented and not co-ordinated across Member States, with the potential benefits of new technology not being realised. It calls for a co-ordinated approach to intelligent transport systems across the Community and sets out an action plan aimed at delivering faster deployment of technology-based systems for road transport (including interfaces with other modes of transport) throughout the Community. The plan covers actions designed to address a wide range of policy areas within three categories:

- cleaner transport;
- improving transport efficiency; and
- improving road safety and security.

4.3 In support of the plan the Commission:

- argues that the deployment of intelligent transport systems must be undertaken on a Community-wide basis for their potential to be realised;
- proposes that the Community should play a major role in creating the right framework for accelerated and co-ordinated implementation of intelligent transport systems, notably the policy priorities, the choice of generic intelligent transport systems components to be shared or re-used and the timetable;
- suggests this action will simplify intelligent transport systems deployment in a complex environment of many different Member States and a wide range of stakeholders and partners; and
- argues that this large-scale approach will make implementation faster, less risky and will support market penetration of technology.

4.4 The Commission says that the action plan draws on a series of ongoing initiatives such as the Freight Transport Logistics Action Plan,¹² the yet-to-be-adopted urban mobility action plan, Galileo deployment,¹³ the Greening Transport package,¹⁴ the i2010 initiative on Intelligent Cars,¹⁵ eSafety,¹⁶ the 7th Framework Programme for Research and Technological Development,¹⁷ eCall,¹⁸ European Technology Platforms¹⁹ and their strategic research agendas and CARS 21.²⁰ The action plan identifies 24 actions in six priority areas:

12 (29035) 14266/07 + ADDs 1–2: see HC 16–iv (2007–08), chapter 7 (28 November 2007) and *Stg Co Deb*, European Standing Committee, 4 February 2008, cols. 3–28.

13 http://ec.europa.eu/dgs/energy_transport/galileo.

14 (29850) 11851/08 + ADD 1: see HC 16–xxx (2007–08), chapter 15 (8 October 2008).

15 (28959) 13922/07: see HC 16–i (2007–08), chapter 12 (7 November 2007).

16 www.esafetysupport.org

17 <http://cordis.europa.eu/fp7>

- optimal use of road, traffic and travel data;
- continuity of traffic and freight management intelligent transport systems services on Community transport corridors and in conurbations;
- road safety and security;
- integration of the vehicle into the transport infrastructure;
- data security and protection, and liability issues; and
- Community intelligent transport systems cooperation and coordination. Amongst matters suggested for this area of action is a proposal for a legal framework for Community coordination on the Community-wide deployment of intelligent transport systems — the subject of document (b).

The Commission says:

- the intention is for these actions to complement existing activities at Community and national level, so as to provide a framework for the contribution of intelligent transport systems to the achievement of more sustainable mobility in the Community;
- in the longer term the plan aims at building a long-term vision to define the role of intelligent transport systems in tomorrow's transport system in the Community;
- it will report on the progress of the plan in 2012; and,
- if necessary, it may look to extend the priority areas and the scope of the actions.

4.5 The draft Directive, document (b), is intended to establish a framework for the coordinated deployment and use of intelligent transport systems for road transport (including interfaces with other modes of transport) and to develop the necessary specifications. In the context of its concern that recent technological developments have been too fragmented and not co-ordinated across Member States the Commission considers the use of a framework Directive to be the most appropriate way to address this issue. The Commission bases its proposal on an impact assessment annexed to both documents. This examined three policy options to support the action plan:

- Option A — no additional new action;
- Option B — overcoming problems by concentrating on coordination and synergy measures; and
- Option B+ — Option B extended with a Directive and comitology procedure.

18 (28122) 15932/06: see HC 41–ix (2006–07), chapter 3 (7 February 2007) and HC 16–vi (2007–08), chapter 11 (12 December 2007).

19 <http://cordis.europa.eu/technology-platforms>.

20 (28368) 5746/07 + ADDs 1–2: see HC 41–xviii (2006–07), chapter 13 (25 April 2007).

4.6 The Commission, believing that the self-regulatory approach pursued so far by industry is not sufficient and that this approach will have the greatest impact, has selected Option B+. The resultant draft Directive would:

- require Member States to take the measures necessary to ensure the coordinated deployment and use of interoperable intelligent transport systems applications and services within the Community;
- provide for type approval of road infrastructure related to intelligent transport systems equipment and software;
- establish a comitology committee²¹ to assist the Commission in defining procedures and specifications;
- establish a “European ITS Advisory Group” to which representatives of relevant intelligent transport systems stakeholders would be invited to advise the Commission on business and technical aspects; and
- require Member States to ensure that processing of personal data be carried out in accordance with Community rules and that these data and records be protected against misuse, alteration or loss.

The Government’s view

4.7 In his Explanatory Memorandum on the Commission Communication, document (a), the Parliamentary Under-Secretary of State, Department for Transport (Paul Clark), says by way of introduction that:

- the Government supports the objectives of reducing congestion, tackling environmental issues, providing reliable travel information and improving safety;
- it is not convinced, however, that combining such a broad set of policy areas into one Communication is the most effective approach;
- the document does not consider in sufficient detail the reasons why intelligent transport systems have not yet been implemented faster or more widely;
- it is important to understand this better before pressing ahead with an accelerated deployment of systems, which would involve close liaison and coordination amongst the devolved administrations; and
- the Government wishes to encourage the Commission to prioritise the actions in the plan associated with gathering robust data, evaluation and developing business cases for intelligent transport systems deployment in line with transport policy

²¹ Comitology is the system of committees which oversees the exercise by the Commission of powers delegated to it by the Council and the European Parliament. Comitology committees are made up of representatives of the Member States and chaired by the Commission. There are three types of procedure (advisory, management and regulatory), an important difference between which is the degree of involvement and power of Member States’ representatives. So-called “Regulatory with Scrutiny”, introduced in July 2006, gives a scrutiny role to the European Parliament in most applications of comitology.

objectives, before defining proposals designed to generate regulation to accelerate the current pace of intelligent transport systems deployment.

4.8 The Minister then comments on each of the Commission’s six priority areas for the action plan, saying that:

Optimal use of road, traffic and travel data

- the UK has experience in the collation of speed limit data and the Government recognises the important role that authorities have to play in ensuring data quality. However, the document lacks clarity over the proposal to guarantee access to safety related data, notably regarding data ownership, copyright and charging arrangements;
- the Department for Transport has successfully implemented ‘Transport Direct’ — a one-stop-shop travel information and multi-modal journey planning service for the UK. The Government is willing to share its experience in understanding the significant challenges in gathering and presenting all transport options in a consistent and impartial manner;

Continuity of traffic and freight management intelligent transport systems services in European transport corridors and in conurbations

- from a freight perspective the Government believes that industry should be encouraged to make best use of intelligent transport systems where appropriate and it is reasonable for the Community to facilitate, support and encourage deployment where there is a proven business case. The Government thinks that market forces should be allowed to lead and that legislation in this area would slow down innovation and development of applications;
- the Government would prefer to see the less prescriptive term “GNSS [global navigation satellite system] technologies”, used in place of the specific “RFID,²² EGNOS/Galileo based location devices”. To avoid system supplier dependence, the Government agrees that open standards and an open architecture have a place in traffic control systems and should be promoted;
- the Government feels that the timescale on the proposal for a European intelligent transport systems framework architecture is too ambitious;

Road safety and security

- the Government shares the Commission’s objective of improving road safety and saving lives and wholly supports safety related systems where there is a positive cost benefit case;
- it considers the timescales for promoting the deployment of advanced driver assistance systems (2009–2014) are not in line with ongoing projects in this area —

22 (28475) 7544/07 + ADD 1: see HC 41–xxi (2006–07), chapter 10 (9 May 2007).

Department for Transport engineers are involved in Community projects which are due to deliver in 2015 for new vehicles;

- it remains concerned over the cost-benefit analysis for eCall in the UK and is seeking further evidence before it would be able to re-consider signing the Memorandum of Understanding and committing to implementing eCall in the UK;
- it agrees with the need for safe on-board Human-Machine-Interface and the integration of nomadic devices. Guidelines for manufacturers, installers and users exist in the form of the European Statement of Principles (ESOP), which has been recently updated to include nomadic devices. The Government believes that the main priority for the near future should be to publicise and encourage the wider application of the ESOP, especially with regard to nomadic devices;
- it is, however, cautious about the development of a regulatory framework for Human-Machine-Interface — this may help standardise the way warnings are provided and the type of controls used, but there is also the risk that laying down specific requirements at this time could inhibit the development of better Human-Machine-Interface solutions in the future. Any regulations should be sufficiently flexible to allow manufacturers to continue to explore innovative solutions;
- it believes priority should be given to the issue of driver overload, for example from multiple warnings and sources of information — this is likely to become an increasing problem as vehicles are fitted with an ever-increasing range of information and warning systems. Identifying how best to prioritise this information and provide it in a timely manner is vital to minimise the level of distraction;

Integration of the vehicle into the transport infrastructure

- while it seems sensible for different intelligent transport systems applications to be delivered from a common piece of equipment, especially where the supporting technologies, for example GNSS, are potentially common, there are risks associated with overcomplicating and overpricing the technical component — especially as not all Member States have the same traffic issues. The ability of any manufacturer to incorporate these different matters into a cost effective piece of in-vehicle equipment remains in some doubt;
- from a freight perspective end user industries have said that they would like a “single black box” solution — for navigation, customs clearances, freight tracking and tolling purposes. However, whilst the prospect of linking a number of applications may be an attractive option, it may create unnecessarily onerous costs and technical burdens on users if a specific device or technology were specified by the Commission;

Data security and protection and liability issues

- the Government believes data security and protection is likely to remain a major factor in the development of transport systems for the foreseeable future and an appropriate balance is needed to manage risks to an acceptable level in a way that does not place unreasonable costs on operators or burdens on the travelling public;
- it welcomes the proposals set out under this heading;

European intelligent transport systems cooperation and coordination

- the Government has serious concerns about the proposal for a legal framework for Community coordination of intelligent transport systems deployment (document (b)). It already has a number of intelligent transport systems in place and its successes have been achieved through cooperation and coordination with industry groups and other adopters. The Government believes that a proposal to establish a legal framework may place undue obligations on authorities wishing to implement or update schemes;
- the Government supports taking a more systematic approach to the assessment of intelligent transport systems solutions to support decision-makers in their evaluation of intelligent transport systems tools and deployments — good business cases and well-evidenced cost benefit analyses are key to the successful deployment of intelligent transport systems applications;
- in the UK, the Department for Transport has supported the development of good practice guidance through the operation of the web-based toolkit “Understanding the benefits and costs of Intelligent Transport: A toolkit approach”.²³ This provides specific advice on the selection of intelligent transport systems tools to meet policy objectives, the benefits and costs of intelligent transport systems deployment, what others have done to incorporate intelligent transport systems within transport plans and lessons learnt from case study experience; and
- the Government supports the proposal to set up a collaboration platform between Member States, but would need to review the terms of reference to be confident that it was not duplicating the work of other fora.

4.9 In his Explanatory Memorandum on the draft Directive, document (b), the Minister deals with three main issues — aspects of fundamental human rights, subsidiarity and the substance of the proposal. On human rights the Minister says that:

- because the deployment and use of intelligent transport systems applications and services are very likely to entail the processing of personal data, the right to the protection of personal information and the right to respect for private and family life are engaged by the draft Directive — as is recognised in its recitals;

²³ See <http://www.dft.gov.uk/itstoolkit/>.

- the Commission considers that concerns about privacy are one of the reasons why intelligent transport systems have not been taken up as quickly as anticipated and the proposal is seen as a way of dealing with those concerns;
- the main relevant article providing for rules on privacy, security and re-use of information seeks to ensure that privacy rights are protected in relation to intelligent transport systems generally;
- the Government believes that the provisions of the draft Directive respect the rights that are engaged; and
- in particular, it considers that the processing of personal data can be done in a way which respects those rights and that the processing of personal data in order to ensure the proper working of intelligent transport systems and obtain the benefits of intelligent transport systems is legitimate and proportionate.

4.10 Turning to subsidiarity the Minister says that:

- the draft Directive does not fall under the exclusive competence of the Community but does address cross-border issues;
- the Commission's view is that the proposal respects the principle of subsidiarity as the issues cannot be regulated satisfactorily by Member States alone and as it believes that if no Community action is taken Member States will continue to develop and implement individual solutions which could hamper the interoperability of systems;
- it recommends a Directive as the most suitable instrument for achieving coordinated deployment of intelligent transport systems applications across the Community;
- the Government recognises the importance of cooperation between Member States and the value of a coherent approach to intelligent transport systems across the Community — as a result of early cooperation there have been successes in the development of existing standards, for example in the provision of traveller information;
- however, the Government has questioned whether a legislative approach is necessary in order to achieve these goals or whether an approach based on discussion and negotiation would be more appropriate; and
- it raised this with the Commission at the consultation stage and will pursue this as discussions of the action plan continue.

4.11 On the substance of the draft Directive the Minister first says that:

- the UK has been an early adopter of intelligent transport systems technologies and there are already a number of successful applications in operation;
- the Government is committed to implementing technology only where it addresses policy requirements, supported by a business case. It is encouraged that the draft

Directive recognises this at a high level but it is important that this approach is carried through into implementation;

- the Government believes that the Community should not attempt to specify particular technologies as this could stifle both the commercial market and innovation in the intelligent transport systems arena;
- the Government is very pleased that a comprehensive impact assessment has been carried out by the Commission to support the proposal. Of the three potential policy options offered for future activities the Government's preference is Option B — overcoming problems by concentrating on coordination and synergy measures, rather than legislation and comitology;
- it believes that taking no additional action, as proposed in Option A, would not address slow deployment of intelligent transport systems applications for meeting policy objectives and that cooperation and communication across the Community would not be readily achieved;
- it feels that Option B+ is too open-ended and would provide too much scope for decision making without wide-reaching consultation. There is the potential of conflict, and lack of clarity regarding roles and precedence between the proposed Advisory Group and the comitology committee — if there is to be a group or committee, the Government believes that it would be more productive to have one group comprising stakeholders and Member States;
- it does not support formation of a comitology committee, as it believes that it has to potential to cut across work already underway by a number of groups and committees;
- there is a risk that a comitology committee process may lead to international, legally binding requirements to implement certain intelligent transport systems system that are not relevant for the UK road network; and
- the Government would not be in a position to support the formation of a comitology committee until it understood more about its composition and the implications it would have on the practical implementation of intelligent transport systems and is assured that it would be boosting uptake of intelligent transport systems for the right reasons.

4.12 The Minister then comments on some details in the draft Directive, saying that:

- in relation to the proposed requirement that Member States take “necessary measures” to ensure the coordinated deployment and use of interoperable intelligent transport systems within the Community, the definition of these measures is not clear and therefore risks becoming a subject of disagreement between the Commission and Member States and will be difficult to implement;
- the Government is seeking clarity over the copyright and commercial arrangements for the supply and use of data referred to in the provision on this requirement;

- it is concerned about the provision that the Commission is to define specifications for the deployment and use of intelligent transport systems as the UK is already using standards developed in Europe to collate and exchange travel data and any changes to these could impact on the delivery of existing services;
- it is seeking clarity on the purpose of the specifications, for example, user requirements, functionality and interface protocols, how they would be adopted and what responsibility Member States would have to enforce their use;
- it considers the type approval for road infrastructure related intelligent transport systems equipment and software provided for is a very onerous process and the Government would like the Commission to provide clarity over the decision making process, who will be responsible for the work and how it will be funded;
- the amendment procedure in the draft Directive suggests that the Commission would be able change the scope of the Directive, seemingly without further consultation. The Government is seeking assurances that, in the interests of sound governance and Member State acceptability, there would be a consultation process;
- the Government believes further clarity is required over the terms of reference for, and the procedure to determine the make up of, the proposed European ITS Advisory Group; and
- it does not believe that the proposed requirement for Member States to report on a national intelligent transport systems strategy and the status of intelligent transport systems deployment will be useful or appropriate. Intelligent transport systems applications are now becoming mainstream technologies and it may not be possible to group them together in this way — the Government would be more inclined to report on how transport technologies are helping it to deliver its policy objectives.

4.13 The Minister describes the consultations the Commission undertook in preparation for the draft Directive (and for the Commission Communication, document (a)). But he does not mention any planned consultation of UK interests by the Government. However, he does say that the proposals in the draft Directive are at an early stage and without further clarity the Government would not be able to complete a separate impact assessment for the UK with a satisfactory degree of accuracy. The Minister continues that, if more specific, defined proposals are brought forward at a later date, they will be subjected to an impact assessment.

Conclusion

4.14 **We note that the Government finds the breadth of the policy areas covered by the Commission Communication, document (a), an ineffective approach and that it urges the Commission prioritise its proposals for 24 actions in relation to intelligent transport systems. Whilst, nevertheless, we are clearing this document, we note that it would be relevant to a debate on the draft Directive, document (b), which it is likely we will eventually recommend.**

4.15 As for the draft Directive we are unsure as to what the Government's approach to the proposal will be. On the one hand the Minister tells us why, for subsidiarity and practical reasons, the Government finds the proposal for legislation inappropriate. On the other hand the Minister's comments about the details of the proposal implies that the Government accepts that there will be legislation based on negotiated revisions of the draft Directive. So before we consider the document further we should be grateful for clarification as to how the Government intends to handle this proposal.

4.16 Additionally, while we understand why it is not possible yet to sensibly undertake an impact assessment of the draft Directive, we are surprised that the Government does not seem to intend a consultation on the proposal. We should be grateful for clarification on this also.

4.17 As mentioned in relation to the Commission Communication, document (a), it is likely, once we have heard from the Government again, that we will recommend that the draft Directive, document (b), be debated. Meanwhile the document remains under scrutiny.

5 Bilateral Agreements

(30334) 5147/09 COM(08) 893	Draft Regulation establishing a procedure for the Negotiation and Conclusion of Bilateral Agreements Between Member States and Third Countries concerning sectoral matters and covering applicable law in contractual and non — contractual obligations
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<i>Legal base</i>	Articles 61, 65 and 67(5) EC Treaty; unanimity; consultation.
<i>Document originated</i>	23 December 2008
<i>Deposited in Parliament</i>	14 January 2009
<i>Department</i>	Ministry of Justice
<i>Basis of consideration</i>	EM of 22 January 2009
<i>Previous Committee Report</i>	None
<i>To be discussed in Council</i>	No date fixed
<i>Committee's assessment</i>	Legally and politically important
<i>Committee's decision</i>	Not cleared. Further information requested

Background

5.1 The external competence of the Community is its capacity to act separately from Member States internationally, in particular to negotiate and conclude binding international agreements and to belong to, and participate in, international organisations. The Community's external competence may be either exclusive or shared. Where the Community has exclusive external competence, Member States have no further power to

act internationally in respect of that subject-matter. The European Court of Justice has established that the Community's external competence will normally be exclusive if an agreement falls into an area of law which, internally, is already largely covered by Community rather than national law, or if the effectiveness or purpose of Community's internal rules may be adversely affected or undermined by an international agreement concluded by Member States. The Community's external competence may thus be exclusive in areas of law where it only has shared internal competence.

The document

5.2 The purpose of this proposal is to establish a procedure to enable Member States in future to negotiate and conclude bilateral agreements with third countries in certain areas of the choice of law concerning non-contractual and contractual obligations. Subject to the satisfaction of certain conditions, this procedure would enable the Commission to authorise such negotiations and their conclusion.

5.3 These subject areas have recently been covered by Community legislation, respectively by EC Regulation No. 864/2007 ("Rome II") and EC Regulation No. 593/2008 ("Rome I"). The consequence of this Community legislation is to establish exclusive external Community competence in these areas. This has had the result that in principle Member States are prevented from entering into bilateral agreements which fall within the scope of this legislation. Concerns were raised by some Member States during the negotiations on Rome II that the consequent extension of external competence in this area might prove too restrictive in some circumstances, for example in the context of cross-border infrastructure projects involving third countries, such as airports or tunnels, where it might be desirable to put in place special choice of law regimes which departed from the terms of the relevant Community legislation.

The Government's view

5.4 In his Explanatory Memorandum of 22 January 2009 the Parliamentary Under-Secretary at the Ministry of Justice (Lord Bach) outlines the Government's position in the following terms:

"The Government is in principle supportive of the underlying aim of this proposal which is to introduce some degree of flexibility into the rigidity of the doctrine of external Community competence. The effect of this doctrine is generally to prevent individual Member States from entering into bilateral agreements with third countries in those areas that are subject to such competence. This is likely to be particularly problematic for those Member States, such as the United Kingdom, which have a significant number of bilateral agreements with third countries with which they have important historical and cultural links. The problem will be acute in those cases where the Community as a whole has no sufficient interest in entering into an agreement with a particular third country.

"While the Government welcomes the proposal, as the United Kingdom does not have bilateral agreements in the area of choice of law there will be limited value for us as it stands. The value of the proposal would be increased if the scope was extended

to the recognition and enforcement of judgments. This is an area where the United Kingdom has many bilateral agreements, mostly with Commonwealth countries, in accordance with the Administration of Justice Act 1920 and the Foreign Judgments (Reciprocal Enforcement) Act 1933. In the light of this the Government will seek to widen the scope of the proposal during the course of the negotiations.

“Article 4 lays down the conditions under which the Commission may authorise a Member State to pursue negotiations with a third country. One of these conditions is likely to be of particular importance. This is the requirement under Article 4(2)(b) that the proposed agreement should be ‘of *limited* impact on the uniform and consistent application of the Community rules in place and on the proper functioning of the system established by those rules’. The Government will seek clarification of the meaning of ‘limited’ in this context. If what is meant here is any impact that is of more than minimal significance then that would be likely to diminish significantly the utility of this proposal. On the other hand, if it is intended that only agreements which would clearly have a significant impact on the *acquis communautaire* should be excluded from the proposed procedure, then the utility of the proposal would be correspondingly increased.”

Conclusion

5.5 We thank the Minister for his helpful comments and share the Government’s support for the underlying aim of the proposal, which would allow Member States to retain shared external competence in the area of choice of law concerning contractual and non-contractual obligations. We ask the Minister if on this basis the Government intends to ‘opt in’ to the proposal.

5.6 We agree with the Minister that the value of the proposal would be considerably enhanced if its scope were extended to the recognition and enforcement of judgments. We encourage the Government to argue the case for appropriate amendments during the course of negotiations.

5.7 We share the Government’s concern about the ambiguity of some of the conditions attached to the exercise of Member State competence in this area. We in particular urge the Government to seek an appropriate clarification of the meaning of “limited” in Article 4(2)(b) which seeks to ensure compatibility of any bilateral agreement with the functioning of the intra-EU and EEA conflict of laws rules. We shall hold the document under scrutiny until the publication of a new revised proposal or until we have had further word from the Minister.

6 Market access for European exporters

(30317) 17581/08 COM(08) 874	Commission Communication on the external dimension of the Lisbon Strategy for Growth and Jobs: Reporting on market access and setting the framework for more effective international regulatory cooperation
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<i>Legal base</i>	—
<i>Document originated</i>	16 December 2008
<i>Deposited in Parliament</i>	13 January 2009
<i>Department</i>	Business, Enterprise and Regulatory Reform
<i>Basis of consideration</i>	EM of 23 January 2009
<i>Previous Committee Report</i>	None, but see footnotes 24 and 25
<i>To be discussed in Council</i>	See para 6.6 below
<i>Committee's assessment</i>	Politically important
<i>Committee's decision</i>	Cleared

Background

6.1 According to the Commission, open markets create opportunities for growth, employment and investment, and are of particular importance for the Community, as the largest trading block in the world. However, it suggests that the current financial and economic crisis might bring about more protectionism, and that removing existing trade barriers — notably through the conclusion of the Doha Round — but also through bilateral and regional approaches has acquired further importance. It notes that the Global Europe Strategy²⁴ is an essential external pillar of the Lisbon Strategy, and that the renewed Market Access Strategy²⁵ is a key strand of this, the importance of these efforts to open markets being recognised by the European Council's endorsement in spring 2008 of the Commission's suggestion that it should report each year on these issues.

The current document

6.2 This Communication is the first such report, and is regarded by the Commission as a further step in developing a stronger external dimension to the Lisbon Strategy. It addresses first the issue of non-tariff barriers, which it says are seen by firms as increasingly important, compared with traditional measures such as import tariffs and duties. It adds that the most frequent barriers include burdensome customs procedures, as well as discriminatory tax rules, technical regulations, standards and conformity assessment procedures, sanitary and phyto-sanitary measures, restrictions on access to raw materials, poor protection of intellectual property rights, barriers to trade in services and foreign direct investment, restrictive public procurement rules, and abusive use of trade defence instruments or unfair use of subsidies. However, it also recognises that addressing these

24 (27896) 13175/06: see HC 34–xliv (2005–06), chapter 13 (7 November 2006).

25 (28575) 8753/07: see HC 41–xxii (2006–07), chapter 15 (16 May 2007).

barriers is a complicated, technically challenging and time-consuming process, and that much depends on whether or not a barrier is in pursuit of a legitimate aim. It draws a further distinction between those which arise from different social, environmental, health and consumer objectives, and those which are used more systematically to protect domestic production.

6.3 The Communication goes on to examine in more depth the different barriers faced by European exporters. Thus:

- in the case of *non-tariff barriers to goods*, it reinforces the need to tackle those used systematically, and cites a number of examples of the problems encountered by different industrial sectors, such as automobiles, chemicals, pharmaceuticals, electronic equipment, and agricultural and food products;
- as regards *services and establishment*, it notes that, although there are many barriers to the entry of Community firms (including nationality and residency requirements, limits on foreign ownership or shareholding, or on the type of legal entity, or entry being subject to an economic needs test), it is often complex to detect and remove these;
- in the case of *public procurement* (which it says makes up an average of 15% of the GDP of OECD countries), Community suppliers can rely on the Agreement on Government Procurement, which provides for common disciplines and public advertising of major contracts: however, whilst a number of other countries²⁶ have signed up to this, many WTO members have not, and several procurement areas and contracting entities are not bound by the rules, even though the Community's own procurement market is relatively open to foreign competition; and
- as regards *protection of intellectual property*, European industry remains deeply concerned at the extent to which its rights are infringed in certain regions, by lack of legal protection or effective enforcement, with an OECD study in 2007 having suggested that international trade in counterfeit and pirated products could be some \$200 billion a year — a figure which it says could well be increased by several hundred billion dollars if products traded and produced domestically, or distributed via the internet were to be included: the Commission also highlights the record number of Customs seizures of counterfeit and pirated products in 2007, notably in areas posing health and safety concerns, such as cosmetics, toys, foodstuffs and medicines.

6.4 The Communication then looks at the Community response to existing barriers, in the light of the Global Europe and Market Access Strategies. It draws attention to a broad range of instruments, including:

Trade agreements

It sees these as a primary tool to provide market access for Community exporters, and adds that, whilst multilateral negotiations in the context of the WTO (notably

26 Including, the US, Japan, Canada and Korea.

the swift conclusion of the Doha Round), is crucial to achieving a rule-based international system, bilateral Free Trade Agreements often provide for more comprehensive and deeper engagements, especially with important trading partners in Asia.

Bilateral relations

The Commission suggests that regular and more ad hoc bilateral contacts, for example through the Transatlantic Economic Council, can also be an effective way of addressing trade barriers and regulatory issues, as can assertive trade diplomacy, and trade-related assistance, for example in the training of customs officials.

Formal instruments

The Commission says that instruments such as the WTO Technical Barriers to Trade and Sanitary and Phytosanitary Agreements are increasingly important in securing open trade opportunities and enabling concerns to be addressed at an early stage, failing which the Community's Trade Barriers Regulation (which enables companies to request the Commission to investigate complaints and seek redress) and the WTO dispute settlement procedures can be effective remedies.

Regulatory cooperation

The Commission points out that the Community has long experience with regulatory convergence and cooperation within the single market, and that such cooperation on a multilateral or bilateral basis can address unnecessary barriers caused by differences in regulatory practice, both in addressing specific issues and in building a relationship between regulators.. It adds that, in some cases, regulatory convergence may be appropriate, whilst in others recognition or equivalence agreements can be helpful.

Market Access Partnership

The Commission notes that the Market Access Strategy established a new, stronger partnership between the Commission, Member States and business in order to pool resources and expertise to detect and remove barriers. It says that monthly meetings of the Market Access Advisory Council have become the main focal point for coordination, supported by specific expert groups, and that local Market Access Teams have been established in most of the Community's major export markets, proving to be especially valuable in providing an early warning mechanism and local knowledge and contacts.

The Commission concludes by saying that the Community's future activities should be based upon a coordinated approach, setting priorities (with priority being given to areas where there is a strong economic interest, and a real impact can be achieved within a reasonable time), listening to stakeholders, and making full use of the available range of instruments.

The Government's view

6.5 In his Explanatory Memorandum of 23 January 2009, the Minister for Trade, Investment and Consumer Affairs at the Department for Business, Enterprise and Regulatory Reform (Mr Gareth Thomas) notes that this Communication does not propose any new instruments or policy measures. He adds that the re-launch of the Market Access Strategy followed a consultation process in which the Government and UK business participated fully, and that the latter remains fully involved in the development of the Strategy. He also says that the Communication is consistent with the Government's objectives for developing free and open markets.

6.6 The Minister says that the Communication is subject to continuing discussion in the Council and its relevant preparatory bodies, and that a report will be agreed for the Spring European Council on 19–20 March.

Conclusion

6.7 Although this Communication in many ways covers ground similar to that set out in the Market Access Strategy, it provides a useful resumé of the various trade barriers which exist, and of the measures being taken to address these. Consequently, whilst we are clearing the document, we think it right to draw it to the attention of the House.

7 Interim Economic Partnership Agreement between the European Community and its Member States and the South African Development Community States

(a) (29973) 13314/08 + ADDs 1–13 COM(08) 562	Draft Council Decision on the signature and provisional application of the Interim Economic Partnership Agreement between the European Community and its Member States and the South African Development Community States
(b) (29979) 13386/08 + ADDs 1–13 COM(08) 565	Draft Council Decision concluding the Interim Economic Partnership Agreement between the European Community and its Member States and the South African Development Community States

<i>Legal base</i>	Articles 133, 181 and 300 EC; QMV
<i>Document originated</i>	18 September 2008
<i>Deposited in Parliament</i>	29 September 2008
<i>Department</i>	International Development
<i>Basis of consideration</i>	Minister's letter of 26 January 2009
<i>Previous Committee Report</i>	HC 16–xxxii (2007–08), chapter 5 (15 October 2008); also see (29043) 14498/07 and (29155) 14968/07: HC 16–xxi (2007–08), chapter 13 (14 May 2008)
<i>To be discussed in Council</i>	Before the end of 2009
<i>Committee's assessment</i>	Politically important
<i>Committee's decision</i>	Cleared; further information requested

Background

7.1 The Economic Partnership Agreement (EPA) negotiations with the African, Caribbean and Pacific (ACP) group of countries, which began in 2002, aimed at redefining the trade regime between the two groups of countries, thereby replacing the long-standing Lomé system of preferential access to the European market for the ACP from 2008. The EPAs are intended to be in conformity with WTO rules, which require that barriers to trade be dismantled on both sides, introducing an element of reciprocity into trade relations between the EU and the ACP states for the first time. This gave rise to concern that extensive market opening in these countries to the EU could create strong adjustment pressures, while European suppliers would be only marginally affected by free market access for ACP goods and services. The deadline for negotiation was 31 December 2007.

7.2 The Commission's aim was always "full" EPAs — which include provisions on trade-related areas, trade-related rules and trade in services and include appropriate links to development cooperation, as well as trade in goods — in accordance with what is outlined

in the Cotonou Agreement and the Commission’s negotiating mandate. But not all of the six ACP negotiating regions were likely to conclude a full EPA by the set deadline; so, for these regions, the Commission decided to pursue basic “trade in goods agreements”, which provide for duty free/quota free access and simplified Rules of Origin.

7.3 Our earlier Reports set out our consideration of the process in greater detail, concluding with a letter from the Parliamentary Under-Secretary of State at the Departments for International Development and Business, Enterprise and Regulatory Reform (Mr Gareth Thomas) outlining the general situation as of the end of April 2008.²⁷

The Council Decisions

7.4 These two proposals are for:

- a Council Decision authorising the signature, on behalf of the Community, and provisional application of an Agreement between the EC and its Member States on the one hand, and the SADC EPA states on the other; and
- a Council Decision authorising the formal conclusion, on behalf of the Community, of an Agreement between the EC and its Member States on the one hand, and the SADC EPA states on the other.

7.5 “SADC EPA states” refers to Namibia, Botswana, Lesotho, Swaziland and Mozambique, countries within SADC that have completed interim EPA negotiations. Of these, the first four are members, along with South Africa, of the Southern African Customs Union (SACU). In this Agreement, for some purposes the “SADC EPA states” act collectively and for others they act individually.

7.6 The Commission and SADC EPA states initialled the IEPA on 23 November 2007, which enabled their inclusion in the EPA Market Access Regulation adopted by the Council of Ministers on 20 December 2007 (which provides for duty-free, quota-free access for all SADC EPA states’ exports to the EU, commencing 1 January 2008).

7.7 The Commission has issued these proposals together as they both concern the formalities necessary to agree formally and give effect to the same international agreement, namely the Agreement establishing an interim Economic Partnership Agreement between the EC and its Member States and the SADC EPA states (the IEPA). The two step process is not unusual — the EC Treaty expressly allows the Community to apply international agreements provisionally, prior to their formal conclusion, as the formal conclusion process can be lengthy.

Previous consideration

7.8 The details of the IEPA are set out in our previous Report. In his accompanying Explanatory Memorandum of 10 October 2008, the then Parliamentary Under-Secretary of State at the Department for International Development (Mr Gareth Thomas) said that the UK had consistently stated that EPAs should help provide a strong framework for long

27 See headnote: see (29043) 14498/07 and (29155) 14968/07: HC 16–xxi (2007–08), chapter 13 (14 May 2008).

term development, economic growth and poverty reduction, and had centred its policy on the principles set out in the DFID/DTI Position Paper of 2005.²⁸

7.9 This Agreement broadly aligned with these principles, which included the belief that: ACP countries should be able to decide the scope of issues covered within their IEPA; they should have flexibility over their market opening; EPAs should provide them with duty and quota free market access into the EU with improved Rules of Origin; they should benefit from effective safeguards to protect their markets when required; and EU partners should provide ACP countries with effective development assistance to benefit from new trade opportunities while ensuring aid is not made conditional on signing an EPA. The initialling of this ‘goods-only’ agreement had thus enabled SADC EPA states to secure market access into the EU while allowing more time to work with other African neighbours to negotiate a regional EPA covering other trade issues such as services.

7.10 The Minister noted a number of positive features. Better Rules of Origin (ROOs) would provide the SADC EPA states with a more flexible and liberal basis to export to Europe. The right to impose quantity restrictions on exports in the event of food shortages addressed a common concern of African ACP countries on food security. Protective measures such as safeguards would enable SADC to apply or raise duties or quotas on imports if faced with a surge of EU imports; their being easier to trigger than current WTO safeguards would help protect vulnerable producers, including emerging industries, from the increased volatility associated with opening trade; the 12 year provision for non-LDC SADC EPA countries and 15 years for LDC states was not, in the Minister’s view, ungenerous. The Agreement contained a number of developmental provisions; this included the aspiration to create a regional development financing mechanism such as an EPA Fund. A number of EU Member States, including the UK, were also supporting aid for trade initiatives in the region; the UK was currently on track to spend over £400 million per year on aid for trade globally by 2010, within which the southern African region was a major plank, with specific targeting towards regional trade facilitation.

7.11 The Minister had, however, a number of concerns. The first arose from the commitment in the IEPA by the SADC EPA states to conclude negotiations on other trade issues (services and investment) by the end of 2008, which he regarded as an ambitious deadline; he would be asking the Commission to show flexibility.

7.12 Secondly, there was a potential for disruption of SACU — which manages most of the borders of the SACU members and collects tariffs which are redistributed between members — and the free circulation of goods as agreed in the IEPA arising from the fact that South Africa (SACU’s biggest and most influential member) had chosen not to initial the IEPA. Moreover, since the SACU agreement technically prevents members from concluding new trade agreements without the consent of all, there could be difficulties should South Africa object to the IEPA agreement. However, in concluding the Trade and Development Cooperation Agreement with the EU, South Africa had acted unilaterally. The Minister therefore felt that both the border administration and the SACU consent issue were manageable in principle, but would require the good-will of South Africa to

28 Which is reproduced at the Annex to chapter 1 of our First Report: see HC16–i (2007–08), chapter 1 (7 November 2007).

support an IEPA and close working between the SACU states to ensure a more complicated border administration operated effectively. The UK was monitoring South Africa's position and regional dynamics on these issues — which might partly be affected by progress on negotiations towards a regional EPA.

7.13 The UK remained supportive of the aspiration to conclude a region-wide Agreement. Ultimately the range of SADC countries that initialled the IEPA reflects choices made by the countries themselves. The liberalisation schedule for SACU EPA states was designed to be very similar to the schedule for liberalisation in the Customs Union. Also the agreement allowed accession of new members and did not preclude the establishment or expansion of customs unions or free-trade areas. However, the IEPA limited the scope for SADC EPA states to use South African inputs in products for export to the EU, which the Minister said could potentially restrict the take-up of preferential access to EU markets accorded by IEPA as well as restricting regional integration. SADC countries such as South Africa, Namibia and Angola had raised these concerns with the UK and the Commission as serious issues to be addressed. However, the Minister noted, this was an interim Agreement: the intention of the Commission was to conclude a broader regional EPA which took these concerns into account. The UK would monitor progress with a view to promoting any measures that could be taken to facilitate development gains and support for integration in the region.

7.14 Although the UK's aim to secure flexibility for ACP countries on market opening had been addressed in this Agreement, most of *Mozambique's* liberalisation would happen immediately and the speed of adjustment could be a challenge. Moreover, Mozambique's liberalisation schedule was to be merged with the SACU EPA states at such a time as Mozambique made a technical move onto a new customs classification system requiring it to liberalise further: the Minister said that this was not ideal — such a merger should be linked to development performance and not customs administration. The UK would aim to monitor the development impact of the proposed liberalisation schedule, and also push the Commission to be flexible during implementation by taking due account of any perceived development impacts and challenges.

7.15 Finally, the Minister said that the Agreement, like other EPAs, included provisions that were not strictly required for WTO compatibility but were common in free trade agreements, including the Most Favoured Nation Clause, Standstill Clause and ban on new export taxes. These provisions had been raised as concerns by some of the SADC countries and similar views are held by some ACP representatives and NGOs. South Africa, Namibia and Angola were very vocal about these concerns and had officially raised this as a matter of concern during discussions with the UK government; Namibia had also submitted a statement to Commission saying it initialled the IEPA on the understanding that these concerns would be addressed in subsequent negotiations leading to a comprehensive EPA.

7.16 Summing up, the Minister said that he intended to pursue the concerns that had been raised about the terms of the Interim Agreement in the relevant Council Working Groups, including measures not required for WTO compatibility (such as the MFN clause and standstill clause), the commitments to broaden the scope of the Agreement (on services and investment) and with regard to regional integration. He proposed to monitor them and lobby the Commission to address them in broader regional negotiations towards a

comprehensive EPA. Given these concerns and the fact that discussion on the concluded SADC IEPA had not been held so far in the Working Groups, the Minister concluded by saying that it was possible that he might need to come back to the Committee with further developments and advice on the SADC IEPA.

7.17 Although no issues arose about the procedural aspects of these Council Decisions, the Minister having drawn attention to other important aspects about which he felt that he might need to revert to us, we retained the documents under scrutiny.

7.18 We also drew them to the attention of the House because of the widespread interest in the EPA process, and also to the attention of the International Development Committee, so that they might be aware of the elements of the EPA, as described by the Minister, and of his concerns.²⁹

The Minister's letter of 26 January 2009

7.19 The Minister provides what he describes as the following update:

“Regional Integration issues — Border administration: There are concerns over regional integration as South Africa is not party to the interim EPA (IEPA). The most pressing of these concerns relates to the mis-match in tariffs between the SADC states and SACU (South African Customs Union). The main challenge to maintaining coherent regional trade regimes is to harmonise tariffs between South Africa and other countries in SADC. The Commission has presented South Africa with a range of options that would enable this and dialogue is ongoing.

“Regional Integration issues — Content: EPA rules on sourcing of materials mean that inputs from South Africa which fall under the exclusion list cannot be used in goods which are exported to the EU from SADC. The Commission have informed us that these items are not indefinitely excluded. However, our understanding from regional governments is that there is not yet clarity on dates and how future sourcing of inputs from South Africa will be managed. We are monitoring the situation closely and will, if necessary, push for greater flexibility from the Commission.

“Country Government Views: Angola, South Africa and Namibia were the only governments in the region to express opposition to the terms of the interim EPA. Botswana, Lesotho and Swaziland have been generally supportive of the Agreement, but they have expressed concerns about the impact of the Interim EPA on regional integration.

“Whilst Namibia has signalled its intention to sign they have also raised concerns, some of which echo those of South Africa. We have received recent updates from the Commission that progress has been made on the most contentious issues. On balance, it appears that Namibia is likely to sign but will do so with the expectation that their concerns be addressed in the move towards a regional EPA.

29 See headnote; HC 16–xxxi (2007–08), chapter 5 (15 October 2008).

“Engagement with South Africa is ongoing, however given current domestic pressures in South Africa, progress has been slow. We continue to track progress on the various negotiations and do all we can to encourage both the Commission and key negotiating partners to reach agreement on outstanding issues.

“Future Regional Engagement: The Trade Commissioner will visit the Southern African region in February to help progress discussions on the regional EPA. She will meet with a range of stakeholders and government representatives. We welcome this move and are aware that it has been positively received by the region.

“The Commission has outlined plans to hold a seminar in early 2009 once the Interim EPA has been signed. The aim of this is to promote constructive discussion with countries in the region on difficult or sensitive issues that are not fully resolved within the Interim EPA but will be seriously considered in the regional agreement.

“In summary, the SADC region is complex and contains countries with quite divergent interests. While there are a number of concerns that have not yet been resolved, there are structures in place to work towards their resolution.”

Conclusion

7.20 It is plain that there has been little concrete progress regarding any of the Minister’s major concerns. However, there are indications that the Commission is beginning to address them. Moreover, it would not be possible for them to do so were the IEPA to remain unsigned.

7.21 We therefore now clear the documents. We should be grateful, however, if the Minister were to write before the summer recess with a further update.

7.22 In the meantime, for the same reasons as before, we are both reporting these developments to the House and drawing this chapter of our Report to the attention of the International Development Committee.

8 Transport and the environment

(29851) 11857/1/08 + ADDs 1–2 COM(08) 436	Draft Directive amending Directive 1999/62/EC on the charging of heavy goods vehicles for the use of certain infrastructures
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<i>Legal base</i>	Article 71(1) EC; co-decision; QMV
<i>Department</i>	Transport
<i>Basis of consideration</i>	Minister’s letter of 27 January 2009
<i>Previous Committee Report</i>	HC 16–xxx (2007–08), chapter 5 (8 October 2008) and HC 16–xxxvi (2007–08), chapter 7 (26 November 2008)
<i>To be discussed in Council</i>	30–31 March 2009
<i>Committee’s assessment</i>	Politically important
<i>Committee’s decision</i>	Cleared

Background

8.1 Directive 1999/62/EC, the Eurovignette Directive, sets out detailed rules governing the imposition of tolls, user charges and vehicle excise duties on heavy goods vehicles using the Trans-European Road Network. The Directive does not require Member States to introduce charging, but, should they choose to do so, they would be obliged to comply with the rules in the Directive. The Directive was amended by Directive 2006/38/EC³⁰ to take account of developments in road charging since the original Directive and to elaborate the principles governing any tolling arrangements that Member States choose to apply to heavy goods vehicles. This draft Directive would further amend Directive 1999/62/EC (and it is part of a wider so-called “greening transport” package adopted by the Commission).³¹

8.2 The first main change to be made by the draft Directive relates to the existing Directive’s limitation of charges to what is needed to cover infrastructure costs. The new proposal would allow Member States to decide whether or not to levy tolls to cover some external costs — local air pollution, congestion and noise. The calculation would have to be according to a methodology set out in a new annex and revenues from any external cost charges imposed would have to be reinvested in transport.

8.3 The other main change relates to the current Directive applying its detailed rules only to tolling schemes on the Trans-European Road Network, but allowing Member States to apply charging regimes on other roads provided they respect the Community principles of non-discrimination and freedom of movement. The new proposal would apply the detailed rules to all roads subject to charge, though there is a separate provision which makes clear

30 (24818) 11944/03: see HC 63–xxxiii (2002–03), chapter 19 (15 October 2003); HC 42–xiii (2003–04), chapter 5 (17 March 2004) and HC 42–xxii (2003–04), chapter 24 (9 June 2004).

31 (29848) 11841/08 + ADDs 2–3 (29849) 11842/08 + ADDs 1–2 (29850) 11851/08 + ADD 1: see HC 16–xxx (2007–08), chapters 13, 14 and 15 (8 October 2008).

that Member States are not prevented from introducing environmental or congestion charges on urban roads in built-up areas.

8.4 Other provisions in the draft Directive include a requirement that:

- any external cost charge is set by an independent authority in the Member State;
- any external cost charge must be collected by electronic means after 2013; and
- a requirement on the Commission to produce a report by 2013 on implementation and covering matters such as the treatment of carbon dioxide, whether to extend the Directive beyond lorries and the feasibility of minimum distance based charges.

Finally, much of the text of the draft Directive reproduces text from the existing Directive and is therefore not new, but in some cases the text has been rationalised.

8.5 When we considered this proposal, in October 2008, we said that the general intentions of this proposal seemed unexceptional. However we noted several points the Government had drawn to our attention and that its consideration of the draft Directive seemed to be at an early stage. So before considering the document further we asked to hear:

- whether a methodology for assessing the costs of externalities had proved satisfactory;
- whether evolution of the text, particularly in relation to localised charges, had justified support for extending the present Directive's rules to all charged roads;
- whether a derogation from differentiation of charges by environmental class of vehicle had been restored;
- whether a tax legal base had proved necessary;
- whether a hypothecation issue had been resolved;
- about the outcome of the Government's consultation;
- whether it had decided it also needed to produce an impact assessment; and
- what further information about impacts had been received from the Commission.

8.6 In November 2008 we considered responses from the Government in relation to consultations and impact assessments, noting that no points were made in the former that would require change to the Government's broad support for the draft Directive. We also heard about developments on the substance of the draft Directive, the Government telling us that us that:

- the Government was satisfied that the methodology for assessing the costs of externalities proposed by the Commission reflected current best practice and was compatible with the UK approach to such calculations;
- the methodology was constraining on charges, but, on the one hand, under the current Directive Member States had no freedom whatsoever to apply external cost

charges at all, while, on the other, given the concerns of peripheral Member States over high transit charges some constraints were necessary;

- some Member States had expressed reservations about allowing the inclusion of congestion costs. The French Presidency had suggested that congestion charges for lorries should be recovered only where there were demand management arrangements in place for all vehicles;
- the Government was sympathetic to the argument — lorries were not the sole cause of congestion — and would agree to such a provision provided it could be drafted in such a way as to avoid the side-effect of extending the scope of Community legislation to cars — which no Member State wanted;
- the grounds for derogation from differentiation of charges by environmental class of vehicle had been incorporated in the then text of the draft Directive;
- the then text of the draft Directive reverted to the present situation of the detailed rules applying only to the Trans-European Road Network. The Government could have accepted the Commission's proposal for a wider scope but was content to revert to the more limited approach used in Directive 2006/38/EC;
- the then text of the draft Directive provided the Government with more confidence that localised charging arrangements such as the London Congestion Charge and the Dartford Crossing charges would fall outside the detailed rules. The text was not quite settled but the Government anticipated an acceptable outcome; and
- little progress had been made on the legal base and earmarking (hypothecation). The UK was among a number of Member States with reserves on these points, though some of these appeared to be tactical and might not hold.

8.7 The Government told us that, apart from its concerns about the legal base and earmarking, the text of the draft Directive was heading in the right direction and that it remained supportive of the overall thrust of the proposal, which would give the Government greater freedom to introduce lorry charges should it decide to do so in the future. The Government added that:

- on the legal base point the Government was considering the use of a minutes statement along the lines used in similar circumstances in the past; and
- the Government did, and would continue to, oppose mandatory earmarking.

8.8 We were also told that:

- continuing negotiations might produce a satisfactory outcome on earmarking;
- if so, the Government might have found it necessary to support a general approach at the Transport Council of 8–9 December 2008; and
- this would have been in order to secure negotiated improvements to the text, even though we would not have been able to scrutinise further developments on the outstanding issues.

8.9 We noted that most of the issues on which we had awaited further information had been resolved satisfactorily. However we were concerned that:

- the Government might rely on a minutes statement at a Council meeting rather than an appropriate legal base in the actual legislation; and
- we might not have had the opportunity to scrutinise the proposed outcome on the earmarking issue.

We said that we wanted to consider further developments on these two issues before the Council adopted a general approach and so we very much hoped that the Government would not be acquiescing in such a general approach at the forthcoming Transport Council. We kept the document under scrutiny.³²

The Minister's letter

8.10 The Parliamentary Under-Secretary of State, Department for Transport (Paul Clark) writes now to tell us first that in the event a general approach was not agreed at the December 2008 Transport Council. The Minister then says that, although the current draft text remains largely acceptable to the Government, the two main concerns, the legal base and the requirement that revenues should be earmarked (hypothecated) for investment in transport, are outstanding.

8.11 Turning first to earmarking the Minister tells us that it appears that the Czech Presidency will wish to seek agreement to a text similar to that in Directive 2006/38/EC, which is intended to stop short of a legally binding requirement to hypothecate any charging revenues to transport. He says that:

- subject to being satisfied that the text does not have legally binding effect, and subject to other points being resolved, the Government may wish to signal its agreement to such an approach as part of an overall deal on this issue with the European Parliament, which strongly favours legally binding hypothecation; and
- the Government does and will oppose mandatory (legally binding) earmarking of revenues.

8.12 The Minister continues, in relation to the issue of the legal base for the draft Directive that:

- the UK is one of seven Member States reserving their positions on the legal base;
- it is debatable whether the sorts of lorry tolls or charges foreseen by this proposal would formally be classified as taxes — those making decisions on classification would want to look closely at the detailed structure of any scheme;
- although Directive 1999/62/EC was adopted under a dual (transport and tax) legal base, the amending Directive 2006/38/EC was adopted under a single (transport) legal base;

³² See headnote.

- the original 1999 Directive contained provisions on minimum levels of vehicle taxes, which were clearly fiscal in nature, the amending Directive did not touch these provisions and modified only the articles relating to tolls and user charges;
- the unanimity requirement for tax measures ensures that the UK can veto any proposal that constrains the Government's flexibility in the fiscal sphere, but it is important to note that the impact of the present proposal would relax constraints on the levels of tolls it could charge for lorries, should the Government choose to implement a scheme;
- provided the rest of the text is satisfactory this proposal could represent a useful measure both in increasing flexibility and applying the polluter pays principle;
- the proposal does not raise any new issues of principle compared to Directive 2006/38/EC, where the Government ultimately voted in favour of the proposal accompanied by a minutes statement, setting out its view on the legal base and making its vote without prejudice to its general stance on tax and the legal base; and
- therefore the Government wishes to keep open the option of accepting the legal base whilst clarifying its position with a minutes statement, particularly if other Member States currently objecting to the legal base withdraw their reservations on this point, such that a blocking minority no longer exists.

8.13 The Minister concludes that discussions are continuing on these issues, with the possibility that a general approach or political agreement will be sought at the Transport Council on 30–31 March 2009 and that the European Parliament plenary first reading of the proposal is currently scheduled for 10 March 2009.

Conclusion

8.14 We note the Government's expectation that a satisfactory, non-binding, text on earmarking can be secured and its justification of a possible use of a minutes statement in relation to the legal base issue. We have no further questions to ask and clear the document.

9 Port security

(30375) 5614/09 COM(09) 2	Commission report: <i>Report assessing the implementation of the Directive on enhancing port security</i>
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<i>Legal base</i>	—
<i>Document originated</i>	20 January 2009
<i>Deposited in Parliament</i>	26 January 2009
<i>Department</i>	Transport
<i>Basis of consideration</i>	EM of 5 February 2009
<i>Previous Committee Report</i>	None
<i>To be discussed in Council</i>	Not known
<i>Committee's assessment</i>	Politically important
<i>Committee's decision</i>	Cleared

Background

9.1 Directive 2005/65/EC,³³ concerned with enhancing port security, applies to all ports located in the territory of a Member State in which one or more port facilities, covered by a Port Facility Security Plan approved in accordance with Regulation (EC) No 725/2004,³⁴ is, or are, located. While the Regulation is focussed on security measures on board vessels and the immediate ship/port interface, that is the port facility, the Directive is focussed on all areas of a port within a perimeter specified on a case by case basis by the relevant Member State.

9.2 The Directive requires the Commission to:

- submit an evaluation report to the European Parliament and the Council by 15 December 2008 and every five years thereafter;
- analyse compliance with the Directive by Member States and the effectiveness of the measures taken; and
- if necessary, present additional measures.

The document

9.3 This is the first report by the Commission on the implementation of Directive 2005/65/EC. The Commission:

33 (25377) 6363/04: see HC 42–xii (2003–04), chapter 3 (10 March 2004), HC 42–xxii (2003–04), chapter 20 (9 June 2004) and HC 34–i (2005–06), chapter 38 (4 July 2005) and (25717) 10124/04: see HC 42–xxv (2003–04), chapter 7 (30 June 2004).

34 (24536) 8566/03: see HC 63–xxiii (2002–03), chapter 4 (4 June 2003) and HC 63–xxix (2002–03), chapter 2 (10 July 2003) and *Stg Co Deb*, European Standing Committee A, 10 September 2003, cols.3–22.

- highlights delays in adopting national legislation implementing the Directive in Member States;
- says the majority of the 22 Member States required to transpose the provisions of the Directive into national law only did so after the 15 June 2007 deadline for implementation;
- records its decision of 18 September 2008 to take action in the European Court of Justice against the two Member States, the UK and Estonia, which had not yet met the deadline;
- says that in the 2009 work programme for the performance of its maritime security inspections the Commission is including sections for verifying that the procedures for monitoring the application of the Directive have been correctly applied; and
- says that it is going to examine the constraints facing authorities responsible for implementation of security measures in order to how best to improve security measures, particularly in relation to the interests involved in ports.

The Government's view

9.4 In his Explanatory Memorandum the Parliamentary Under-Secretary of State, Department for Transport (Jim Fitzpatrick), tells us that:

- in implementing Regulation (EC) No 725/2004 the Government sought to ensure that the anticipated requirements of Directive 2005/65/EC were already being met by requiring port facility security assessments and port security plans to cover all commercial maritime transport operations on port estates, as required by the Directive, pushing security measures beyond the ship/port facility interface;
- thus the majority of existing “Port Facility Security Plans” established in accordance with the International Ship and Port Facility Security Code, and as required by the Regulation, already cover the essential areas of the port that are concerned with commercial maritime transport activity;
- the Government acknowledges that transposition of the Directive did not take place in Great Britain and Northern Ireland before the deadline. This delay was due to the need to integrate the new regime with the enhanced system already introduced following the Regulation, to take on board the views of a wide-range of stakeholders and, in particular, to further consult as to the proposed legal status of the prospective Port Security Authorities; and
- to implement the Directive in Great Britain and Northern Ireland requires secondary legislation in the form of Regulations. Those Regulations have been drafted and it is intended that, subject to the Parliamentary process, they will be laid in March 2009 and come into effect by May 2009.

Conclusion

9.5 Although we have no questions to raise on this document and clear it, given the threat of infraction proceedings against the Government, we draw the Commission Report and the Minister’s explanation to the attention of the House.

10 European cooperation in education and training

(30310) 17535/08 COM(08) 865	Commission Communication: <i>An updated strategic framework for European cooperation in education and training</i>
+ ADDs 1–2	Commission staff working documents: impact assessment and summary of assessment

<i>Legal base</i>	—
<i>Document originated</i>	16 December 2008
<i>Deposited in Parliament</i>	12 January 2009
<i>Department</i>	Innovation, Universities and Skills
<i>Basis of consideration</i>	EM of 23 January 2009
<i>Previous Committee Report</i>	None
<i>To be discussed in Council</i>	May 2009
<i>Committee’s assessment</i>	Politically important
<i>Committee’s decision</i>	Cleared; further information requested

Background

10.1 Article 149 of the EC Treaty requires the Community to contribute to the development of “quality education” by encouraging cooperation between Member States and, if necessary, supporting and supplementing their action, while fully respecting the responsibility of Member States for the content of teaching and the organisation of the education system.

10.2 Article 150 of the EC Treaty requires the Community to have a vocational training policy which supports and supplements the action of Member States, while fully respecting the responsibility of Member States for the content and organisation of vocational training.

10.3 Since 2000, Member States and the European Commission have been cooperating with each other through the Education and Training 2010 work programme. The programme:

- sets three strategic goals (improve the quality and effectiveness of education and training in the EU; facilitate access for all to education and training; and open the EC education and training systems to the wider world);

- defined 13 objectives;
- set five benchmarks (for example, to reduce to no more than 10% the proportion of children who leave school prematurely; to increase adult participation in lifelong learning to 12.5%); and
- defined 16 indicators to measure performance.

10.4 The Commission and Member States have used the Open Method of Coordination (OMC) to help them implement the 2010 work programme. The principle features of the OMC are as follows:

- Member States voluntarily agree EU-wide objectives and goals;
- they also define a set of common indicators to measure progress towards the achievement of the objectives;
- each Member State translates the common objectives into national policies; and
- progress is assessed jointly by the Commission and Member States (“peer review”).

The document

10.5 The Commission’s Communication reviews the Community’s progress towards achieving the goals, objectives and benchmarks the Council approved; compares educational attainment in the EC with attainment in competitor countries; and makes proposals for the period up to 2020.

10.6 The Commission notes that the EC has exceeded one of the benchmarks (to increase by 15% the number of graduates in maths, science and technology), will not reach three others and has seen an increase — not a reduction — in the number of children who leave school prematurely.

10.7 The Commission also notes that the proportion of low achievers in reading at age 15 is higher in the EC than in the USA, Japan, Korea, Canada and Australia; and that only 23% of people aged 25 to 64 in the EC have had a tertiary education compared with 40% in Japan, 39% in the USA and 32% in Australia and Korea.

10.8 When it approved the Lisbon Strategy in 2000, the European Council stressed the importance of education and training to the achievement of the Strategy’s objectives for growth, jobs and social inclusion. On the basis of the EC’s implementation of the 2010 work programme and extensive consultations, the Commission proposes that European cooperation in education and training should address four “strategic challenges” in the period ending in 2020. The challenges are:

- to make lifelong learning and learner mobility a reality;
- to improve the quality and efficiency of education and training;

- to promote equity and active citizenship — everyone should be able to acquire, update and develop the job-specific skills and the competences needed to take part in social, cultural and political life; and
- encourage and enable innovation, creativity and entrepreneurship at all levels of education and training.

The Commission says that these strategic challenges should provide the basis for policy cooperation between 2010 and 2020.

10.9 The Communication also sets out the priorities the Commission proposes for 2009–10. It says that Member States and the Commission should, for example:

- complete the implementation of the national plans for lifelong learning;
- link all national qualifications to the European Qualifications Framework;
- remove obstacles to the mobility of people to obtain education and training;
- improve the quality and range of professional development for teachers and trainers;
- set up a group to investigate the causes of children’s reading difficulties and recommend ways to improve literacy across the EU;
- do more to prevent children from leaving school prematurely; and
- develop partnerships between the providers of education and training, research institutions and creative industries.

10.10 The Commission also proposes action to increase the effectiveness of the OMC in education and training by, for example, strengthening peer review.

10.11 In the Commission’s view, the five existing benchmarks have proved useful in monitoring progress. The Commission wishes to discuss with Member States the following proposals for ten new benchmarks to be achieved by 2020:

- increase to 15% the proportion of the adult population participating in lifelong learning;
- develop a benchmark for the mobility of students, vocational trainees, school children, teachers and trainers;
- reduce by 15% the proportion of children aged 15 with low attainment in maths, reading and science;
- teach two foreign languages to at least 80% of children in lower secondary education;
- invest 2% of GDP in higher education;
- increase to 45% the proportion of people aged 30–34 who received a tertiary education;

- develop new benchmarks linked to the participation in the labour market of people with different levels of educational attainment;
- ensure that at least 90% of children aged 4 receive pre-school education;
- retain the present benchmark for not more than 10% of people aged 18–24 to have had only a lower-secondary education and who are not receiving education or training; and
- if feasible, develop a benchmark on the contribution of education to innovation and creativity.

10.12 The Commission calls on Member States to endorse its proposals for the strategic challenges for the period up to 2020, the priorities for 2009–10 and the improvements to the OMC.

The Government's view

10.13 In his Explanatory Memorandum of 23 January 2009, the Minister for Further Education at the Department for Innovation, Universities and Schools (Mr Sion Simon) tells us that the 2010 Education and Training work programme and the OMC have helped Member States learn from each other, exchange good practice and develop EC-wide programmes for education and training. The time is ripe to consider the objectives and working methods for 2010–20.

10.14 The Government believes that the Commission has correctly identified the strategic challenges which face Member States. It also agrees with the proposed priorities for 2009–10 and the proposals to strengthen the OMC.

10.15 The Minister notes that only one of the existing benchmarks has been attained and says that:

“We and other Member States are currently discussing the proposed new set of benchmarks with the Commission. We want to work with the Commission to see if an arrangement can be reached so that a varied series of benchmarks can be set which allow both Member States and the Commission to track progress on the reform agenda.”³⁵

The Czech Presidency expects that Council Conclusions on the Commission's proposals will be agreed at the Education Council in May.

Conclusion

10.16 In our view, the four challenges the Commission has identified for education and training over the next decade are neither surprising nor contentious. The proposals for new benchmarks appear ambitious and we shall be interested to learn the outcome of the Council's consideration of them. We should be grateful, therefore, if the Minister would send us a copy of the Council Conclusions, together with his comments on them.

³⁵ Minister's Explanatory Memorandum, page 3, ante-penultimate paragraph.

Meanwhile, we draw the Communication to the attention of the House and clear the document from scrutiny.

11 Patient safety

(a) (30285) 17427/08 COM(08) 836	Commission Communication on patient safety, including the prevention and control of healthcare associated infections
+ ADDs 1–2	Commission staff working documents: impact assessment and summary of assessment
(b) (30286) 17430/08 COM(08) 837	Draft Council Recommendation on patient safety, including the prevention and control of healthcare associated infections
+ ADDs 1–2	Commission staff working documents: impact assessment and summary of assessment

<i>Legal base</i>	(a) — (b) Article 152(4) EC; co-decision; QMV
<i>Department</i>	Health
<i>Basis of consideration</i>	(Both) Minister’s letter of 9 February 2009
<i>Previous Committee Report</i>	(Both) HC 19–v (2008–09), chapter 6 (28 January 2009)
<i>To be discussed in Council</i>	No date set
<i>Committee’s assessment</i>	(Both) Politically important
<i>Committee’s decision</i>	(Both) Cleared; but further information requested

Previous scrutiny of documents (a) and (b)

11.1 When we considered these documents in January,³⁶ we noted the reasons given in document (a) for the Commission’s view that action by the Community is needed to improve the safety of patients. We also noted that the Commission proposes that, in collaboration with Member States, it should:

- develop common definitions and indicators of patient safety;
- facilitate the sharing of information and best practice;

³⁶ See HC 19–v (2008–09), chapter 6 (28 January 2009).

- promote EC research; and
- consider how best to achieve and sustain effective collaboration between Member States in the longer-term.

In addition, the Commission proposes a Recommendation to Member States (document (b)).

11.2 The draft Recommendation provides that, as well as implementing 11 specific recommendations, Member States “should” take the supporting action listed in Annex 2 of the draft.

11.3 The specific recommendations are as follows:

General patient safety

- i) Member States should support the establishment and development of national policies and programmes on patient safety;
- ii) Member States should empower and inform citizens and patients about safety policies and programmes;
- iii) Member States should establish or strengthen systems for reporting adverse incidents and disclosing information about them;
- iv) Member States should promote the education and training of healthcare workers in patient safety;
- v) Member States should classify, codify and measure patient safety, working with the Commission to develop common definitions, indicators and statistics; and
- vi) Member States should share knowledge, experience and best practice at European level.

Prevention and control of healthcare associated incidents

- vii) each Member State should adopt and implement a national strategy for the prevention and control of healthcare associated incidents; and
- viii) each Member State should consider the establishment of a mechanism for the coordinated implementation of its national strategy and for the exchange of information and coordination with the Commission, the European Centre for Disease Prevention and Control and other Member States.

Additional recommendations

- ix) Member States should disseminate the contents of the Recommendation to healthcare organisations, professional bodies and educational institutions and encourage them to follow the approaches it suggests;
- x) Member States should complement the key elements of recommendations i) to viii) by taking the supporting action in Annex 2; and

- xi) Member States should report to the Commission on the implementation of the Recommendation within two years of its adoption and subsequently on request.

11.4 Annex 2 of the draft Recommendation lists 20 further things that Member States “should” do. For example, in support of the recommendation that Member States should empower and inform citizens and patients, Annex 2 says that Member States should disseminate information to patients about complaints procedures and means of redress and should consider the development for patients of core competencies in patient safety.

11.5 In his Explanatory Memoranda of 8 January, the Minister for Health Services at the Department of Health (Mr Ben Bradshaw) told us that the proposals in the Communication are in line with policies in the UK on patient safety and that the majority of the measures advocated in the draft Recommendation have already been introduced in the UK.

11.6 In our report on the documents, we said that we shared the views of the Commission and the Government about the importance of patient safety and the need to prevent adverse incidents while patients are receiving treatment. We were concerned, however, that the draft Recommendation repeatedly asserts what Member States “should” do. Recommendations are not legally binding and, in our view, it is inappropriate for them to appear to impose mandatory duties on Member States in the way that document (b) does. Moreover, we questioned whether some of the individual recommendations go into too much detail. For example, Annex 2 of the Recommendation says that Member States should consider the development for patients of core competencies in patient safety. We asked the Minister for his comments on these points and for progress reports on the negotiations.

The Minister’s letter of 9 February 2009

11.7 We are grateful to the Minister for replying so promptly. He says that he agrees with us that it is inappropriate for the draft Recommendation to make repeated assertions about what Member States “should” do. Moreover, he agrees that the draft goes into too much detail. The Department has raised these concerns in the negotiations and will seek agreement to a more appropriate tone and level of detail.

11.8 The Minister’s letter also provides a progress report. In January, there were initial discussions of the proposals in the Council Working Group. Officials representing the UK expressed broad support for the proposals but registered the Government’s concerns about them. Other Member States shared the concerns. The Commission offered to amend the draft. The amendments are expected shortly. The negotiations will continue in the working group. The Minister says that he will give us a further progress report. The Czech Presidency aims to achieve the Council’s agreement to the draft Recommendation during its Presidency.

Conclusion

11.9 We are glad that the Minister shares our reservations about the draft Recommendation and will seek suitable amendments. In the light of his letter, we see no need to keep documents (a) and (b) under scrutiny and we have decided to clear

them. We should, however, be grateful for the further progress the Minister has offered.

12 Comitology

(30364) Commission Report on the working of Committees during 2007
 —
 + ADD 1
 COM(08) 844

<i>Legal base</i>	—
<i>Document originated</i>	15 December 2008
<i>Deposited in Parliament</i>	21 January 2009
<i>Department</i>	Foreign and Commonwealth Office
<i>Basis of consideration</i>	EM of 9 February 2008
<i>Previous Committee Report</i>	None
<i>To be discussed in Council</i>	n/a
<i>Committee's assessment</i>	Legally and politically important
<i>Committee's decision</i>	Clear

Background

12.1 The Commission is obliged to publish annual reports on the arcane field of the comitology law-making process. The term ‘comitology’ refers to the procedures under which various committees oversee the Commission’s exercise of its implementing powers. These committees consist of representatives of the Member States, the Council and the European Parliament and allow them to exercise a measure of control over the exercise of delegated powers by the Commission. There are four different comitology procedures available, which give varying degrees of control to the Council and European Parliament.

12.2 A 2006 reform of the Comitology procedure allows the European Parliament to share with the Council a right of control over the Commission’s exercise of implementing measures in matters for co-decision. Before this reform, the Council alone had a say in the adoption of the implementing measure. The new Regulatory Procedure with Scrutiny (PRAC) gives the European Parliament or the Council (by QMV) the right to veto a proposal on the grounds that the particular comitology measure: (i) exceeds the implementing powers provided for in the basic instrument; (ii) is not compatible with the aim or content of the basic instrument; or (iii) does not respect the principles of subsidiarity or proportionality.

The Document

12.3 The Commission’s annual report on the working of committees during 2007 was published on 15 December 2008 in accordance with the requirements in Article 7(4) of

Council Decision 1999/468/EEC of 28 June 1999. The report contains general information and comments on the development of the comitology system and provides an overview of committees' activities together with detailed statistics regarding the individual comitology committees, arranged according to the different Directorates-General of the Commission.

12.4 The report comments on the effects of the new regulatory procedure with scrutiny during its first full year of operation. It states that the Commission undertook a screening exercise at the beginning of 2007, which identified 225 acts needing to be aligned to the new PRAC procedure. The realignment was achieved through four bulk so-called 'omnibus proposals', the last of which was adopted in February 2008.

12.5 The report adds that the Commission undertook discussions with the European Parliament to improve scrutiny and streamlining of procedures, and that the Commission has committed to an improved comitology register to provide more transparent access to documents.

12.6 The also report summarises two relevant 2007 judgements from the European Court of Justice. In the first the court ruled that the Customs Code imposes no obligation on the Commission to use any particular procedure to take individual decisions. The second decided that the Commission had approved a project (on border security) which fell outside of the framework of the committee (development cooperation) in which it had been approved, and that the Commission had exceeded the implementing powers delegated to it.

12.7 Finally, the report lists the number of comitology committees as of 31 December 2007, and the number of opinions and implementing measures by committee. Numbers were slightly down on the previous years, though the large number of measures adopted in sectors such as Agriculture, Aid, and Health and Consumer Protection continued to reflect the intensity of work delegated to these committees.

The Government's view

12.8 In her Explanatory Memorandum of 22 February 2006 the Minister for Europe (Caroline Flint) briefly comments as below:

“The Government welcomes the efficiency with which the Commission has acted to bring legislative acts into line with the Regulatory Procedure with Scrutiny, and in doing so avoiding any adverse implications to the legality of the acts in question. The Government also welcomes the commissions [sic] dialogue with the European Parliament and efforts to make, what can be a complicated and opaque process, more transparent.

“However, we are slightly concerned at the quality of the report. For example, section 1.1.2. identifies an agreement as ‘expected to be entered into force in June 2008’. HMG would expect a report published in December 2008 to be able to be definitive here.

“And in section 2.2, no explanation is given for the fall in implementing measures in Agriculture and Research, even though this trend is identified. We will ask the Commission to improve on this for the 2008 report.”

Conclusion

12.9 We thank the Minister for her brief summary of the contents of the latest annual Commission comitology report. We share the Minister's concerns about some aspects regarding the quality of the report. We ask the Minister to cast a similarly watchful eye over future Commission reports in this and other areas. On this basis we are content to clear this otherwise uncontentious document from scrutiny.

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

Department for Business, Enterprise and Regulatory Reform

- (30323)
5028/09
+ ADD 1
COM(08) 884
- Commission Report on the application of the Postal Directive (Directive 97/67/EC as amended by Directive 2002/39/EC).
- (30360)
5401/09
COM(08) 905
- Commission Report on the implementation of Directive 2001/95/EC of the European Parliament and of the Council of 3 December 2001 on general product safety.
- (30409)
5119/09
COM(08) 901
- Draft Council Regulation imposing a definitive anti-dumping duty on imports of certain iron or steel fasteners originating in the People's Republic of China.

Department for Environment, Food and Rural Affairs

- (30253)
16902/08
COM(08) 796
- Draft Council Regulation laying down the trade arrangements applicable to certain goods resulting from the processing of agricultural products (Codified version).
- (30372)
5538/09
COM(09) 6
- Annual Report on implementation of the European Fisheries Fund (2007).
- (30373)
5570/09
—
- Special Report No.11/2008 — The management of the European Union support for the public storage operations of cereals together with the Commission's replies

Foreign and Commonwealth Office

- (30400)
—
—
- Council Common Position renewing restrictive measures against the leadership of the Transnistrian region of the Republic of Moldova.

Department of Health

- (30366)
5021/09
COM(08) 882
- Commission Report on the Implementation of the Council Recommendation of 2 December 2003 on cancer screening (2003/878/EC).

Home Office

- | | |
|-----------------------------------|--|
| (30363)
5553/09
COM(08) 840 | Commission Report on the application of Directive 2004/38/EC on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States. |
| (30374)
5593/09
— | Special Report No. 9/2008 — The effectiveness of EU support in the area of freedom, security and justice for Belarus, Moldova and Ukraine together with the Commission's replies. |

Formal minutes

Wednesday 11 February 2009

Members present:

Michael Connarty, in the Chair

Mr William Cash
Mr James Clappison
Jim Dobbin

Keith Hill
Kelvin Hopkins

2. 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.

Paragraph 1, Headnote read.

Amendment proposed in line 22, to leave out the words “Cleared, but further information requested”, and to insert the words, “Do not clear: for debate in European Committee B”
— (*Mr William Cash*)

Question put, That the Amendment be made.

The Committee divided.

Ayes, 5

Noes, 0

Mr William Cash
Mr James Clappison
Jim Dobbin
Mr Keith Hill
Kelvin Hopkins

Headnote agreed to.

Paragraph 1.1 to 1.21 read and agreed to.

Paragraphs 1.22 to 1.25 read, amended and agreed to.

Paragraphs 2.1 to 13 read and agreed to.

Resolved, That the Report, be the Eighth Report of the Committee to the House.

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

[Adjourned till Wednesday 25 February at 2.30pm.]

Standing order and membership

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

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

The expression “European Union document” covers —

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

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

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

Current membership

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