



House of Commons
European Scrutiny Committee

**Thirty-first Report of
Session 2008–09**

Documents considered by the Committee on 28 October 2009,
including the following recommendation for debate:

Dairy market situation

Report, together with formal minutes

*Ordered by The House of Commons
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Notes

Numbering of documents

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

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

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

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

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

Abbreviations used in the headnotes and footnotes

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

Euros

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

Further information

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

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

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1 Dairy market situation

(a) (30825) 12289/09 + ADD 1 COM(09) 385	Commission Communication: <i>Dairy market situation 2009</i>
(b) (30790) 11905/09 COM(09) 354	Draft Council Regulation derogating from Regulation (EC) No 1234/2007 (“Single CMO” Regulation) as regards the 2009 and 2010 intervention periods for butter and skimmed milk powder

<i>Legal base</i>	(a) — (b) Article 37EC; consultation; QMV
<i>Department</i>	Environment, Food and Rural Affairs
<i>Basis of consideration</i>	Minister’s letter of 21 October 2009
<i>Previous Committee Report</i>	HC 19–xxvii (2008–09), chapter 6 (14 October 2009)
<i>To be discussed in Council</i>	See para 1.8 below
<i>Committee’s assessment</i>	Politically important
<i>Committee’s decision</i>	(a) For debate in European Committee A (b) Cleared

Background

1.1 Although the dairy sector benefited from the general increase in food prices in 2007, milk prices then dropped significantly, leading to what the Commission has described as “substantial unrest” among dairy farmers. This was considered by the European Council in June 2009, when the Commission was invited to present an in-depth market analysis within the next two months, including possible options for stabilising the market, consistently with observing the outcome of the “Health Check” of the Common Agricultural Policy carried out in 2008.

1.2 As we noted in our Report of 14 October 2009, the Commission accordingly put forward in July 2009 these two documents. Document (a) is a Communication on the dairy market situation, which describes the dairy reform process, provides an analysis of the market situation, summarises Community market support measures, as well as other available instruments, and outlines options for further action and discussion (including measures to boost demand and reduce supply, to support producer incomes, to restructure the dairy sector, and to increase market transparency). Document (b) is a draft Council Regulation, which would give effect to one of the measures identified in the Communication — to extend during 2009–10 and 2010–11 the period within which intervention buying may take place.

1.3 In our Report, we also noted that some of the measures proposed in the Communication — such as extended intervention and private storage aid, extended

promotional funding, the possibility for Member States to bring forward/offer advanced payment of the single payment in exceptional cases, and extended export refunds — had already been agreed in Management Committees in July, but that the Government expected that there would still be pressure to continue to increase direct support payments, and that an initial discussion on other possible measures was due to take place at the Agriculture Council on 7 September. It had added that the options were limited, given the budgetary constraints, and that, whilst a decrease in quotas was not contemplated, the Commission had suggested that producers exceeding their individual quotas should be penalised (possibly through the super levy), on which there were mixed views and possible budgetary implications. The UK did not however support the proposal to extend intervention, which it regarded as a short term measure applied to a long term problem.

1.4 When we considered these two documents on 10 September, we decided that, before reporting them to the House, it would be sensible to hear what had transpired at the meeting of the Council on 7 September when they were due to be discussed, and our Chairman therefore wrote to the Minister asking that we should in this case receive in good time his Department's usual account of Council meetings.

1.5 We subsequently received from the Secretary of State for Environment, Food and Rural Affairs (Hilary Benn) a letter of 25 September, indicating that there had been substantial discussion of the dairy market situation, with all Member States sharing the Commission's analysis, and many wishing to see more done to provide support (though without always being specific as to what this should entail). The UK had noted that the market situation had improved, and had urged caution on enhanced market measures or changing state aid rules, whilst France and Germany (supported by 14 other Member States) had tabled a declaration calling for more support measures, together with a separate declaration calling for the freezing of the planned increase in milk quotas. However, as we understood that further discussion was due to take place at the Council on 19–20 October (and perhaps subsequently), we decided to draw the documents to the attention of the House, but to holding them under scrutiny, pending further information.

Minister's letter of 21 October 2009

1.6 We have now received a letter of 21 October 2009 from the Minister of State for Food, Farming and Environment at the Department for Environment, Food and Rural Affairs (Jim Fitzpatrick), which says that the proposal on intervention (document (b)) was formally adopted at the Council on 19 October. As regards the dairy market situation, he says that, at a meeting of the Special Committee on Agriculture on 21 September, the Commission told Member States that it had raised several ideas with the European Parliament, including doubling the *de minimis* level for state aids to €15,000; amending Article 186 of the Single Common Market Organisation (CMO) Regulation 1234/2007,¹ to include the dairy sector among those where the Commission may take action to deal with market disturbances; and providing new flexibilities as regards the superlevy.² In addition,

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

2 A superlevy is payable if a Member State exceeds its quota. At present, a Member State can "buy" quota from its farmers and put it into a national reserve, which counts as part of its total quota for determining whether a superlevy is payable: the change now proposed would exclude any bought-up quota in the national reserve from that calculation, thus reducing the level of production at which the superlevy would become payable.

it had proposed the creation of a High Level Group to discuss medium term options, with the first meeting on 13 October having looked at the contractual framework for the dairy supply chain with particular reference to contract between producers and processors. The Group is also to look at other areas, including transparency and consumer information (including labelling), innovation, research, and the possibility of a dairy futures market), and is due to report back to the Council by 30 June 2010.

1.7 The Minister adds that, following an informal meeting of Ministers on 5 October, the Council on 19 October had a full discussion of a new Commission proposal³ on the extension of Article 186 of Council Regulation 1234/2007 and the superlevy, with most Member States supporting the first of these, but with there being a wide range of views on the second. The Council also considered a note by 21 Member States calling for various immediate steps including a further use of market measures, an extension of products available under the school milk scheme, caution in selling intervention stocks, and the establishment of a new €300 million milk fund. The Minister says that, although other Member States queried the relevance of these proposals, the Commission did indicate a willingness to propose a new €280 million fund for the dairy sector in 2010.

Conclusion

1.8 We are grateful to the Minister for this update, from which we infer that there will be further discussion at the meeting of the Agriculture and Fisheries Council next month, which will be centred around the latest proposal which the Commission produced on 9 October. We also infer that a qualified majority does not exist within the Council for many of the measures put forward by France and Germany (and other Member States), and that the action in the short term is likely to be limited to that already taken by the Commission itself or set out in its latest proposal, with any action for the medium term awaiting the deliberations of the High Level Group.

1.9 In the light of this situation, we have considered carefully how to proceed. We shall in any case wish to consider the Explanatory Memorandum the Government is due to provide on the new Commission proposal, but, in the meantime, it does seem to us that last summer's Communication (document (a)) does raise a number of important issues in relation to the underlying situation in the dairy sector, and the measures (and funding) available to tackle them, which the House should consider further. We are therefore recommending that document for debate in European Committee A, but we are clearing the proposal at document (b), which has now been adopted by the Council.

3 COM(09) 539, on which we currently await an Explanatory Memorandum.

2 European Security and Defence College

(30713)	Council Decision establishing a European Security and Defence College (ESDC) and repealing Joint Action 2008/550/CFSP.
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<i>Legal base</i>	Article 14 EU; unanimity
<i>Department</i>	Foreign and Commonwealth Office
<i>Basis of consideration</i>	EM of 23 June 2009
<i>Previous Committee Report</i>	HC 19–xxii (2008–09), chapter 2 (1 July 2009); and see (29699) —: HC 16–xxiii (2007–08), chapter 20 (4 June 2008) and (26630) — HC 34–i (2005–06), chapter 49 (4 July 2005)
<i>Discussed in Council</i>	To be determined
<i>Committee’s assessment</i>	Politically important
<i>Committee’s decision</i>	Not cleared; further information requested

Background

2.1 The European Security and Defence College (ESDC) was originally proposed by France, Germany, Luxembourg and Belgium at the so-called “Chocolate” Summit at Tervuren in April 2003, to provide training in what was described (in his 25 June 2005 Explanatory Memorandum by the then Minister for Europe, Mr Douglas Alexander, that accompanied the original Joint Action) as “the broad range of political, institutional and operational issues which are central to ESDP [the European Security and Defence Policy], with the aim of promoting better understanding of ESDP amongst the relevant Member State civilian and military personnel”.

2.2 It has

- a *Steering Committee*, comprising one representative from each Member to, inter alia, establish the annual academic programme of the ESDC, select the Member State institutes which will host the ESDC activities, and agree the annual academic programme;
- an *Executive Academic Board* comprising senior representatives of the institutes providing training each academic year with a main role of implementing the agreed annual academic programme through the ESDC network, developing curricula, reviewing standards and preparing evaluation reports;
- an *Administrative Secretariat* of up to three staff within the Council General Secretariat (CGS) in Brussels and carrying out administrative support activities in support of the Steering Committee and the Executive Academic Board.

2.3 Member State institutions and the EU Institute for Security Studies make up the training “network”.

2.4 Member States that send personnel for training in the ESDC bear the costs incurred. Member State institutions providing training as part of the ESDC network cover the associated organisational costs. The costs of the administrative secretariat in the CGS are covered by either the existing CGS budget or by those Member States that choose to second staff to work within it.

2.5 The ESDC was to deliver two main courses:

- the High-level Course, consisting of five week-long residential courses held in five different Member State institutions, intended for senior military and civilian personnel;
- the Orientation Course, a one-week course to be held around three times a year, in Brussels, providing a broad introduction to the ESDP for military and civilian personnel.

Previous consideration

2.6 The then Minister for Europe explained that the UK was originally sceptical, but a pilot course demonstrated that it would be “an effective means of delivering some of the key elements of ESDP training”. So the Government had “engaged with the initiative to ensure that it is based on a proper assessment of needs, and does not duplicate existing Member State training provision”, and “ensured that the ESDC will be established as a “virtual network” of existing Member State training institutions, rather than a new ‘bricks and mortar’ institution. Apart from the small administrative secretariat within the Council General Secretariat, there will be no common funding for the training provision. Member States will bear their own costs for the funding of their students”.

2.7 On 18 July 2005, the Council adopted Joint Action 2005/575/CFSP establishing the European Security and Defence College.⁴

2.8 It was cleared by the then Committee at its first meeting following the May 2005 General Election. In so doing, the then Committee noted that it seemed as though the UK’s success in ensuring that the ESDC would be a “virtual network” aiming to add value at minimal cost in order to improve the effectiveness of an established policy had not been achieved without a struggle; resistance had been necessary not only to proposals for common funding but also to the proposal to give the ESDC a legal personality, which would have undermined the concept of a “virtual” ESDC. Although no legal or policy questions arose, our predecessors felt that a short Report to the House was appropriate, to illustrate the constant battle that had to be fought to restrain expenditure on, and the institutionalisation of, activity which can clearly be carried out effectively at much lower cost, and in order to congratulate the Minister on the outcome.

Amendments to the 2005 Joint Action

2.9 In a helpful and informative Explanatory Memorandum of 2 June 2008, the then Minister for Europe at the Foreign and Commonwealth Office (Mr Jim Murphy) recalled that the 2005 Joint Action required the Steering Committee to review implementation of

4 OJ No. L 194, 26.07.05, p.15.

the Joint Action after two years and present a report to the Council. He noted that their report acknowledged that, with the EU's increasingly global role and the continuing development of ESDP, there was an increasing demand for the training provided by the ESDC, and accordingly made a number of recommendations aimed at improving the running of the ESDC and broadening its activities.

2.10 The then Minister went on to explain that the Steering Committee report also made other recommendations that required further investigation, which included increasing the number of Secretariat staff, securing a long-term solution for ensuring adequate access to suitable conference facilities in Brussels, and reviewing the current financing arrangements; and that the Council had commissioned a study of these issues to report by November 2008 with a view to further revising the Joint Action as necessary.

2.11 In the meantime, the then Minister explained that in order to incorporate those findings of the report that did not need such further investigation, a number of revisions to the original Joint Action had been proposed (set out in our previous Report). He reaffirmed the Government's support of the work of the ESDC — “in particular its development of an internet-based ESDP Distance Learning System” — and the proposed changes to the Joint Action, as a series of practical measures that would “allow the college to conduct a broader range of training activities of use to Member States [and] ... improve the day-to-day management of the college's activities without the need for major changes to its current organisation.”

2.12 He noted that as the ESDC operated on a “costs lie where they fall basis”, the UK did not provide a regular contribution to support the college's activities, but was nonetheless “actively engaged in the college's activities”, and routinely sent officials on the ESDC's training courses, and had provided expert speakers on a number of occasions and hosted a module of the High Level Course.

2.13 The Minister also welcomed the further review commissioned by the Council to report in November 2008, which would “look into the long-term impact that developments in ESDP will have on the college's future activities and what steps will need to be undertaken to ensure that the college can continue to meet Member States' requirements.”

Our assessment

2.14 Although modest and sensible, and with no financial implications, we considered the proposed changes warranted a Report to the House for two reasons.

2.15 First, the story so far illustrated that the Government's original approach was well-judged. Secondly, we felt the temptation might arise, in the further consideration of some of the more substantial issues raised in this review, to use another review — that of the European Security Strategy — to argue that “the long-term impact of developments in ESDP” and the alleged difficulties of ensuring adequate access to suitable conference facilities in Brussels to which the Minister referred might now necessitate common funding and giving the ESDC “legal personality”. If so, we trusted that the Minister would resist these or any other such suggestions with the same determination as had his antepredecessor.

2.16 We cleared the document, and looked forward to scrutinising the outcome of the further consideration of the review at the end of the year.⁵

2.17 Council Joint Action 2005/575/CFSP was replaced by Council Joint Action 2008/550/CFSP of 23 June 2008 establishing a European Security and Defence College.⁶

Further proposed amendments to Joint Action 2008/550/CFSP

2.18 In addition to his Explanatory Memorandum of 23 June 2009, the Minister of State at the Foreign and Commonwealth Office (Ivan Lewis) enclosed a copy of the study,⁷ and said that the French Presidency had taken up “a number of these recommendations and proposed a number of changes”, including:

- housing the college in permanent accommodation;
- an increase in the number of Secretariat staff from three to 17; and
- a dedicated budget of up to €3.6m per annum.

2.19 He went on to explain that, following extensive negotiations in Brussels, the General Affairs and External Relations Council on 8 December 2008 endorsed a much more modest version of the Presidency proposals, and that the Joint Action now needed to be amended for these proposals to be implemented. The changes to be incorporated into the new Joint Action are set out in our previous Report.

2.20 The Minister went on to say that:

- the ESDC maintained strong support amongst Member States and demand for ESDC courses continues to grow;
- the Government supported the work of the ESDC — in particular its focus on both civilian and military training — and its potential for further development along UK policy lines, without duplicating or undermining NATO training arrangements
- despite “very strong opposition from the majority of Member States”, the government, to ensure cost effectiveness and a better deal for the UK and ESDP, had successfully negotiated a significantly more modest deal which would still allow the college to conduct a broader range of training activities of genuine use to Member States and improve the day-to-day management of the College (details in our previous Report).
- this included a dedicated budget (for additional staff costs, installing and running the IDL System, developing and producing training materials, managing an Alumni Association etc.) of €850,000 for the first 12 months (down from an initial Presidency proposal of €3.6 million per annum). The ESDC shared budget would be capped until the Joint Action was renegotiated in four years time;

5 (29699) —: HC16–xxiii (2007–08), chapter 20 (4 June 2008); see headnote.

6 OJ No. L 176, 4.7.08, p.20.

7 The executive summary of which is at Annex 1 of this chapter of our Report.

— he had initially shared the Committee’s concerns over giving the College legal capacity. But now giving it the necessary legal capacity to fulfil its tasks and realise its objectives would be useful in practical ways; it would be able, for example, to enter into staff contracts, and contracts for equipment such as IT equipment to install its Internet-Based Advance Distance Learning System as supported by the UK and to print teaching materials. It would also be able to open a bank account. Giving the College the necessary legal capacity would not mean that the College could increase the size of its budget or act outside the scope of the powers given to it under the Joint Action by the Member States.

Our assessment

2.21 We agreed that the Minister and his predecessor had done well in holding to the Government’s original position, that the ESDC should be a “virtual network” of existing Member State training institutions, rather than a new “bricks and mortar” institution — at least for a further four years.

2.22 We were less pleased, however, that we had heard nothing from any Foreign and Commonwealth Office Minister concerning the recommendations emanating from the review, let alone what line the Government proposed to take. Not only did this ignore what we had asked in our report of a year ago; it also illustrated precisely the sort of “upstream” scrutiny issue that we had discussed *in extenso* with the previous Minister for Europe, which had concluded with the Committee saying that one of the things that it needs to do its job properly is not to be taken by surprise when presented with a piece of draft legislation.⁸ We asked the Minister to explain how this had happened, and what would be done to ensure that it did not happen again.

2.23 We would also asked him to explain, if the ESDC was to continue as a “network”, why (under Article 2: Legal Capacity) one of the reasons given for its acquiring a legal capacity was “to acquire equipment, *including teaching equipment*” (our emphasis). Was this a stepping stone, from teaching materials to hired class rooms to a new “bricks and mortar” institution? Or was there a more innocent explanation?

2.24 In the meantime we retained the document under scrutiny.

The Minister’s letter of 14 July 2009

2.25 The Minister of State at the Foreign and Commonwealth Office (Mr Ivan Lewis) begins his letter by thanking the Committee for its appreciation for the work undertaken by the Government during negotiations “to ensure that the College remains a virtual network, resisting intense pressure from the Council Secretariat and the majority of Member States who supported the recommendation for a permanent building to house the College.”

2.26 With regard to the Committee’s question regarding the ability afforded to the College to “acquire equipment, including teaching equipment”, the Minister says that the

8 (30691) 10665/09; see HC 19–xxi (2008–09), chapter 7 (24 June 2009).

equipment refers to the Council Secretariat’s recommendation (Future Perspectives paper, reference 16631/08, 1 December 2008, p25) to “provide the ESDC with its own budget to cover the expenditures for staff and IDL [Internet Distance Learning] equipment”. He sees that as “a welcome reinforcement of the network principle of the College.”

2.27 The Minister goes on to express his regret that the Committee “feels it has not been sufficiently briefed on the Government’s strategy with regards to the College”, and continues as follows:

“This was certainly not deliberate. During the course of both the French and Czech Presidencies we were involved in fast-moving negotiations with our European counterparts to ensure that the most cost-effective solution was found for the College to provide a service that genuinely adds value. We felt that it was important to ensure that the Committee received a realistic understanding of where the final negotiations might end up and have tried to convey this to the Committee, giving members enough time to express their opinions.

“I am committed to engaging with the Committee. Parliamentary scrutiny is a top priority for the Foreign Office and we are currently striving to satisfy the Committee’s requests, within practical limits. As I write, discussions on the College are still ongoing and we will continue to take the Committee’s views on board and meet regularly, at official level, to improve the scrutiny processes. The Foreign Office will continue to increase the level of correspondence with the Committee on areas of interest.”

2.28 The Minister concludes his letter by referring to the part of his earlier Explanatory Memorandum in which he explained that the relevant working group in Brussels “was still discussing the finer details of the ESDC expansion agreement, parts of which are centred on an area that is of fundamental concern to the UK — the budget.” This issue, he says:

“has not yet been resolved but could be concluded and recommended to go to the Council for agreement at short notice. When the Presidency announces the exact timing of when this will go before Council, we will inform the committee. Should there be insufficient time for this to pass scrutiny, we will then use our scrutiny reserve in order to allow Parliament to complete its work.”

Conclusion

2.29 On our substantive query, the Minister’s view that, through acquiring a legal personality, the ESDC’s ability now “to acquire equipment, including teaching equipment” is “a welcome reinforcement of the network principle of the College” implies that he does not see any danger that this will strengthen the hand of those who would like to see a much more costly “bricks and mortar” institution. We hope that he is right. We shall know in four years’ time, when the Joint Action is next reviewed.

2.30 Turning to the scrutiny issues, for some unexplained reason, the Committee did not receive the Minister’s letter until three months after he signed it, which suggests that, his words of assurance notwithstanding, there is still room for improvement in the process of getting correspondence from his Private Office to the Committee.

2.31 Beyond that, the Committee has long recognised that ESDP negotiations are often fast-moving and that, at times, this puts the scrutiny process under strain. However, this would not appear to have been one of those occasions. The Committee is not seeking a blow-by-blow advance warning system; only, as it has said before, not to be taken by surprise when presented with draft legislation. In this instance, there is no reason why the Minister could not have responded to the Committee's earlier request, and outlined the review findings, the Government's view and what it hoped to achieve in the subsequent negotiations.

2.32 Three months ago, the Minister says that discussions on “an area that is of fundamental concern to the UK — the budget” had yet to be concluded. We should be grateful if he would let us know what the present situation is.

2.33 In the meantime we shall continue to retain the document under scrutiny.

Annex 1: Council General Secretariat Study of “The Future Perspectives of the European Security and Defence College”: Executive Summary

The European Security and Defence College has developed over the last three years into a key training actor providing Member States and EU institutions with quality training for personnel involved in ESDP. To meet a steadily growing demand on the ESDC, some improvements for its functioning were agreed in a review and revision of the Council Joint Action in spring this year. However, some difficulties remain related to future perspectives of the ESDC in general and the current situation of the ESDC Secretariat in particular.

The General Secretariat of the Council was tasked to elaborate a “Study on the future perspectives of the ESDC” in order to provide sound information for a debate on this issue at the Council in November 2008.

Based on the previous evaluation reports of the ESDC Steering Committee and relying on the experiences and lessons learnt by the ESDC Secretariat from the early start in 2005 until today, the Study elaborates possible options for a further development of the ESDC including a general assessment of the resource implications.

The starting point is the state of play of training undertaken by the ESDC with a significant grow of training activities in terms of number and variety, the further development of the IDL system and at the same time running parts of it in a transitional phase which all together can no longer be dealt with by the current 3 staff members of the Secretariat. Insufficient staff resources also prevent the ESDC from valuable participation in international co-operation activities, notably with the Geneva Centre for Security Policy and the NATO Defence College, limitations which would also apply to further developments in international co-operation.

Key is and remains thereby the current situation of the ESDC Secretariat within the Council Secretariat which does not allow the recruitment of any additional staff beyond the current three and is so identified as an obstacle to a demand-driven development of the ESDC.

The solution proposed to meet the growing demand on the ESDC is therefore the establishment of the ESDC / ESDC Secretariat as a separate entity with its own premises and its own budget.

A needs analysis with a view to the years 2009/2010 results in the need for a permanent staff of about 11 staff members, including

- a Head of the ESDC, as already foreseen by the current Council Joint Action,
- supported by a small administrative team of 2 persons managing a budget, human resources and security aspects and 1 staff for overall secretarial support of the Secretariat,
- 3 staff to run the IDL system in its transitional phase and further develop it towards full operational capability, and
- about 4 staff who are basically dealing with the programming, planning, conduct and evaluation of the training activities in support of the national institutes, and aspects related to international co-operation.

Two concrete options are identified to establish the ESDC as a separate entity, taking the establishment of the European Police College as an organisation model:

- firstly, the Quartier Panquin close to Brussels, offered by Belgium as a potential location to accommodate the ESDC and its staff, and
- secondly, the renting of offices in the centre of Brussels. The building currently occupied by the WEU Secretariat might be an option.

Furthermore, it is recommended that training activities falling under the ESDC should get financial support through the budget of the ESDC.

Consideration has been given to management and co-ordination of other training initiatives at EU level. The study comes to the conclusion that the ESDC, if established properly, could be a suitable framework for hosting and providing management support for

- training activities in the field of civilian crisis management,
- training initiatives currently undertaken by the EDA to close significant capability gaps in the intelligence area, and “Enhancing the mutual understanding of stakeholders engaged in co-operative programmes” (recommended in the study of the EU ISS).

The ESDC with these additional responsibilities would also provide the financial support to these activities through the ESDC budget.

As regards the financial implications, 4 specific cost factors are identified: the staff, the staff facilities, the development and running of the IDL system and the training activities. The overall cost estimate is elaborated on this basis and differentiates between 2 options which so far do not include costs related to a building and/or offices needed and related operational costs.⁹

Option 1 is considered to be the ESDC as a separate entity with a focus on its strategic level training, with 11 staff members and financial support to the ESDC training activities (on the basis of the current academic programme with 14 activities). This would require a budget of about 1.6 million Euro. If parts of the staff would be made available by Member States as Seconded National Experts, the budget could be limited to about 1.2 Million Euro.

Option 2 is considered to be the ESDC with additional responsibilities, with additional 6 staff members and financial support to about 50 additional training activities through the ESDC budget. This would require a budget of about 3.6 Million Euro. If parts of the permanent staff would be made available by Member States as Seconded National Experts, the budget could be limited to about 2.7 Million Euro.

Finally, among other options, the use of the CFSP budget is considered to be a feasible options for financing the ESDC as a separate entity.

3 Financial services

(30966) 13688/09 + ADDs 1–2 COM(09) 491	Draft Directive amending Directives 2003/71/EC on the prospectus to be published when securities are offered to the public or admitted to trading and 2004/109/EC on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market
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<i>Legal base</i>	Articles 44 and 95 EC; co-decision; QMV
<i>Document originated</i>	23 September 2009
<i>Deposited in Parliament</i>	2 October 2009
<i>Department</i>	HM Treasury
<i>Basis of consideration</i>	EM of 15 October 2009
<i>Previous Committee Report</i>	None
<i>To be discussed in Council</i>	Possibly 2 December 2009
<i>Committee's assessment</i>	Politically important
<i>Committee's decision</i>	Not cleared; further information requested

⁹ "The assessment of these costs could not be finalised in time before publishing the study due to ongoing research into the two concrete possibilities. It will be finalised and circulated to delegations as soon as possible."

Background

3.1 Directive 2003/71/EC sets out Community requirements on prospectuses that must be published when securities are offered to the public or admitted to trading. Directive 2004/109/EC sets out transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market in the Community.

The document

3.2 The Commission intends this draft Directive, amending Directive 2003/71/EC and Directive 2004/109/EC, to simplify and improve the application of the Directives by reducing legal uncertainties, reducing unjustified burdensome requirements on market participants and further enhancing investor protection. The proposal is presented as part of the Commission's programme to simplify legislation and reduce administrative burdens.

3.3 The specific aims of the draft Directive are to:

- clarify that, where limits of offered amounts are included in the Directives, these limits should be calculated on a Community-wide basis and may be updated in the future by the Commission following the comitology regulatory procedure with scrutiny;¹⁰
- harmonise the term “qualified investor” with that of “professional investor” used in the Markets in Financial Instruments Directive;
- remove a restriction on the choice of home Member State for issues of non-equity securities with denominations below €1,000 (£909);
- clarify the requirement and responsibilities for a prospectus when securities are sold to investors by intermediaries and not directly by the issuer;
- widen the existing exemption from the requirement for a prospectus for offers of securities to employees where the securities are of a company that is not listed on a regulated market;
- clarify and enhance the requirement for a summary in a prospectus and clarify the civil liability associated with it;
- introduce a proportionate disclosure regime for small companies or credit institutions and for rights issues;
- clarify requirements where securities are guaranteed by a Member State;
- extend the period during which a prospectus, duly supplemented and updated, may be considered valid;

¹⁰ 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.

- remove one requirement for public reporting that is duplicated by the two Directives;
- clarify the period when publication of a prospectus, or supplementary information to it, is required and for the exercise of the right of withdrawal; and
- ensure that a home competent authority directly advises an issuer of its approval of a prospectus, removing any risk of the issuer contravening the law due to an oversight or error by the competent authority.

The Government's view

3.4 The Financial Services Secretary to the Treasury (Lord Myners) says that the Government supports the process of review of existing legislation and this resulting proposal for amendments to improve the balance between the goals of investor protection, consumer confidence, efficiency, legal clarity and reduction of administrative burdens. The Minister comments further that:

- in relation to the €1,000 threshold for non-equity securities and the extension of the period of validity of prospectuses the Government will seek revisions to the draft Directive to improve the balance;
- otherwise the Government supports the substantive proposals, as improving this balance;
- the Government is establishing a stakeholder group to give users and representatives of affected industry in the UK an opportunity to share views on the detailed proposals and to gain a more developed understanding of their impacts;
- the Government broadly supports the conclusions of the Commission's impact assessment; and
- as part of its consultation with stakeholders, the Government will seek further information on the likely impacts on affected sectors from UK firms.

Conclusion

3.5 **We welcome any effort to simplify Community legislation and reduce administrative burdens. However, before considering this draft Directive further we should like to hear from the Government about:**

- **the revisions the Government is seeking in relation to the €1,000 threshold for non-equity securities and the extension of the period of validity of prospectuses; and**
- **the outcome of its consultations.**

Meanwhile the document remains under scrutiny.

4 Use of Passenger Name Records for law enforcement purposes

(a) (30385) 5618/09 —	Draft Council Framework Decision on the use of Passenger Name Records (PNR) for law enforcement purposes
(b) (30651) 5618/1/09 —	Draft Council Framework Decision on the use of Passenger Name Records (PNR) for law enforcement purposes (Articles 1–10)
(c) (30735) — —	Draft Council Framework Decision on the use of Passenger Name Records (PNR) for law enforcement purposes

<i>Legal base</i>	(a) Articles 29, 30(1)(b) and 34(2)(b) EU; consultation; unanimity
<i>Deposited in Parliament</i>	(a) 27 January 2009 (b) 21 May 2009 (c) 3 July 2009
<i>Department</i>	Home Office
<i>Basis of consideration</i>	EM of 14 July 2009
<i>Previous Committee Report</i>	(a) HC 19–xiii (2008–09), chapter 4 (1 April 2009) (a) and (b) HC 19–xxi (2008–09), chapter 3 (24 June 2009) (c) None
<i>To be discussed in Council</i>	No date set
<i>Committee’s assessment</i>	Legally and politically important
<i>Committee’s decision</i>	(a) and (b) Cleared (c) Not cleared; further information requested

Background

4.1 Passenger Name Record (PNR) data is booking information held by airlines about their passengers which can be useful to law enforcement authorities in identifying criminals and criminal activity. (PNR is different from Advanced Passenger Information (API) which is data derived from passports.) The proposed draft Framework Decision sets out a mechanism for PNR data to be transferred by carriers (the ‘push’ method) on flights into and out of the EU; for this data to be held by Passenger Information Units in each EU Member State; and for its subsequent use by national enforcement agencies to identify suspected criminals. The draft instrument also makes provision for PNR data to be shared between EU enforcement agencies, and, where necessary, with third countries.

Previous scrutiny

4.2 When we reviewed this draft Framework Decision (document (a)) on 1 April,¹¹ we noted that the Presidency had significantly amended the text largely in line with findings made by the multi-disciplinary group on organised crime under the French Presidency. The Presidency had also incorporated some proposals on which no consensus had been agreed, including the retention period for PNR data and the use of sensitive personal information.

4.3 We took stock of these amendments but refrained from a full review until the negotiation positions of Member States on the new text had become apparent. We did, however, express considerable concern that the obligation to process PNR data for all flights into and out of the EU — i.e. collection of 100% of PNR data — greatly extended the scope of the Framework Decision; was in consequence a greater intrusion into passengers' rights to privacy and data protection; and went against the evidence provided that speculative searches of all such flights was both impractical and unnecessary. We also expressed concern over the role given to the Commission in the Framework Decision in recommending protocols for the transmission of PNR data through comitology.

4.4 We then reported on further (Presidency) amendments to Articles 1–10 of the Framework Decision, document (b), on 19 June.¹² We welcomed the additional clarification that “serious crime” would cover “conduct related to a criminal organisation” as defined in Article 2(a) and (b) of the Framework Decision on the fight against organised crime¹³ and, more specifically, as implemented by Member States as specific criminal offences under national law. We noted the comments of the then Parliamentary Under-Secretary of State at the Home Office (Shahid Malik) that there were clear differences of opinion between Member States on 100% PNR collection and the Commission's role in making recommendations regarding common protocols for the transmission of PNR data. We expressed the hope that those provisions would be diluted or positively redrafted as a consequence.

4.5 We voiced concern (again) at the scope of this Framework Decision being extended to 100% PNR data collection. It appeared from the Minister's Explanatory Memorandum that the Government's fall-back position was that the Framework Decision should allow for longer timeframes within which to reach 100% PNR data collection, with a review clause to be used if this goal proved impossible, as the Government predicted. We therefore asked the Minister for an explanation why 100% PNR data collection should even be a goal of this instrument, given, as the Minister said himself, that it is neither “necessary” nor “proportionate”, and in our view could thereby upset the balance between a legitimate and illegitimate restriction on passengers' rights to privacy and data protection.

4.6 We also asked if the Minister could confirm whether there was strong support from Member States for air carriers to be obliged to use the push method to transfer PNR data to national authorities after two years from entry into force of the Framework Decision, as appeared from revised Article 5(4) of document (b).

11 See headnote

12 See headnote

13 2008/841/JHA

4.7 We further noted the Presidency’s comment that it was highly unlikely that consensus would be achieved on the period of retention of PNR data and asked the Minister views on what in the Government’s opinion would be an appropriate period of retention by national authorities both in the EU and in third countries.

4.8 Finally, we asked for clarification of whether a dispute had arisen between Member States over the legal basis of this Framework Decision. We kept both documents (a) and (b) under scrutiny.

The Minister’s Explanatory Memorandum of 14 July

4.9 On 14 July the Minister of State at the Home Office, (Phil Woolas), submitted an Explanatory Memorandum in response to our Report of 19 June, attaching a further revision of the draft Framework Decision (document (c)).

4.10 The Minister states that the Government welcomes the redraft of the Framework Decision. In his view the draft instrument has made progress towards establishing an EU PNR system which brings with it the advantage of EU wide cooperation on issues such as combating terrorism and serious crime, minimising the burden on industry, and enabling the EU to set appropriate data protection standards on the use of PNR data. He reminds us that the UK has experience of processing PNR data both through manual processing and the more targeted approach of the UK Border Agency’s e-Borders Programme. He states that the Government would like the final EU PNR instrument to provide a permissive framework which sets a basis for collection and sharing of PNR data and enables our authorities to use this data to maintain the security and integrity of our borders.

4.11 The significant proposed amendments are as follows:

Legal base

- Some Member States have argued that the instrument should be based on Article 80(2) EC, the Community’s transport policy, given that it proposes to regulate the airline industry. The Government and other Member States disagree, arguing that the third pillar legal base (Article 29 and 31(1) (b) EU) should be maintained. This is because the Framework Decision proposes to regulate law enforcement authorities; does not impose any additional obligations on carriers to collect more PNR data than they do already; and deals predominantly with the processing of PNR data for law enforcement purposes.

Serious crime

- The revised draft now clarifies in Article 2(i) that when assessing whether an offence meets the required sentence length for the definition of ‘serious crime’ as defined within the Framework Decision, the national law of the Member State collecting the PNR data, or of the Member State processing it, should apply. The Government welcomes this further clarification, as it represents a logical step forward in ensuring that Member States are able effectively to utilise PNR data for combating both serious and organised crime within the scope of the Framework Decision.

Transfer of PNR data

- In Article 5(4) the transition period is changed from three years to two years for air carriers to adopt the ‘push method’ for transferring PNR data to the Passenger Information Unit. (The ‘pull’ method is where the enforcement agency can access the air carrier’s database directly.) This revision reflects suggestions from a number of Member States that have requested that this transition period be amended to reflect the transition periods of the EU-Australia PNR Agreement. The UK Government supports this amendment, as it will allow faster progression towards an effective EU-wide PNR structure. The Government does not believe that this amendment will have a disproportionate effect on air carriers, and will continue to engage with air carriers to ensure they are able to comply effectively with this transition period.

Retention of PNR data

- The revised draft introduces PNR data retention periods of three years within an active database and up to seven years within an inactive database that can be accessed on a case by case basis (Article 9). The Government welcomes the further clarification of periods of data retention, and acknowledges the flexibility that is afforded to individual Member States by allowing PNR data to be retained for ‘up to’ seven years in an inactive database. However, these periods still do not reflect the five years in an active database and five years in an inactive database provided for under the UK’s e-Borders programme. Having discussed the impact of reduced data retention periods with national operational experts, the Government believes that there would be an impact on operational effectiveness if retention periods were to be significantly reduced. The Minister concludes that the Government will continue to consider the impact of shorter PNR data retention periods as negotiations progress. Although as yet not covered by this Article, the Government also believes that data retention periods in third countries should be assessed on a case by case basis, taking into account the adequacy of their data protection standards.

Sensitive data

- The use of sensitive (PNR) data in Article 11a has now been restricted to when it is necessary to combat terrorism or serious crime only. The Minister reports that the Government’s experience has shown that processing sensitive personal data contained within PNR can be extremely helpful, often in eliminating individuals from further investigation. However, the Government advocates the use of established data protection safeguards, accessing sensitive personal data only on a case by case basis, by an appropriately trained officer, and with a robust audit trail in place once a passenger has been identified as being of potentially higher risk.

Bilateral agreements

- The Czech Presidency has amended the draft to ensure that related instruments between Member States may continue to be applied and negotiated so far as they are compatible with the objectives of the Framework Decision (Article 19). The Government considers this to be a logical amendment that aims to ensure that the

standards proposed in the Framework Decision are upheld within the EU. The Government also welcomes the additional amendment that the Framework Decision will not impact on existing data sharing agreements with third countries unless PNR data has been received from another Member State under the Framework Decision and would be transferred to that third country. The Government is currently considering the impact of this amendment on any outstanding or proposed data sharing agreements.

4.12 The Minister also acknowledges that the new draft Framework Decision continues to incorporate proposals on which consensus has yet to be reached. In particular, Member States are no closer to agreeing systematic (100%) collection of PNR data from all airline routes into the EU, as currently provided for in Article 5(1). He reaffirms that the Government is against it, believing it to be neither necessary nor proportionate; but other Member States take a different view, thinking that it will allow for a wider range of PNR to be collected for processing and analytical purposes. More discussion will therefore be required.

Conclusion

4.13 **We thank the Minister for his Explanatory Memorandum and take stock of the improvements in the revised draft Framework Decision (document (c)). We particularly welcome the new restriction in accessing sensitive PNR data and the reduction in the transition to using the push method of transferring PNR data from three to two years.**

4.14 **We also note the areas where agreement is pending. Like the Government, we have grave reservations about the proposed change in the legal base from third to first pillar. It would set an unwelcome precedent were this argument to be lost. (However, we note that if the Lisbon Treaty comes into force before negotiations end, this is likely to have an effect on the question of legal base.) And our views on the consequences of 100% PNR data collection for the right to privacy and data protection are by now well known to the Government.**

4.15 **We look forward to an update on the progress of negotiations in December, particularly with regards to the legal base and draft Articles on 100% PNR data collection, the length of time PNR data is retained, and precautions against misuse of PNR data by third countries.**

4.16 **In the meantime we clear document (a) and (b) from scrutiny.**

5 Agency for the management of JHA databases

(a) (30737) 11722/09 COM(09) 293	Draft Regulation establishing an Agency for the operational management of large-scale IT systems in the area of freedom, security and justice
(b) (30738) 11726/09 COM(09) 294	Draft Council Decision conferring upon the Agency established by Regulation XX tasks regarding the operational management of SIS II and VIS in application of Title VI of the EU Treaty

<i>Legal base</i>	(a) Articles 62(2)(a), 62(2)(b)(ii), 63(3)(b) and 66 EC; co-decision; QMV (b) Articles 30(1)(a) and (b) and 34(2)(c) EU; consultation; unanimity
<i>Department</i>	Home Office
<i>Basis of consideration</i>	Minister's letter of 26 October 2009
<i>Previous Committee Report</i>	HC 19–xxv (2008–09), chapter 7 (21 July 2009)
<i>To be discussed in Council</i>	No date set
<i>Committee's assessment</i>	Politically important
<i>Committee's decision</i>	(Both) Not cleared; further information requested

Background

5.1 These proposals concern the arrangements for the management of three large Justice and Home Affairs (JHA) databases:

- **EURODAC**, which stores asylum seekers' fingerprints and is used to help Member States decide which of them is responsible for deciding an asylum application;
- **SIS II**, which will contain information about, for example, people wanted for arrest and extradition, third country nationals to be denied entry to any of the Schengen states, missing people and stolen property. Its purpose is to help participating states enforce the provisions of the Schengen *acquis* on the free movement of people and on police and judicial cooperation in criminal matters; and
- **VIS** (the Visa Information System), which will store records of all Schengen visa applications received in participating Member States' missions overseas, together with the applicant's photograph and fingerprints. VIS will make it easier for Member States to exchange visa information so as, for example, to detect visa fraud. VIS may be consulted not only by immigration authorities but also by Europol and Member States' law enforcement authorities for the purposes of the prevention and detection of terrorist and other serious offences.

5.2 The Commission is responsible for the operational management of EURODAC. It is also responsible for completing the development of SIS II and VIS. When approving the

legislation to establish SIS II and VIS, the Council of Ministers and the European Parliament invited the Commission to present proposals for legislation to make an agency responsible for the management of the systems.

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

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

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

Previous scrutiny of documents (a) and (b)

5.6 We first scrutinised these document in July.¹⁴ Document (a) is the draft of a Regulation to create an Agency to be responsible for the operational management of SIS II, VIS and EURODAC. It also provides for the Agency to develop and manage other large-scale information technology systems for which Title IV of the EC Treaty provides the legal base.

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

5.8 The Agency would be an EC body with its own legal personality. It would be funded by contributions from the EU budget and the Member States. The powers of the Agency's Management Board would include appointing the Agency's Executive Director, approving the annual work and agreeing the annual estimates of revenue and expenditure. The Management Board would comprise one representative of each Member State and two representatives of the Commission. Europol and Eurojust would have observer status at the Board when matters relevant to their functions were discussed and would be represented on the Agency's SIS II and VIS advisory groups. The Agency would be established in 2011 and take over the management of the databases in 2012. It would employ 120 staff. The Agency's total start-up costs between 2010 and 2013 would be €113 million.

5.9 Recital 8 of the draft Decision says that:

¹⁴ See HC 19–xxv (2008–09), chapter 7 (21 July 2009).

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

5.10 In July, the Minister of State at the Home Office (Mr Phil Woolas) told us that, in the Government's view, the UK's involvement in the proposed Agency should reflect the UK's current participation in the JHA databases. The UK is connecting to SIS II for the purposes of police and judicial cooperation in criminal matters. It also participates in EURODAC. The Government is challenging in the European Court of Justice the current exclusion of the UK from the Council Decision which gives law enforcement authorities access to VIS.¹⁵ The outcome of that case will affect whether the UK could take part in document (b).

5.11 We recognised the potential benefits of creating a single Agency to manage SIS II, VIS, EURODAC and other large JHA systems. But we decided to keep documents (a) and (b) under scrutiny pending progress reports on the negotiations and notification of the Government's decision whether to opt into document (a).

The Minister's letter of 26 October 2009

5.12 The Minister's letter tells us that the Government has decided to opt-in to the draft Regulation to the extent that it applies to the databases in which the UK currently takes part and all future IT systems in which the Government of the day decides to participate.

5.13 The Minister says:

“There were a number of key considerations that informed the decision to partially opt-in. If the UK did not opt into the measure, we would have no representation in the Agency and would not be able to participate in the negotiations over its creation. Given that we already participate in Eurodac, are scheduled to connect to SIS II, and have launched an ECJ challenge to the decision preventing us gaining access to the law enforcement aspects of VIS, not opting into the Regulation would marginalise our ability to influence the management of these systems in which we participate. The Agency would also have a role in developing any new IT systems, which may include systems in which the UK would want to eventually participate and where for example we might want to take part in pilot projects to influence their development. Our non-participation in the Agency would exclude us from such a role.”

5.14 The Minister also tells us that the Government will propose some amendments to the draft Regulation. For example, the Government, supported by other Member States, has proposed an amendment to one of the provisions on the voting rights of Member States in the Management Board.

¹⁵ Decision2008/633/JHA: OJ No. L 218, 13.8.08, p.129.

Conclusion

5.15 We note the Government’s decision to opt-in to document (a). We also note that it will seek amendments to the Regulation. We should be grateful, therefore, if the Minister would provide us with progress reports on the negotiations. Meanwhile, we shall keep both documents under scrutiny.

6 Communication — enforcement of Intellectual Property rights

(30915) 13286/09 COM(09) 467	Commission Communication — <i>Enhancing the enforcement of intellectual property rights in the internal market</i>
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<i>Legal base</i>	—
<i>Document originated</i>	11 September 2009
<i>Deposited in Parliament</i>	17 September 2009
<i>Department</i>	Business, Innovation and Skills
<i>Basis of consideration</i>	EM of 29 September 2009
<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>	Cleared

Background

6.1 This Communication follows on from the Commission’s IPR Strategy for Europe,¹⁶ which was adopted in July 2008, and the adoption on 25 September 2008 of the Competitiveness Council Resolution on a comprehensive European anti-counterfeiting and anti-piracy plan. This plan envisaged measures:

- facilitating dialogue amongst concerned parties and voluntary inter-industry agreements to tackle key problems;
- improving co-ordination between Member States;
- helping to build partnerships and develop information sharing between industry and enforcers.

6.2 The Resolution also invited the Commission to set up a European counterfeiting and piracy observatory. This would collect and analyse data on counterfeiting and piracy across

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Europe, to enable assessment of the scope and scale of the problem, share information, promote best practice and strategies, raise awareness and pose solutions to key problems. The European Observatory on Counterfeiting and Piracy was launched on 2 April 2009 at the Second High Level Conference on Counterfeiting and Piracy, and the first meeting of the Observatory took place on 4 September 2009.

The Document

6.3 This Communication sets out a series of practical initiatives designed to respond to counterfeiting and piracy of intellectual property rights and their economic effects on EU economies. The Commission is proposing to complement the existing legal framework by more focused enforcement measures. This is to be achieved through the activities of the newly established EU Observatory on Counterfeiting and Piracy, improved administrative co-operation across Europe, and greater collaboration between the private sector, national authorities and consumers throughout the internal market. The Communication sets out a range of initiatives designed to promote a more collaborative approach to protecting intellectual property as an important ingredient of innovation and creativity across industry sectors.

The EU Observatory on Counterfeiting and Piracy

6.4 The Observatory is designed to provide a new forum facilitating collaboration between national representatives, private sector experts and consumers. The Observatory's functions are:

- to improve the collection and use of independent, reliable information and data;
- to promote awareness of best practice amongst public authorities;
- to develop appropriate solutions to problems in specific geographical areas and specific sectors.

The Commission emphasises that the Centre will need to ensure that no duplication of effort takes place.

6.5 Whilst most of the administrative work of the Observatory will be conducted by the European Commission Directorate General (DG) for Internal Market and Services, other key Commission services such as DG Enterprise, DG Trade, DG for Justice, Freedom and Security and DG for Taxation and Customs Union will contribute to developing the work and will join external experts for specific research and specialist tasks. The Centre was set up in part to address a long-standing complaint that Commission Services have been fragmented.

6.6 The first stakeholder meeting of the Observatory agreed the overall mission, objectives, governance and future structure of the Observatory, and practical work streams are already being developed. One work stream aims to improve understanding across the EU and involves a comprehensive exercise ('mapping study') to identify structures and frameworks currently in place to combat IP infringements within Member States. Alongside this, two sub-groups have been created to look at specific issues surrounding data gathering and existing legal frameworks.

6.7 The Commission has formally asked Member States to appoint a national representative from each country to be a full member of the Observatory. The first full meeting of Member States' representatives will take place in December, in Stockholm, under the Swedish Presidency. During this meeting results from the 'mapping study' will be presented by the Commission who will invite discussions on the findings and the work of the Observatory sub-groups.

Improved administrative co-operation and collaboration

6.8 The Commission aims to foster administrative cooperation across Europe by improving coordination to ensure more effective exchanges of information and mutual assistance. As a result, Member States will be asked to designate National Coordinators. Building on current experience, a technical assessment is also taking place to advise on existing and appropriate electronic networks to exchange information across borders on IPR infringements.

6.9 The Commission is also seeking to build coalitions between stakeholders to overcome conflicts and disputes, by developing voluntary collaborative arrangements that focus on concrete problems, such as the sale of counterfeit goods over the internet and illegal uploading and downloading. The Commission feels that such agreements have the potential to be more easily extended beyond the EU and to become the foundation for best practice at global level.

6.10 In this respect the Commission is facilitating monthly meetings to address specific issues and reach voluntary agreements on practical solutions and measures. A wide range of rights holders, internet companies, internet service providers and telecommunication operators are participating to help develop and carry out common actions in these fields. The Commission expects participants to be in a position to develop a joint Memorandum of Understanding before the end of the year in respect of the illegal sales dialogue, and before the summer of 2010 in respect of illegal uploading and downloading. A range of UK rights owners are taking part. If successful, the Commission envisages that dialogues could then be extended to promote cooperation with financial institutions and transport companies in the fight against online counterfeiting.

The Government's view

6.11 The Minister of State for Higher Education and Intellectual Property at the Department for Business, Innovation and Skills (David Lammy) confirms the Government's general support for the Commission's approach. He states that the Government "is already working closely with stakeholders in the UK and Europe on increasing collaboration and co-operation." The Minister adds that "the UK will need to confirm our delegate ahead of the first representative's meeting in December. The UK will also need to designate a National Coordinator."

Conclusion

6.12 We thank the Minister for his helpful summary of the Commission Communication. We share the Government's general support for the Commission's

objectives and general approach and have no questions of the Minister. We clear the document from scrutiny.

7 Food aid for deprived people within the Community

(30962) 13721/09 —	Special Report No. 6/2009 concerning the European Union food aid for deprived persons: an assessment of the objectives, the means and the methods employed together with the Commission's replies
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<i>Legal base</i>	—
<i>Deposited in Parliament</i>	30 September 2009
<i>Department</i>	Environment, Food and Rural Affairs
<i>Basis of consideration</i>	EM of 20 October 2009
<i>Previous Committee Report</i>	None, but see footnote 18
<i>To be discussed in Council</i>	No date set
<i>Committee's assessment</i>	Politically important
<i>Committee's decision</i>	Cleared

Background

7.1 In order to avoid a build-up of public intervention stocks, the Common Agricultural Policy (CAP) has over the years contained provisions for the subsidised sale of produce. These include a measure¹⁷ introduced in 1987, enabling intervention stocks to be supplied free of charge to designated charitable organisations for distribution to the most deprived persons in the Community (including children from poor families, the elderly and the homeless) in those Member States which choose to participate.

7.2 As we noted in our Report¹⁸ of 29 October 2008, the Commission believes that this measure has contributed to achieving two of the objectives in the Treaty — to stabilise markets, and to ensure that supplies reach consumers at reasonable prices — and has been a reliable supply of food for the most deprived, particularly in the light of the successive enlargements which have substantially increased the Community's needy population, and the recent rise in food prices. However, it has also noted that the various reforms of the CAP have greatly reduced the scope and level of intervention stocks, leading to a significantly increased reliance on market purchases. This in turn led it to propose in September 2008 the changes set out in our Report (following which the document was debated in European Committee A on 20 January 2009).

17 Council Regulation (EEC) No 3730/87 (OJ No. L 352, 15.12.87, p.1.) This measure was subsequently repealed, and integrated into Council Regulation (EC) No 1234/2007 (OJ No. L 299, 16.11.07, p.1.) which consolidated into one instrument existing sectoral legislation under the CAP.

18 (29981) 13195/08: see HC 16–xxxiii (2007–08), chapter 1 (29 October 2008).

The current document

7.3 The current document is a report by the European Court of Auditors, which examined whether the intended aims of the scheme are still valid in the context of the evolving market and social situation; the adequacy of the means made available, and of the systems applied, for measuring the scheme's impact on the beneficiaries in terms of value, quantity and variety of products provided and distributed; and the administrative and management procedures used for the implementation of the annual plans. It covers the management of the scheme between 2006–2008 by the Commission and four Member States — Spain, France, Italy and Poland — which account for more than 72% of the annual budget (which amounted to €307 million in 2008 and €500 million in 2009).

7.4 The Court comments that the scheme was designed to alleviate, not eliminate, poverty, and that the resources available have had only a limited impact, offering on average the equivalent of one meal per month to its beneficiaries, making it necessary to target the aid and improve coordination with social policy. It adds that the existing provisions related to intervention stocks have constrained the variety of products which can be distributed, whilst the procedures applied in the distribution chain have resulted in different treatment of final beneficiaries in terms of quantity of food provided per person. The Court also found that the administration of the scheme is particularly difficult since it is managed by thousands of charitable organisations, mainly staffed by volunteers, dealing with an unstable target population; that monitoring and reporting systems need to be improved at both Commission and Member State levels, as well as the methodology for allocating the financial resources between Member States; and that the tendering procedures differ considerably between Member States and have not ensured equal access to all operators and the broadest competition. The Court also commented on the tenuous link between this programme and agricultural expenditure since the reduction in intervention stock levels, and notes that a number of Member States consider that it should not be financed from the European Agricultural Guarantee Fund (EAGF).

7.5 The Court notes the Commission's recent proposal to reform the scheme, which it says would go some way towards addressing certain of the weaknesses highlighted, and says that, since there is support within the Council and European Parliament for its continuation, it has made a number of recommendations, as follows:

- that the Commission should consider whether it is appropriate to continue financing such a measure through the CAP;
- that the Commission should encourage Member States to embed the programme in the social policy framework and improve coordination and cooperation with others involved in that area;
- that, in order to increase the impact of the measure, the Commission should define workable priorities to select recipients of aid, taking due account of difficulty of applying delivery mechanisms involving voluntary bodies and the volatile target groups involved;

- that the restriction of foods for distribution to products eligible for intervention storage should be reconsidered in order to increase the diversity and nutritional value of the food supplied;
- that, in order to increase the impact of the aid, and to ensure more equal treatment of recipients, the Commission should consider introducing a level of standardisation consistent with the characteristics of the charitable organisations and of the target group;
- that the Commission should encourage Member States to develop specific, measurable, achievable, relevant and timed objectives for the implementation of the programme as well as to define performance indicators, and should review the reporting system;
- that, in order to increase the openness of competition and to ensure that the best market prices are achieved, the Commission should better define the legal basis as well as implementing rules for the procurement of food products for deprived persons.

7.6 In its response, the Commission argues that the food distribution plans adopted under the scheme have successfully contributed to the food security of the most deprived persons and to ensuring an alternative outlet for intervention stocks. It also points out that, although the intervention system has been extensively reformed, it still remains for cereals, skimmed milk powder and butter, and that stocks have recently started to rebuild due to market circumstances. It notes the support for the scheme from a majority of Member States and the European Parliament, which has also expressed its wish that the scheme should remain financed by the EAGF. It suggests that overall the scheme is managed satisfactorily, but accepts that further improvements are possible: and it points out that the methodology to calculate Member State contributions has already been revised to take account of relative wealth levels, and that its proposal last autumn to reform the scheme addresses several of the Court's suggestions.

The Government's view

7.7 In his Explanatory Memorandum of 20 October 2009, the Minister of State (Farming and the Environment) at the Department for Environment, Food and Rural Affairs (Jim Fitzpatrick) says that the Government welcomes the Court's examination, and that a number of the issues raised in the report reflect the Government's own view — expressed previously in connection with the amendments proposed by the Commission last year — that the current scheme does not represent good value for money, and that it is inappropriate that it should continue to be financed through the CAP budget, particularly as it has increasingly been used for the purchase of goods on the open market. The Minister adds that, despite the Commission's contention that its proposals to reform the scheme address a number of the Court's suggestions, the Government remains unconvinced as to the merits or appropriateness of that proposal, considering that the Community should act only where there are clear additional benefits, and that social measures are a matter for Member States more properly and efficiently delivered through domestic social programmes.

Conclusion

7.8 The issues raised by this scheme have already been drawn to the attention of the House by virtue of our Report of 29 October 2008 on the amendments which the Commission has proposed, and these were subsequently debated in European Committee A. Nevertheless, the comments made by the European Court of Auditors in this Special Report provide an interesting backdrop to that earlier proposal and to some of the UK's reservations on the scheme. Consequently, although we see no need to withhold clearance, we think it right that this latest document should also be drawn to the attention of the House.

8 Global navigation satellite system

(30902) 13066/09 COM(09) 453	Draft Council Decision on the signing of the Cooperation Agreement on a satellite navigation between the European Community and its Member States and the Kingdom of Norway
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<i>Legal base</i>	Articles 133, 170 and Article 300 (2) EC; —; QMV
<i>Document originated</i>	4 September 2009
<i>Deposited in Parliament</i>	14 September 2009
<i>Department</i>	Transport
<i>Basis of consideration</i>	EM of 19 October 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

8.1 The Community has a two-phase policy for developing a global navigation satellite system (GNSS). The first phase, GNSS 1, is the European Geostationary Navigation Overlay System (EGNOS) programme. The second phase, GNSS 2, is the programme, named Galileo, to establish a new satellite navigation constellation with appropriate ground infrastructure. Galileo is based on the presumption that Europe ought not to rely indefinitely on the GPS (the US Global Positioning System) and GLONASS (the Russian Global Navigation Satellite System) systems, augmented by EGNOS. Galileo is being carried out in conjunction with the European Space Agency¹⁹ and there are a number of agreements in place or being negotiated with third countries about cooperation in the project. From early in 1999 we and previous Committees have reported to the House on

19 See http://www.esa.int/SPECIALS/About_ESA/SEMW16ARR1F_0.html and <http://www.esa.int/esaNA/index.html>.

many aspects of the Galileo project, most recently in September 2009.²⁰ The matter has been debated four times in European Standing Committee, most recently on 26 November 2007,²¹ and once on the Floor of the House.²²

8.2 Norway is the closest non-EU partner involved in the Galileo programme. It belongs to the European Space Agency, has participated informally as an observer in a number of Galileo-specific Community committees and forums and is a member of the European Economic Area (EEA).

The document

8.3 With this proposed Decision the Council would authorise signature of a cooperation agreement between the Community, the Member States and Norway in respect of GNSS. This follows from a July 2005 Council mandate authorising the Commission to enter into negotiations with Norway to establish such an agreement. Negotiations involved a Special Committee of the Council, took views from technical, security and transport experts of Member States and resulted in the parties initialling a draft agreement on 17 July 2009.

8.4 The agreement lays down the principles, scope and form of cooperation between the Community and its Members States on the one hand and Norway on the other. The provisions covered include:

- cooperation between the parties in promoting the use of Galileo;
- the coordinated approach to be followed at international fora in relation to the development of GNSS and augmentation systems;
- the coordinated approach to be followed in ensuring security of the Galileo programme;
- the coordinated approach to be followed in ensuring protection and enforcement of intellectual property; and
- the principles for authorising exports of sensitive Galileo related items by Norway to third countries.

8.5 The Agreement will be complemented by a proposed EEA Joint Committee Decision amending the two Protocols to the EEA Agreement which set out the framework for the agreement and future cooperation on GNSS between the Community, the Member States and the countries of the EEA, specifically Iceland and Norway.²³ It is appropriate to amend these Protocols to take into account the provisions of the Regulations establishing the management structures for Galileo and permitting additional funding to the GNSS programmes from non-Community countries, the latter being particularly important as it

20 (30514) 6257/09: see HC 19–xxvi (2008–09), chapter 3 (10 September 2009).

21 See *Stg Co Deb*, European Standing Committee, cols. 3–40.

22 See *HC Deb*, 2 July 2007, cols. 763–87.

23 Because of financial uncertainty and difficulties, the terms of the Protocols are currently suspended with respect to Iceland. The third member of the EEA, Lichtenstein, is not covered by the Protocols.

would formalise Norway's ongoing and future political and financial contributions to the Galileo programme.

The Government's view

8.6 The Parliamentary Under-Secretary of State, Department for Transport (Paul Clark), says that a long stated objective of the Government is to see the Galileo programme as a commercially viable and global enterprise, that it has always been supportive of the engagement of non-Community countries to support this aim and that it therefore welcomes this agreement.

8.7 The Minister comments further that:

- the Government generally encourages further commercial and political cooperation with other countries in all arenas, and not just Galileo, as a means to encourage trade and commerce, providing that this does not in any way prejudice the UK's national security;
- it fully recognises that where Galileo is concerned there are areas that are of a particularly sensitive nature;
- the proposed agreement recognises the need to ensure there are safeguards in place to provide assurance for Member States;
- in particular it specifically addresses the need to safeguard access to sensitive technology, including Galileo's encrypted Public Regulated Service;
- there are clear advantages for the Galileo programme and benefits for European industry in extending formal co-operation between the Community and Norway;
- the Government recognises the important role that Norway has played in the Galileo programme to date and the important role that it will continue to play in financial contributions and in hosting a number key ground facilities as the programme moves towards achieving the full operational capability of Galileo; and
- the Government therefore welcomes this agreement that further strengthens the close working relationship that exists between the Community and Norway on GNSS.

Conclusion

8.8 We note the utility of the involvement of Norway in the Galileo project and, whilst clearing the proposed cooperation agreement from scrutiny, draw it to the attention of the House.

9 Road safety

(30908) Commission Communication: *eCall: Time for Deployment*
 13233/09
 COM(09) 434

<i>Legal base</i>	—
<i>Document originated</i>	21 August 2009
<i>Deposited in Parliament</i>	15 September 2009
<i>Department</i>	Transport
<i>Basis of consideration</i>	EM of 12 October 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 The Commission’s third European Road Safety Action Programme, for the period 2002–2010, set a target of halving the annual number of road deaths in the Community by 2010 (that is from about 47,000 to 25,000 annually). In the context of that programme the Commission published in September 2002 a Communication on “information and communications technologies for safe and intelligent vehicles” (the 1st eSafety Communication). This suggested that, while much of the development and use of ICT-enabled vehicles is an industry responsibility, there is a need for and merit in collaboration between the private and public sectors. Areas for collaboration highlighted were facilitating more cooperative intelligent vehicle and intelligent infrastructure systems and assisting in provision of a business case for widespread and rapid deployment. The Commission discussed action to promote intelligent vehicle safety systems, adapt regulatory and standardisation provisions and remove societal and business obstacles.²⁴ The subject is sometimes referred to as eSafety.

9.2 In its Communication “i2010 — a European Information Society for growth and employment” the Commission announced its intention to launch “flagship ICT initiatives on key social challenges” including safe and clean transport.²⁵

9.3 In September 2005 the Commission published a Communication, *The 2nd eSafety Communication— Bringing eCall to citizens*, in which it made proposals to carry forward one of the suggestions from its earlier Communication on the use of ICT in road safety — promotion of a pan-European in-vehicle emergency call service, to be known as eCall. eCall would manually or automatically generate a call from a vehicle following an accident,

24 (24592) 9713/03: see HC 63–xxviii (2002–03), chapter 11 (2 July 2003) and (24897) 12736/03 + ADD 1: HC 63–xxxiv (2002–03), chapter 18 (22 October 2003).

25 (26616) 9758/05 + ADD 1: see HC 34–ii (2005–06), chapter 1 (13 July 2005) and *Stg Co Deb*, European Standing Committee C, 8 November 2005, cols 3–22.

establishing a voice link to the emergency service, whilst transmitting vehicle and location data. The Commission set this in the context of its intention to launch a flagship initiative, the Intelligent Car, as part of the i2010 programme. Amongst the actions the Commission said Member States should undertake in order to bring forward the introduction of eCall was signing the European Memorandum of Understanding (MoU) for Realisation of Interoperable In-Vehicle eCall.²⁶ In November 2006 in a further Communication, *Bringing eCall back on track — Action Plan (3rd eSafety Communication)*, the Commission asserted that slow progress in the deployment of eCall shown by some Member States, especially the large ones, who were crucial for keeping industry committed, had endangered the realisation of the already agreed deployment plan. The purpose of the Communication was to summarise the background to and rationale for Community action, to support and facilitate progress and to set out Commission actions “necessary for solving the current deadlock and for bringing eCall back on track”.²⁷

9.4 In December 2008 the Commission published a Communication calling for a coordinated approach to intelligent transport systems across the Community and set out a 24 point 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 covered actions designed to address a wide range of policy areas within three categories:

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

At the same time the Commission presented a draft Directive 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 had been too fragmented and not coordinated across Member States, the Commission considered the use of a framework Directive to be the most appropriate way to address this issue.²⁸

The document

9.5 The Commission introduces this further Communication by noting that, although road fatalities in the Community have fallen by 27% since 2001, in 2008 there were around 39,000 deaths and more than 1.7 million injured on Community roads. It says that consequently further action is needed and asserts that “The pan-European in-vehicle

26 The MoU “is to secure the realisation of” eCall. It is not legally binding “rather, it is an expression of the individual and collective commitment of the signatories to work in partnership in order to realise a shared objective to the benefit of everyone”. It “creates a framework for the introduction of in-vehicle emergency call at all levels in the emergency call chain”. See http://europa.eu.int/information_society/activities/esafety/doc/esafety_library/mou/invehicle_ecall_mou.pdf

27 (26852) 12383/05 (28122) 15932/06: see HC 34–ix (2005–06), chapter 6 (9 November 2005), HC 41–ix (2006–07), chapter 3 (7 February 2007) and HC 16–vi (2007–08), chapter 11 (12 December 2007).

28 (30312) 17563/08 + ADDs 1–2 (30313) 17564/08 + ADDs 1–2: see HC 19–vii (2008–09), chapter 4 (11 February 2009), HC 19–xi (2008–09), chapter 6 (18 March 2009), HC 19–xix (2008–09), chapter 6 (10 June 2009), HC 19–xxii (2008–09), chapter 1 (1 July 2009) and *Stg Co Debs* European Committee, 20 July 2009, cols. 3–14.

emergency call ‘eCall’ is estimated to have the potential to save up to 2,500 fatalities annually in EU-27 when fully deployed, to reduce the severity of injuries bringing significant savings to society in healthcare and other costs to reduce human suffering.”

9.6 The Commission summarises the progress of the standardisation activities for eCall and progress on the commitment of major stakeholders to the project since publication of *The 2nd eSafety Communication— Bringing eCall to citizens*. It laments that progress has been too slow and that the roll out of the pan-European eCall is severely delayed. It sets out a plan of further action. Under this plan the Commission suggests that all stakeholders will:

- actively support the European eCall Implementation Platform²⁹ and its task forces;
- launch coordinated awareness campaigns to increase the understanding of and demand for the service; and
- carry out pre-deployment pilots taking into account the standards being approved.

The Commission says that, also under the action plan, it intends to propose three regulatory measures in 2010 if “significant progress” on eCall is not achieved by the end of 2009. The proposed measures would be:

- a Recommendation to Member States about transmission of eCalls by Mobile Network Operators;
- a draft Regulation on mandatory fitment of eCall in vehicles through type approval; and
- a possible regulatory measure, on investment in the Public Safety Answering Point (PSAP — call centres to route emergency calls appropriately), in the context of the draft Directive on ITS deployment.³⁰

The Government’s view

9.7 The Parliamentary Under-Secretary of State, Department for Transport (Paul Clark), tells us that:

- it is one of the Government’s objectives to improve road safety;
- it supports in principle, therefore, any action that would assist in reducing the number of accidents, deaths and serious injuries; and
- each initiative needs, however to be considered on its merits and the relative costs and benefits measured.

29 This Platform is the coordination body bringing together representatives of the relevant stakeholders associations and of the National Platforms. It aims to guide, coordinate and monitor the progress of the implementation of the eCall service across Europe to ensure a timely, effective and harmonised deployment of the eCall service in Europe. See http://www.esafetysupport.org/en/ecall_toolbox/ecall_implementation_platform/.

30 See footnote 28.

9.8 The Minister says that the Government supports the principles of eCall and believes technology has the potential to play an important role in helping to deliver transport policy objectives. He continues further that:

- the Government’s evidence thus far suggests, however, that the costs outweigh the benefits for mandatory implementation;
- it does, nevertheless, currently support two voluntary private eCall systems in the UK —BMW and Volvo;
- the Government has not yet signed the MoU (18 Member States have done so) — an independent review carried out in 2006 for the Department for Transport indicated that at the time the likely costs of implementing the system in the UK outweighed any potential benefits;
- uncertainties still remain regarding the technical specifications, which render it difficult to assess fully the potential impacts;
- the Commission has recently completed a further study which included a review of eCall implementation in the UK;
- the Government will review the report when it is made available and consider its position as necessary in light of any new evidence or information;
- once this review has been completed and the technical specifications have been agreed the completion of an impact assessment can be considered;
- in relation to its suggestion that if “significant progress” is not made by the end of 2009 then the Commission is prepared to seek a regulatory approach, it has not clarified what it would consider to be “significant progress”;
- the separate task forces of the European eCall Implementation Platform, responsible for technical issues, have yet to agree final specifications; and
- until these specifications are finalised and it has had the opportunity to review them the Government is not in a position to recommend a change to its current policy position on eCall implementation.

9.9 Turning to the actions proposed under the Commission’s plan in its Communication the Minister says that:

All stakeholders will actively support the European eCall Implementation Platform and its Task forces

- although the Government has not signed the MoU, it welcomed the formation of the platform;
- government officials regularly attend the high level meetings;

- the Government is currently considering the work of the several task forces and plans to consider the work at a meeting with UK stakeholders during late 2009 or early 2010;

All stakeholders will launch coordinated awareness campaigns to increase the understanding of and demand for the service

- Government policy is to support and encourage the take-up by motorists of effective road safety technologies;
- to help achieve this it actively supports organisations such as the eSafetyAware initiative, an organisation originally established by the Commission to raise awareness of new safety technologies;
- this organisation has the experience and links to coordinate a Europe-wide awareness campaign which could be supported and promoted within the UK;
- there are still a number of issues, however, regarding the operation of a pan-European public eCall service that need to be resolved before a functional system can be deployed;
- vehicle manufacturers will also need time to incorporate systems in new vehicles — they have indicated that a period of three years for a large scale roll-out would be required once the functional specifications were finalised;
- it would therefore be premature to promote a pan-European eCall system that may not be available to the public for the foreseeable future;
- if progress on eCall is achieved in a shorter timeframe and effective systems become available, the eSafetyAware organisation has indicated that it could quickly support initiatives to raise public awareness;
- there are many opportunities to raise consumer awareness of, and demand for, effective safety systems — the European New Car Assessment Programme (EuroNCAP)³¹ is an organisation that assesses the safety performance of new cars and gives consumers a star rating depending on the performance achieved;
- this initiative has proved very effective in raising public awareness of vehicle safety and also encourages manufacturers to exceed the minimum levels of safety required by regulatory measures;
- the Government is actively involved with EuroNCAP and its work to develop its ratings to reflect the benefits on new advanced safety systems;
- the Government has no plans at present to launch its own awareness campaign for pan-European eCall;

31 See <http://www.euroncap.com/home.aspx>.

All stakeholders will carry out pre-deployment pilots taking into account the standards being approved

- the Government recognises that pilot studies can play a key role in addressing pre-deployment issues, especially for new and advanced systems requiring multi-agency interactions;
- any such pilot should be based, however, on clearly defined specifications and should be considered when the standards and specifications for eCall technology are finalised;
- it is important to recognise that eCall deployment involves many different areas of the public and private sector and any such pilot will need agreement and co-operation between the different stakeholders;
- the Government has not explored this in detail but plans to do so at its planned UK stakeholder meeting;

The Commission Recommendation that Member States target Mobile Network Operators on the transmission of eCall (including the “minimum set of data” (MSD) from the in-vehicle systems to the PSAPs)

- the Government recognises the important role that the mobile network operators have in the correct function of eCall;
- it is important, however, to recognise that the mobile network is also only one part of the chain — any actions required of the network will need to be considered along with the final specification of the vehicle device and the requirements of the answering point that receives the eCall;
- the GSM Association, the operator-led trade association representing the global mobile industry, has signed the MoU and produced a position paper indicating its willingness to support a pan-European eCall;
- the full impact on UK mobile network operators is unclear until the standards and specifications for eCall technology are agreed — many of these are still being finalised and are unlikely to be completed before mid-2010;

The Commission proposal for a Regulation under the European vehicle type-approval legislation framework for the mandatory introduction of the in-vehicle part of the eCall service in new type approved vehicles in Europe.

- the Government is not supportive of mandatory introduction of the in-vehicle part of the eCall service through type approval to all new vehicles, unless there is a clear cost benefit case for doing so;
- earlier UK work to examine the cost benefit case for mandatory eCall deployment was inconclusive — the Government will reconsider its position once the Commission’s a further study on eCall deployment, with the review of eCall deployment within UK, is received;

The Commission's potential regulatory measure for the necessary upgrading of the PSAP infrastructure required for proper receipt and handling of eCalls, in the framework of the proposed Directive on the deployment of ITS in Europe

- the Government acknowledges that the correct receipt and handling of eCall is vital to achieve a fully functioning pan-European eCall service and would welcome broad guidelines on how this could be achieved at a national level;
- the measures necessary to upgrade and handle eCalls may also vary significantly between different Member States — a solution that is appropriate in France, for example, may not be the best solution for the UK;
- the UK PSAP infrastructure already supports several private eCall services but these utilise different technologies to the system being developed by the Commission eCall group; and
- until all the standards and specifications for eCall technology are finalised it is difficult to assess the impact of this measure for the UK answering points.

9.10 Turning to the financial implications of the Communication and an impact assessment the Minister says that:

- it has such implications for the UK in terms of establishing the infrastructure and requires further discussions with various stakeholders once systems specifications have been finalised;
- in the UK one of the major costs resulting from deployment of eCall would be the cost of the in-vehicle equipment and it is likely that this would need to be met by the consumer;
- there are potential costs for mobile operators that the Government anticipates they would have to meet;
- it would need to upgrade the emergency 999/112 call handling system;
- these additional costs will be explored in more detail at the planned stakeholder meeting;
- the business case as presented is not sufficiently detailed or robust to allow an impact assessment to be produced; and
- further research by the Commission has been undertaken to ascertain the potential impacts on the UK and the Government will consider whether an assessment can be produced once it has received and reviewed this latest study.

Conclusion

9.11 We have no questions to raise on this document and we clear it from scrutiny. However, although eCall has the potential to contribute to road safety, we commend the Government's continued cautious approach to this issue, whilst so many unknowns continue to make a proper impact assessment impossible.

10 Restrictive measures against Uzbekistan

(30048)	Council Common Position amending and extending Common
—	Position 2007/734/CFSP concerning restrictive measures against
—	Uzbekistan

<i>Legal base</i>	Article 15 EU; unanimity:
<i>Department</i>	Foreign and Commonwealth Office
<i>Basis of consideration</i>	Minister's letter of 26 October 2009
<i>Previous Committee Report</i>	HC16–xxxiii (2007–08), chapter 4 (29 October 2008); also see (29615) —: HC16–xx (2007–08), chapter 14 (30 April 2008) and HC16–xix (2007–08), chapter 3 (23 April 2008); also see (29024) —: HC 16–i (2007–08), chapter 19 (7 November 2007), HC 16–iv (2007–08), chapter 29 (28 November 2007); (28644) —: HC 41–xxiii (2006–07), chapter 18 (6 June 2007); (28053) —: HC 41–ii (2006–07), chapter 14 (29 November 2006); and (26927) — and (26928) —: HC 34–vii (2005–06), chapter 18 (26 October 2005)
<i>Discussed in Council</i>	26 October 2009 General Affairs and External Relations Council
<i>Committee's assessment</i>	Politically important
<i>Committee's decision</i>	Cleared; evidence session requested with Minister (reported to the House on 29 October 2008); further information now provided

Background

10.1 Our previous reports have detailed the events that took place in Andizhan in Uzbekistan on 12–13 May 2005 that led to the large-scale loss of life at the hands of the Uzbek authorities. The 23 May 2005 GAERC both condemned the reported excessive, disproportionate and indiscriminate use of force by the Uzbek security forces and expressed their deep regret at the failure of the Uzbek authorities to respond adequately to the UN's call for an independent international inquiry.

10.2 In the light of the continuing failure by the Uzbek authorities to respond to further repeated requests of the same nature, the GAERC then decided to introduce a 12 month arms embargo and a visa ban aimed at a number of listed individuals directly responsible for the excessive, indiscriminate and disproportionate use of force in Andizhan, and to suspend discussions under the Partnership and Cooperation Agreement (PCA); and to review these measures in the light of any significant changes to the situation, in particular with regard to:

- the conduct and outcome of the ongoing trials of those accused of precipitating and participating in the disturbances in Andizhan;

- the situation regarding the detention and harassment of those who had questioned the Uzbek authorities’ version of events;
- Uzbek co-operation with any independent, international Rapporteur appointed to investigate the disturbances in Andizhan;
- the outcome of any independent, international inquiry;
- any action that demonstrated the willingness of the Uzbek authorities to adhere to the principles of respect for human rights, rule of law and fundamental freedoms.

10.3 In view of the widespread concern at these events, the Committee reported its clearance of the Council Decision to the House on 26 October 2005.³²

Our consideration thereafter

10.4 When the Common Position was due for renewal in November 2006, signs of differences of view began to emerge, and were maintained during the German Presidency, with the majority favouring a six month suspension of the travel ban. The then Minister for Europe said at the time that he had been opposed to this, but had agreed it because otherwise the EU’s policy would have collapsed, and noted that the visa ban would automatically be re-imposed in May unless all agreed on its continued suspension. In reporting this to the House, the Committee drew attention to the October 2007 GAERC Conclusions, which stated that the Council:

“... urges Uzbekistan to implement fully its international obligations relating to human rights and fundamental freedoms as well as rule of law and, in particular, to allow full unimpeded access by relevant international bodies to prisoners; to engage effectively with the UN Special Rapporteurs to Uzbekistan; to let all NGOs, including Human Rights Watch operate without constraints in Uzbekistan; to release human rights defenders from detention and cease their harassment; to engage positively on human rights issues in the context of the forthcoming EU-Uzbekistan Cooperation Committee. The reform of judiciary, law enforcement and police law should be pursued. Progress towards these goals will be evaluated on the basis of a report by the Head of Missions, which will include an assessment of the upcoming presidential elections.”

10.5 These, the then Minister said, were the objectives against which the EU would review the Uzbek authorities’ progress when deciding what action to take the following May.

10.6 We thanked the then Minister for these further clarifications, which showed the Uzbek authorities clearly where there would need to be significant, measurable progress between then and May 2008 if the suspension of the visa ban was to be prolonged; and noted that, without it, it would be hard for those who were so inclined to continue to argue for further such “rewards” to the Uzbek authorities, or pressure others to join in such a consensus, for fear of the whole policy collapsing.

32 See headnote.

10.7 In his Explanatory Memorandum of 17 April 2008, the then Minister for Europe outlined revisions to the Common Position so as to renew the suspension of the travel ban for a further six months. He said that since the suspension of the travel ban in November 2007 there had been “more progress on the human rights situation than in any other six month period since the sanctions were imposed”, which he said could “arguably ... be attributed to the suspension of the visa ban”. He cited:

- “the release of four human rights defenders, including Saidjahon Zainabiddinov;
- the resumption of prison visits by the International Committee of the Red Cross (ICRC);
- the appointment of a new Director for Human Rights Watch in Tashkent (although he had yet to be accredited);
- the entering into force of the abolition of the death penalty; and
- the introduction of a limited form of habeas corpus.”

10.8 The then Minister also said that, during the 9–10 April EU Troika-Central Asia Foreign Ministers’ meetings in Ashgabat, the EU had “urged Uzbekistan to continue the positive trend and make further progress on human rights issues”, and that Uzbekistan had agreed to hold a further round of the EU-Uzbekistan Human Rights Dialogue under the Slovenian Presidency. He concluded as follows:

“Automatic re-imposition of the visa ban could put at risk further progress and constructive engagement by Uzbekistan, including on the Human Rights Dialogue. As such, the Government believes that in order to encourage continued constructive engagement, and in recognition of some progress over the last six months, the EU can justify the continued suspension of the visa ban.”

10.9 In a 17 April letter accompanying his Explanatory Memorandum, the then Minister said that:

“The Government believes that continued suspension of the visa ban, backed up by a strong Council statement on the areas in which the EU would like to see further positive progress, is the best approach to ensure continued Uzbek co-operation on human rights issues. This approach recognises the positive progress made in the six months the visa ban has been suspended. As mentioned in my Explanatory Memorandum, this progress could arguably be attributed to the suspension of the visa ban — there has been more progress in this six month period than in any other similar period since the sanctions were first imposed.”

10.10 He then went on to say that, during discussions with fellow Member States, he had argued in favour of the continued suspension of the visa ban, subject to the Presidency using the 9–10 April meeting in Ashgabat “to encourage further progress”. At the time of writing, there was “no consensus on the visa ban ... several Members States have said that they do not consider there has been enough progress from Uzbekistan and that the visa ban should be automatically re-applied.” He noted that it was therefore possible that agreement might not be reached before the 29 April General Affairs and External Relations

Council meeting, in which case the visa ban as set out in Common Position 2007/734/CFSP would be re-imposed; he would write again with further information following the 29 April meeting.

10.11 For our part, we felt that even though there may have been “more progress in this six month period than in any other similar period since the sanctions were first imposed”, it was difficult to see this as significant in relation to the benchmarks set out in the October 2007 General Affairs and External Relations Council Conclusions. It did not appear to constitute “full unimpeded access by relevant international bodies to prisoners”; nor to amount to allowing all NGOs, not just Human Rights Watch, to operate without constraints in Uzbekistan; nor to constitute the release of human rights defenders from detention and the cessation of their harassment, or the authorities’ effective engagement with the UN Special Rapporteurs to Uzbekistan. Nor did the abolition of the death penalty and the introduction of a limited form of habeas corpus seem to us to contribute significantly towards “reform of judiciary, law enforcement and police law”.

10.12 We also noted that the then Minister had made no mention of the findings or conclusions of the report by EU Heads of Missions that was to form the basis of the EU’s position.

10.13 All in all, we thought it more likely that, if the visa ban were re-imposed, the Uzbek authorities would not be able to sit on their hands and play off one group of Member States against the other when the Common Position next came up for review in November, but would instead have six months in which to show their commitment to the sort of significant improvements in respect for human rights, the rule of law and fundamental freedoms, and effective engagement with the UN Special Rapporteurs to Uzbekistan, that the EU has been seeking from the outset. Depending on their response, the EU would then have a much clearer indication of whether or not matters were moving in the right direction when the Common Position came up for review.

10.14 We therefore retained the draft Common Position under scrutiny, and awaited the then Minister’s further report, which we asked to include information about the matter referred to in paragraph 10.12 above.

The then Minister’s letter of 26 April 2008

10.15 The then Minister responded as follows:

- he agreed that the benchmarks set out in the October 2007 General Affairs and External Relations Council (GAERC) Conclusions had not been fully met. He felt, however, that the progress the Uzbeks have made in the past six months had been “significant”, with “positive developments in the following areas: the release of human rights defenders, access by international bodies to prisoners and the appointment of a new Director of Human Rights Watch.”
- with regard to the report by EU Heads of Mission and the assessment of the Presidential election held in December 2007, the then Minister said that EU Heads of Mission’s, in January 2008, “shared the concerns expressed by the OSCE Office of Democratic Institutions and Human Rights (ODIHR) Limited Election Observation

Mission that the election had generally failed to meet many OSCE commitments.” But they “noted, however, that there had been some diversification of candidates: the first ever female candidate, a non-partisan candidate and an “opposition” candidate [and] some positive changes to the election legislation which enabled groups and parties to put forward candidates independently”, but “concluded that improvements to the election process were still needed and that OSCE/ODIHR recommendations from the 2004 election had not been introduced.”

- he further noted that in a more recent report, EU Heads of Mission argued that re-imposing the visa ban now would have a detrimental effect: “a significant risk that Uzbekistan would react negatively and turn away from co-operating with the EU on human rights issues [which] would put in jeopardy the EU-Uzbekistan seminar on media freedom and civil society in May and risk the second round of the EU-Uzbekistan Human Rights Dialogue in May/June, to which the Uzbeks have given their commitment, and therefore remove the prospect of further engagement on human rights issues.”
- in response to the Committee’s view that “if the visa ban were to be re-imposed this would give the Uzbeks six months in which to show their commitment to improvements on human rights, the rule of law and fundamental freedoms, and effective engagement with UN Special Rapporteurs to Uzbekistan”, the then Minister said previous experience had shown that “taking a hard-headed approach can be counter-productive”. In his view, “the continued suspension of the visa ban for six months, backed up by clear Conclusions language on what the EU expects of Uzbekistan and including a commitment to review progress after three months, is the approach most likely to encourage further progress ahead of further consideration of the measures in October.”

10.16 The then Minister concluded by noting that the Common Position was due to be adopted at the General Affairs and External Relations Council on 29 April, and with the hope that, having further outlined his position, the Committee would understand if consensus were to be reached on the Common Position before scrutiny had been completed.

Our assessment

10.17 We found the then Minister’s letter as unconvincing as its predecessor, since it added nothing to his previous argumentation.

10.18 The Council Conclusions to which the then Minister referred are at Annex 3 of this chapter of our Report. It seemed to us that, as he put it, “clear Conclusions language on what the EU expects of Uzbekistan” was likely to have but limited effect, since in large part they reiterated the benchmarks produced last October — benchmarks which had not merely (as he put it) not been fully met, but had been missed by a considerable margin, as we had pointed out in our previous Report.

10.19 Moreover, as the EU Heads of Mission reports indicated, key recommendations on the electoral process, of four years standing, had still not been introduced.

10.20 Taken as a whole, the measures now being applied seemed to us to bear little relation to the position taken by the EU in 2005; nor did the response of the Uzbek authorities begin to measure up to what was asked of them.

10.21 We noted that there was to be a progress review in 3 months time. Even then, the Council Conclusions recorded only that the Council would “present its recommendations to the Uzbek government on possible further steps to be taken in order to improve the respect of human rights and rule of law in Uzbekistan”, which was no more than the Council had been doing since 2005. We looked forward to hearing from him with details of the outcome of the review, and of the Uzbek authorities’ response.

10.22 All in all, we were deeply disappointed that the then Minister should have joined in a consensus to continue suspension of the travel ban. Although we cleared the document, we did so with reluctance.

10.23 In her Explanatory Memorandum of 23 October 2008, the subsequent Minister for Europe at the Foreign and Commonwealth Office (Caroline Flint) said that this new Common Position renewed the arms embargo imposed on Uzbekistan under Common Position 2007/734/CFSP, whilst lifting the travel ban on eight named individuals.

10.24 The then Minister commented as follows:

“The human rights situation in Uzbekistan has seen significant improvement since the suspension of the travel ban in November 2007.

“While it is true that the Uzbeks have made limited progress on the areas set by the European Council, there has been more positive progress on the human rights situation than at any time since the sanctions were imposed. This can be, at least partly, attributed to the suspension of the visa ban. The relatively positive trend has included:

- “the release of five human rights defenders, including Tojibayeva, the most egregious of the Uzbek human rights cases of concern to the EU;
- “the resumption of prison visits by the International Committee of the Red Cross (ICRC);
- “the entering into force of the abolition of the death penalty;
- “the introduction of a limited form of habeas corpus;
- “the ratification of a series of conventions combating child labour;
- “the holding of a second EU-Uzbekistan human rights dialogue on 5 June 2008; and
- “the holding of an EU-sponsored seminar on media freedom in Tashkent on 2–3 October.”

10.25 The then Minister remained concerned about a number of negative developments including:

- “two current trials against human rights defenders;
- “the refusal of the Uzbek Ministry of Justice to accredit the Human Rights Watch; and
- “the lack of substantial change in the registration and operation of NGOs in Uzbekistan.”

10.26 The then Minister agreed with EU Heads of Mission that “isolating Uzbekistan would not be the way to promote further positive progress”, but said that:

“We should, however, continue to follow a path of critical engagement including through the EU-Uzbekistan Human Rights Dialogues. The UK supports lifting the travel ban in order to persuade the Uzbeks to work with the EU on reforms to improve human rights, democratisation and the rule of law.

“In our judgment the renewal of the travel ban could have had a negative effect in Uzbekistan and could have risked losing even the small but positive progress of the past year. The UK therefore supported the EU consensus in favour of lifting the visa ban and renewing the arms embargo for a further 12 months, backed up by strong Council Conclusions language, as the approach most likely to encourage the Uzbeks to make further progress on human rights issues.”

10.27 The then Minister concluded by saying that the Council:

“... has called on Uzbekistan to fulfil its international obligations on human rights and welcomes Uzbekistan’s willingness to work with the EU on a range of human rights issues. This includes an effective, result-oriented human rights dialogue, in line with Uzbekistan’s reform programme.”

Our assessment

10.28 The relevant Council Conclusions (at Annex 2 of this chapter of our Report), indicated to us that there had in fact been little progress over the past six months. From what the then Minister for Europe said, we found it difficult to gauge the nature of “Uzbekistan’s reform programme.” All the positive features to which the then Minister referred were in place in April, save for the release of Mrs Tojibayeva; and even here it seemed that her continued freedom was in doubt. There might have been two meetings: but the then Minister gave no indication of the extent to which, if at all, they had been either “effective” or “result-oriented”. There had certainly been no results with regard to the calls for effective investigation of the events, now 3½ years ago, that led to the imposition of these restrictions in the first place.

10.29 We were also concerned about the way in which this latest change to the Common Position had been handled. As noted above, we had expected to have had a report from the then Minister about the mid-period progress report. Instead, we were effectively presented, not with a proposal to be scrutinised, but with a *fait accompli* — a decision announced in the 13 October GAERC Conclusions, followed by changes to the Common Position to give it effect.

10.30 We therefore asked the then Minister to appear before us to explain the position she had taken, as well as how these lapses in the scrutiny process came to pass and what she proposed to do to remedy them. That evidence session took place on 4 February 2009.³³

10.31 With regard to the discussion on the approach taken with regard to the sanctions, the Minister said that:

“... on the Uzbekistan situation we had to balance the need to remain rigorous over their human rights performance, but with a high risk that these sanctions would lapse in October in the absence of a consensus among all 27 EU Member States, which was actually a possibility. Therefore, we felt that if we allowed that to happen, then that would really undermine the credibility of the EU sanctions policy. This is also about dealing with the circumstances of these other Member States and wanting to keep, in relation to Uzbekistan, a package together, but recognising that to do that we had to get consensus round the table. If it was a choice between no package and a package that might not be as hard as people might want, I think the latter was important. ...

All of this is a work in progress and it is not a black and white situation. I think the levers that the EU has in working with countries such as these and others is constantly about reiterating the gains for these countries in a close relationship with the EU, but that is not unconditional, and we do expect significant improvements in their human rights performance. I do think that sanctions have proven to be instrumental in assisting that process. It is not perfect, I have to say, but it is also the case that, from previous experience taking too inflexible an approach can also be counter-productive. We have to, as I say, be mindful about what we are trying to achieve, but also trying to get a consensus around the table as well. Since the suspension of the visa ban in November 2007, in relation to Uzbekistan, there has been, in the EU’s judgment, more progress on the human rights situation than at any time since the sanctions were imposed, but there is more we need to do, and this is something that we constantly grapple with in different ways.”

10.32 On the question of an independent investigation into the events in Andijan, the Minister said:

“The UK has proposed on numerous occasions, both bilaterally and with EU partners, to the Government of Uzbekistan that there should be an independent international investigation. That has been rejected by the Uzbek authorities ... there has not been progress in that area. What I was trying to draw attention to is progress in some other areas. I think I did make it clear in my earlier comments that this is not a perfect situation that we are dealing with here. Part of it is about how we can encourage progress to be made. It may not be as much as we would want, but certainly I think the sanctions process and other opportunities within the EU have demonstrated, with a number of countries, the progress on human rights which is achieved. This is why, I have to say — and I go back to the question about Uzbekistan — we wanted to make sure there continued to be a sanctions package for

³³ See <http://www.publications.parliament.uk/pa/cm200809/cmselect/cmeuleg/231/9020401.htm> for the record of this evidence session.

that particular country, but there were others who felt that we had to give some acknowledgement of some progress. If it is a choice between no package being renewed, that is the urgency of the situation, and having something that we could all go forward on that still retained a good sanctions package, I think that is what is important and that is the type of decision we had to make at the time.

The Minister's letter of 26 October 2009

10.33 In his letter, the Minister for Europe at the Foreign and Commonwealth Office (Chris Bryant) writes about the recent Uzbekistan sanctions negotiations. The Minister recalls the origins of the sanctions and the “ increasing pressure within the EU to relax measures by those Member States that favour engagement over sanctions”, which led last year “despite there being less progress than hoped ... a further relaxation of measures to secure consensus within the EU to retain some sanctions.” He continues as follows:

“In October, when the latest negotiations began, it became clear that several Member States felt strongly that continued sanctions were unlikely to have any benefits, and indeed might be counterproductive in terms of our ability to have a constructive dialogue with Uzbekistan including on human rights issues. The belief was that lifting sanctions with renewed engagement would better serve the EU’s desire for further progress. We would have liked to see sanctions remain in place until further progress had been made, but without unanimity within the EU the sanctions would have lapsed by default.

“With this in mind we worked for the strongest possible outcome that retained EU unity. Our priorities were to ensure that a strong message was sent to Uzbekistan making clear that the EU remains seriously concerned by the human rights situation in Uzbekistan; underlining that the extent of future EU-Uzbek cooperation will depend on progress in this field; and ensuring the issue remains high on the agenda by committing EU ministers to holding a further discussion and assessment of the situation within a year. The agreed GAERC Conclusions (which I attach) do all of these things.

“We believe this is the best outcome for two main reasons. First, the practical elements of the measures in place are already replicated elsewhere. Even with the lifting of the arms embargo, strategic exports to Uzbekistan, including equipment that might be used for internal repression, will be controlled by the Consolidated EU and National Arms Export Licensing Criteria. Second, this ensures the EU move forward with a common purpose to secure human rights improvements in Uzbekistan. The GAERC Conclusions and future review send a clear message to the Uzbek authorities whilst we look to see if engagement will deliver further progress in this matter.

“We will continue to monitor the human rights situation and to raise our concerns with the Uzbek authorities, both bilaterally and with our EU and other international partners, including through the dialogue on human rights that exists as part of the Partnership and Cooperation Agreement. We continue to fund small projects which support good governance, human rights and the development of civil society.”

Conclusion

10.34 As the saying goes, “reality bites”. According to the BBC country profile, Uzbekistan is the most populous Central Asian country; has the largest armed forces; has no real internal opposition and media that is tightly controlled by the state; has been described in a UN report as making “systematic” use of torture: but is one of the world’s biggest producers of cotton, and is rich in natural resources, including oil, gas and gold.³⁴

10.35 Thus, as the latest Council Conclusions make clear, though the Minister makes no mention of it, there has been a quantum shift in the EU’s relationship with not only Uzbekistan but also with Kazakhstan, the Kyrgyz Republic, Tajikistan and Turkmenistan via the launch this Spring of the EU Central Asia Partnership.

10.36 Having now come to a conclusion, we leave others to judge the effectiveness of the policy pursued by the EU over the past four years. Our concern has been to scrutinise a process that has much wider application and to highlight the possible implications for other areas — such as the enlargement process and the Cotonou Article 96 process — where conditionality and good governance come into conflict with other considerations.

10.37 Given these broader considerations, we are now making this final Report to the House.

Annex 1: General Affairs and External Relations Council Conclusions on Uzbekistan of 26 October 2009

“1. The Council notes that since the adoption of the EU Strategy for a New Partnership with Central Asia in May 2007, the dialogue and cooperation between the EU and Uzbekistan have acquired a new scope and quality. The EU reiterates its readiness to continue to engage comprehensively with Uzbekistan and recalls its position to that effect as set out in previous Council Conclusions. At the same time, the EU remains seriously concerned about the human rights situation in Uzbekistan, and encourages the Uzbek authorities to implement fully its international obligations in this area.

“2. The Council recalls that restrictive measures were originally imposed on Uzbekistan following the Andijan events of May 2005. Bearing in mind its Conclusions of 13 October 2008, the Council urges Uzbekistan to release all imprisoned human rights defenders and prisoners of conscience, to allow unimpeded operation of non-governmental organisations in the country, including Human Rights Watch, to cooperate fully with all relevant UN Special Rapporteurs, to guarantee freedom of speech and of the media, to proceed with the implementation of conventions against child labour, and to fully align its election processes with OSCE commitments, ODIHR recommendations and other international standards

³⁴ See http://news.bbc.co.uk/1/hi/world/asia-pacific/country_profiles/1238242.stm for full country profile.

for democratic elections, especially with a view to the Parliamentary elections on 23 December 2009.

“3. The Council welcomes the commitment of Uzbekistan to work with the EU on a range of questions relating to human rights and the rule of law, and notes the positive steps taken in Uzbekistan over the last years. These include the release of some human rights defenders, the resumption of ICRC prison visits, the abolition of the death penalty, efforts to improve detention conditions, the introduction of habeas corpus, the ratification of conventions against child labour, progress in the implementation of certain OSCE commitments as well as Uzbekistan’s stated willingness to work more closely with that organization, continuation of judicial reform, the active participation of Uzbekistan in the EU Rule of Law Initiative for Central Asia and the consolidation of the dialogue on human rights between the EU and Uzbekistan.

“4. The Council encourages Uzbekistan to continue its reforms in the fields of human rights, democratisation and the rule of law, and remains ready to assist the Uzbek authorities in their efforts through cooperation programmes and dialogue, in particular in the framework of the Cooperation Council, the dialogue on human rights and the Rule of Law Initiative.

“5. With a view to encourage the Uzbek authorities to take further substantive steps to improve the rule of law and the human rights situation on the ground, and taking into account their commitments, the Council decides not to renew the remaining restrictive measures set out in the Common Position 2008/843/CFSP.

“6. The Council will closely and continuously observe the human rights situation in Uzbekistan. Within a year, the External Relations Council will discuss and assess progress made by the Uzbek authorities and the effectiveness of EU-Uzbek cooperation. While reaffirming the EU’s readiness to strengthen its relations with Uzbekistan, the Council notes that the depth and quality of the dialogue and cooperation will depend on Uzbek reforms and progress in the areas mentioned above.”

Annex 2: General Affairs and External Relations Council Conclusions on Uzbekistan of 13 October 2008

“1. The Council recalls its Conclusions of 29 April 2008 and welcomes the progress achieved in Uzbekistan in the last year with regard to respect for the rule of law and protection of human rights. In particular, it hails the release of a number of defenders of human rights, notably that of Mrs Mukhtabar Tojibaeva. The Council welcomes the fact that she was also allowed to travel abroad for medical treatment, but hopes that she will be granted complete freedom of movement. It takes note with satisfaction of the holding of the second series of consultations on human rights on 5 June 2008 and the holding of a seminar on media freedom in Tashkent on 2 and 3 October. It also welcomes the implementation of a number of legislative and judicial reforms, in particular the abolition of the death penalty, the introduction of habeas corpus and the ratification of a series of

conventions combating child labour. The Council is pleased that visits by the ICRC to prisons have resumed, and trusts that they will continue.

“2. The Council nevertheless remains seriously concerned about the situation of human rights in some domains in Uzbekistan and urges the authorities to implement their international obligations fully in that regard. It calls on the Uzbek authorities to release all imprisoned human rights defenders and to cease harassment of human rights defenders; to accept the accreditation of the new Country Director of Human Rights Watch and to allow the unhindered operation of that organisation; to cooperate fully and effectively with the UN Special Rapporteurs on torture and on freedom of expression; and to revoke restrictions on the registration and operation of NGOs in Uzbekistan. The judicial reforms and reforms relating to observance of the law must be continued and effectively enforced.

“3. The Council encourages Uzbekistan to continue progress in the direction of human rights, democratisation and the rule of law, and it is prepared to assist Uzbekistan in its reforming efforts towards that goal. The Council welcomes Uzbekistan’s commitment to work with the EU on a range of questions relating to human rights, by means including an effective dialogue on human rights directed towards achieving practical results.

4. “ In this context, the Council has decided not to renew the travel restrictions applying to certain individuals referred to in Common Position 2007/734/CFSP, which had been suspended in accordance with the Council’s conclusions of 15–16 October 2007 and 29 April 2008. The Council has however decided to renew, for a period of 12 months, the arms embargo imposed in Common Position 2007/734/CFSP.

5. “The Council will continue, on the basis of regular reports from the Heads of Mission, to monitor and assess the human rights situation in Uzbekistan in the light of the conditions set out above and of any other action that demonstrates the readiness of the Uzbek authorities to adhere to the principles of respect for human rights, the rule of law and fundamental freedoms.”

Annex 3: General Affairs and External Relations Council Conclusions on Uzbekistan of 29 April 2008

“1. Recalling its previous Conclusions and especially the Common Position 2007/734/CFSP of 13 November 2007, the Council welcomes the progress achieved in Uzbekistan in recent months in the promotion and protection of human rights and the rule of law, notably the abolition of the death penalty, the introduction of habeas corpus and the ratification of the ILO Convention on the Worst Forms of Child Labour. The Council looks forward to the effective implementation of these measures and stands ready to assist Uzbekistan in that regard. The Council also reiterates its willingness to strengthen cooperation with Uzbekistan in all priority areas outlined in the EU Strategy for Central Asia.

2. The Council welcomes the release by the Uzbek authorities of four human rights defenders in February 2008, namely Saidjahon Zainabitdinov, Ikhtior Khamraev, Ulugbek Kattabaev and Bobomurod Mavlanov, and the cancellation of the probation period of two

other human rights defenders, Gulbahor Turaeva and Umida Niazova, who were released from prison last year.

3. The Council was also pleased that the Uzbek government has reached an agreement with the International Committee of the Red Cross (ICRC) on the resumption of visits by the ICRC to prisons in Uzbekistan. The Council will pay close attention to the effective implementation of this agreement.

4. The Council looks forward to continuing comprehensive and results-oriented dialogue with the Uzbek authorities and in that context welcomes the Uzbek agreement to conduct a second round of the EU-Uzbekistan Human Rights dialogue in May/June this year. The Council also looks forward to the holding of an EU seminar on media freedom in Uzbekistan and encourages the Uzbek authorities to take further steps to guarantee the freedom of expression and to allow further liberalisation of mass media in Uzbekistan.

5. Nevertheless, the Council remains seriously concerned about the situation of human rights and the rule of law in a number of areas in Uzbekistan and urges the authorities to fully implement their international obligations in that regard. In particular, the Council calls on the Uzbek authorities to take the following steps, as requested earlier by the EU: to ensure the early release of the imprisoned human rights defenders and to cease harassment of human rights defenders; to finalise without delay the accreditation of the new Country Director of Human Rights Watch and to allow the unhindered operation of that organisation; to cooperate fully and effectively with the UN Special Rapporteurs on Torture and on Freedom of the Media; and to revoke restrictions on the registration and operation of NGOs in Uzbekistan.

6. With a view to encouraging the Uzbek authorities to take substantive steps to improve the human rights situation and taking into account their commitments, the Council decided that the visa restrictions for individuals listed in the annex of Common Position 2007/734/CFSP would not apply for another period of six months. After three months, the Council will review the progress made by the Uzbek authorities towards meeting the conditions set out in Common Position 2007/734/CFSP and further specified in paragraph 5 of these Conclusions, and in light of any other action that demonstrates the readiness of the Uzbek authorities to adhere to the principles of respect for human rights, rule of law and fundamental freedoms. The Council will assess the outcome of this review and present its recommendations to the Uzbek government on possible further steps to be taken in order to improve the respect of human rights and rule of law in Uzbekistan. The Council will closely and continuously monitor and assess, in light of the conditions set out above, the human rights situation in Uzbekistan and may lift, amend or re-apply the visa restrictions as appropriate.”

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

Department for Business, Innovation and Skills

- | | |
|---|--|
| (30959)
13684/09
COM(09) 498 | Draft Council Decision on the conclusion of an Agreement in the form of a Protocol establishing a dispute settlement mechanism applicable to disputes under the trade provisions of the Euro-Mediterranean Agreement establishing an association between the European Community and its Member States and the Republic of Lebanon. |
| (30960)
13710/09
COM(09) 488 | Commission Report on the European Research Council's operations and realisation of the objectives set out in the Specific Programme "Ideas" in 2008. |
| (30995)
13000/09
+ ADD 1
COM(09) 512 | Commission Communication — <i>Preparing for our future: Developing a common strategy for key enabling technologies in the EU.</i> |

Department for Environment, Food and Rural Affairs

- | | |
|------------------------------------|---|
| (30963)
13726/09
— | Special Report No. 11/2009 on the sustainability and the Commission's management of the LIFE-Nature projects together with the Commission's replies. |
| (30996)
14074/09
COM(09) 517 | Draft Council Regulation fixing the fishing opportunities and the conditions relating thereto for certain fish stocks applicable in the Black Sea for 2010. |
| (31000)
14281/09
COM(09) 516 | Draft Decision repealing Council Decision 79/542/EEC drawing up a list of third countries or parts of third countries, and laying down animal and public health and veterinary certification conditions, for importation into the Community of certain live animals and their fresh meat. |
| (31001)
14291/09
COM(09) 537 | Draft Council Decision establishing the position to be adopted on behalf of the European Community with regard to the proposal for the adoption of Regional action plans in the framework of the implementation of Article 15 of the Protocol for the Protection of the Mediterranean Sea against Pollution from Land-Based Sources and Activities. |

Department for Transport

(30942) Draft Directive on transportable pressure equipment.
13566/09
COM(09) 482

HM Treasury

(30906) Commission Report on the use of the provisions on mutual assistance
13182/09 for the recovery of claims relating to certain levies, duties, taxes and
COM(09) 451 other measures in 2005-2008.

(30924) Commission Communication on the work of the EU Joint Transfer
13370/09 Pricing Forum in the period March 2007 to March 2009 and a
+ ADDs 1–2 related proposal for a revised Code of Conduct for the effective
COM(09) 472 implementation of the Arbitration Convention (90/436/EEC of 23
July 1990).

Formal minutes

Wednesday 28 October 2009

Members present:

Michael Connarty, in the Chair

Mr Adrian Bailey

Mr David S Borrow

Mr William Cash

Mr James Clappison

Ms Katy Clark

Jim Dobbin

Mr Greg Hands

Mr David Heathcoat-Amory

Kelvin Hopkins

Mr Bob Laxton

Mr Anthony Steen

Richard Younger-Ross

1. Scrutiny of Documents

Draft Report, proposed by the Chairman, brought up and read.

Ordered, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1.1 to 4.13 read and agreed to.

Paragraphs 4.14 read, amended and agreed to.

Paragraphs 4.15 to 11 read and agreed to.

Resolved, That the Report be the Thirty-first Report of the Committee to the House.

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

2. Scrutiny related issues and future developments in the European Union

Chris Bryant MP, Minister for Europe, gave oral evidence.

[Adjourned till Wednesday 4 November at 2.30 pm.]

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*)