



House of Commons
European Scrutiny Committee

**Thirtieth Report of
Session 2008–09**

**Documents considered by the Committee on 21 October 2009,
including the following recommendations for debate:**

International climate finance

EU aid effectiveness

Report, together with formal minutes

*Ordered by The House of Commons
to be printed 21 October 2009*

Notes

Numbering of documents

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

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

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

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

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

Abbreviations used in the headnotes and footnotes

EC	(in "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 International climate finance

(30910) 13183/09 + ADD 1 COM(09) 475	Commission Communication: <i>Stepping up international climate finance: A European blueprint for the Copenhagen deal</i>
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<i>Legal base</i>	—
<i>Document originated</i>	10 September 2009
<i>Deposited in Parliament</i>	17 September 2009
<i>Department</i>	Energy and Climate Change
<i>Basis of consideration</i>	EM of 8 October 2009
<i>Previous Committee Report</i>	None, but see footnotes 1 and 4
<i>To be discussed in Council</i>	See para 1.22 below
<i>Committee's assessment</i>	Politically important
<i>Committee's decision</i>	For debate in European Committee A

Background

1.1 In our Report of 4 March 2009, we drew to the attention of the House a Communication¹ relating to the international climate change negotiations to be held in Copenhagen at the end of this year. We noted that the Commission regards a successful conclusion to those negotiations as a key Community priority if its agreed objective of limiting the average global temperature increase to less than 2°C compared with pre-industrial levels is to be achieved, and that it had reiterated that the Community should be willing to agree to a reduction by 2020 of 30% in its greenhouse gas emissions in 1990 in the context of a comprehensive international agreement, involving comparable reductions by other developed countries and appropriate contributions by the economically more advanced developing countries. The Commission also said that any agreement must be underpinned by adequate financial resources for its implementation, and it has now sought in this further Communication to suggest ways in which this might be achieved, though it stresses that the figures quoted should be seen, not as formal proposals, but as indications of the order of magnitude of the finance likely to be required if the Copenhagen conference achieves an ambitious outcome.

The current document

1.2 The Commission says that the aim of the paper is to break the current impasse where developed countries expect developing countries, especially those most economically advanced, to contribute to the overall effort to reduce emissions, whilst developing countries want to see a clear position from developed countries on finance for mitigation and adaptation. It looks in turn at ways of generating adequate flows of finance, the

¹ (30412) 5892/09: see HC 19–ix (2008–09), chapter 1 (4 March 2009).

contribution which the Community might make, and the ways in which decentralised, bottom-up finance might be organised.

Generating adequate financial flows

1.3 The Commission suggests that around €100 billion a year will be needed by 2020 for adaptation and mitigation, but points out that this is very often wrongly equated to the contribution needed from the public budgets of developed countries, whereas contributions can be expected from a variety of different sources, with public and private domestic finance, and flows leveraged by the carbon market, perhaps contributing between them some 60–80% of the overall amount required. In particular, it says that the further development and expansion of the carbon market should be the main means whereby private-sector carbon finance supports mitigation activities in developing countries, leaving public finance to focus in the short and medium term (and beyond) on adaptation, capacity building, and technology research, development and demonstration.

Mobilising domestic private finance

1.4 The Commission believes that domestic private finance will constitute a large part of the necessary investment in both developed and developing countries, and that the major part of what is needed for developing countries as a whole to limit their emissions growth by 2020 to roughly 15–20% below “business as usual” is already commercially viable, with additional investment being recouped by reduced energy bills. It points out that private investment can be stimulated through the right policy framework, including emissions trading schemes covering key sectors, national regulations, and financial incentives, and that developing countries are already introducing energy efficiency standards in excess of old carbon intensive technologies, with many of the more economically advanced, such as Brazil, having sufficient resources at their disposal, and the potential for a large contribution from private households for whom adaptation is in their own interest. That said, it recognises that the poorest countries, together with the poorest segments of the population in developing countries, will not have sufficient means for the investment needed, and will depend largely on both domestic and international public finance.

Making full use of the carbon market

1.5 The Commission says that the international carbon market has been an effective means of leveraging private sector investment in developing countries, whilst allowing developed countries to achieve their emission reduction targets cost-effectively. However, it observes that the project-based Clean Development Mechanism (CDM)² provided for under the Kyoto Protocol needs to be substantially reformed, crediting only those projects which produce real additional reductions and focussing on the least developed countries (LDCs). In addition, a new sectoral carbon market crediting mechanism for more economically developed countries (and highly competitive economic sectors) should be phased in after

2 This is an offset mechanism under which developing countries can sell credits which represent emission reductions achieved by a specified project: these credits can then be bought by a developed country in order to comply with its national reduction target, and so provide finance for clean technology in the developing country concerned.

2012, as an interim step towards the introduction of cap and trade systems in developing countries.

1.6 It adds that, in moving beyond a project-based approach, any new sectoral mechanism should deliver a significant scaling up of investment in low-carbon technologies in developing countries, with the driving force being a robust medium-term carbon price in OECD countries. It also believes that the international carbon market delivers a number of benefits, by cutting global mitigation costs by about a quarter by 2020, by generating financial flows to developing countries of around €38 billion a year, and by leveraging substantially more finance into low carbon development investments. However, it warns that the potential scale of these financial flows will depend upon the structure of the Copenhagen agreement, and that the parties will need a high level of ambition for emission reduction targets from developed countries and for the starting levels of emission reduction paths for the period 2013–20 if the requisite supply-demand balance is to be achieved across all countries listed in Annex I of the UNFCCC,³ noting that the carbon price and financial flows to developing countries in the period 2008–2012 are largely the result of the action taken by the Community.

The scale of international public funding

1.7 The Commission observes that, the less delivered by the carbon market, the greater will be the demand for public finance for mitigation, but that the scale cannot be predicted with certainty at this stage, requiring a regular review via a proposed High Level Forum on International Climate Finance (see below). In the meantime, it suggests that the amount of public finance required is likely to rise gradually, and will be linked to the level of ambition in developing countries. It also says that the emphasis immediately after the Copenhagen agreement should be mainly on capacity building, since the demand for public finance is likely to rise with the implementation of mitigation action plans, and it will also be needed to stimulate private sector investment into research, development and demonstration.

1.8 In particular, it suggests that:

- the additional costs for developing countries which cannot be covered by the carbon market will be around €33 billion a year in 2020, though most of these would be long-term, low-cost efficiency measures which should be financed domestically, mainly from private sources, leaving only about 10–20% of these additional costs (€3–6 billion), mainly in the poorer developing countries, to be funded by international public support;
- the additional costs of reducing non-carbon dioxide emissions from agriculture, and carbon dioxide emissions from deforestation and forest degradation, would be around €23 billion a year, with public finance being the predominant incentive in the two latter cases until 2020: as most of the mitigation potential is in the poorer developing countries, a larger share of the additional costs (from 30% to 60%), equivalent to €7–14 billion, will probably have to be covered by international public finance, and the Commission draws attention to its earlier Communication⁴

3 United Nations Framework Convention on Climate Change.

4 (30047) 14473/08: see HC 19–x (2008–09), chapter 3 (11 March 2009).

on a Global Forest Carbon Mechanism, which would be supported by revenues from the auctioning of allowances under the revised Emissions Trading Scheme, raising between €1.5 and 2.5 billion in 2020;

- taking these elements together, global public transfers in 2020 for mitigation could be between €10 and €20 billion in 2020, with about one third of that amount in 2013, but the actual flows will depend critically upon the availability and quality of low-carbon growth plans of developing countries (and proposals for mitigation action);
- the current emission reduction pledges of developed countries do however imply much lower flows of carbon finance, and those countries will come under pressure to finance additional reductions in developing countries;⁵
- international public funding for capacity building and cooperation for research and technology demonstration has been estimated at an additional €2 to 6 billion in 2020;
- public funding, both domestic and international, will be an important source of finance for adaptation in the poorer developing countries, with the UNFCCC Secretariat having estimated that the adaptation costs for all developing countries could range from €23 — 54 billion a year in 2030, implying global public transfers of €10–24 billion a year in 2020.

The Commission also suggests that adaptation financing will probably originate primarily from the public sector as a combination of direct budgetary outlays from contributing partners and as a share of carbon market revenues, with a need for a strategic integration of climate change adaptation concerns in all sectors of national development strategies.

Fast-start international public funding 2010—12

1.9 The Commission suggests that, if there is an overall deal in Copenhagen which implies fast-start international funding, initial contributions should concentrate on (i) financing the process and capacity building required, and (ii) estimating the likely impact of climate change, integrating adaptation into national development strategies and financing priority investments. It also considers that additional finance should be mobilised in the short term to respond to urgent and identified needs for the most vulnerable developing countries, small island developing states and African countries, including a further strengthening of disaster risk reduction capacity, with the initial contribution being progressively scaled up after 2012 as needs are quantified, capacity for implementation is built up, and an agreement is reached in Copenhagen on a scale of contributions. It believes that this would imply a public contribution from the developed world of €5–7 billion between 2010 and 2012.

⁵ For example, the Commission says that, if the emission reduction target for developed countries were to be reduced from 30% to 10% (the low end of current pledges), this would require the transfer of international public finance of around €120 billion a year in 2020.

Financing from international aviation and maritime transport

1.10 The Commission notes that the Council has highlighted the benefits from global instruments which address emissions in international aviation and maritime transport, and that this would have the potential to provide a significant source of finance to support the mitigation and adaptation efforts of developing countries, either through cap-and-trade systems or through a levy on emissions. At the same time, however, it says that the challenges involved in establishing such a framework should be recognised, but that, given the need to develop this at a global level if the sectors in question are to make a meaningful contribution, a workable compromise might be to make all subject to the same overall cap with full auctioning, whilst redistributing some auction revenue to developing countries, depending on their respective emissions and economic capabilities.

Determining contributions to international public finance

1.11 The Commission says that the substantial public resources needed will come in different forms and via different channels, and that the Copenhagen agreement should include a common scale based on agreed principles to determine the financial contributions of different countries, taking into account their overall effort (including effort reduction commitments). It notes that the European Council in June 2009 expressed a preference for contributions based upon ability to pay (GDP) and responsibility for greenhouse gas emissions, with the need for any distribution key to be “universal”, extending beyond developed countries (but excluding LDCs), bearing in mind that some of the more economically advanced developing countries have significant levels of emissions and GDP.

1.12 It suggests that, although the actual contribution would depend upon the relative weight given to the two criteria, the Community’s share could range from around 10% if the only criterion is emission levels to 30% if GDP is used (which, on the various estimates above, implies a contribution of €0.9–3.9 billion in 2013, rising to €2–15 billion in 2020). It also points out that giving relatively more weight to emissions would provide an additional incentive to cut these, but lead to relatively higher contributions from major emitting developing countries. However, in the case of fast-funding, it suggests that, in view of the importance of early capacity building and adaptation, the Community should consider whether to increase its contribution above the 10–30% range.

1.13 The Commission has summarised these various figures in the following table, showing the estimated international annual public finance requirements over the period 2010–2020 (in €billion):

	2010–2012 (fast start)	2013	2020
Mitigation <i>Energy and industry</i> <i>Agriculture and forestry</i>	1	3–7	10–20 3–6 7–14
Adaptation	2–3	3	10–24
Capacity building	1–2	2	1–3
Technology, research etc	1	1	1–3
Total	5–7	9–13	22–50

The Community contribution to public finance

1.14 The Commission first considers *how the Community can make an ambitious and fair contribution*, and says that there are strong arguments for it making a single global offer, which would ensure coherence and visibility, allow for a fair and transparent distribution between Member States, permit economies of scale in the management of disbursements, and strengthen the Community's voice in ensuring proper implementation. It adds that the Community will also need to consider three options for channelling such funding — direct funding through the Community budget (which would take advantage of existing procedures, offer rigorous financial control and a standard funding key, and involve the European Parliament), establishing a new common Climate Fund through bilateral contributions from each Member State (though this would require its own inter-governmental agreement and legal basis, be outside the Financial Framework and Own Resources ceiling, and not involve the European Parliament), and direct financial contributions from Member States (provided this was clearly presented as part of the Community's single global offer).

1.15 The Commission next considers *how the Community budget can be mobilised up to 2012*. It says that, while the main financial implications of an agreement in Copenhagen would come into effect from 2013 at the earliest, such an agreement would be accompanied by a swift increase in support to developing countries, which should be partly financed through the Community budget, subject to the availability of resources. It points out that it has already proposed an additional €50 million for fast-start activities in 2010, and that comparable figures would be needed for subsequent years: and it adds that identifying appropriate sources will not be easy, since the remaining margins are extremely limited and existing programmes already under pressure, requiring creative solutions and a need to assess the optimal mix of funding sources.

1.16 The Commission also looks at an *equitable Community contribution beyond 2012*, noting that the budgetary implications of an ambitious agreement at Copenhagen for the Community and Member States are likely to be substantial, running to several billion euros a year. It also notes that this would raise a particular issue for 2013 for which the financial framework has already been set, but will thereafter be an issue for the new financial framework. More specifically, it reiterates that, if contributions are based on the ability to

pay and emission levels, the greater the emphasis on the first of these, the higher the Community contribution will be. In addition, it also considers the mechanisms which could be used to adjust the burden on specific Member States, noting that these have at their disposal significant revenues from auctioning, and that Directive 2009/29/EC requires at least 50% of these resources to be re-cycled for domestic and international climate change purposes — a figure which it suggests would be well in excess of the maximum amount of €3 billion which the Community would be required to finance in 2013.

Decentralised, bottom-up climate change governance

1.17 The Commission says that there needs to be an efficient, effective and equitable governance structure, which builds on the principles of country ownership, subsidiarity, coherence, transparency, accountability, rewarding performance, additionality and complementarity. It adds that any blueprint should be based upon low-carbon growth plans by developing countries, which would be reviewed by an independent “co-ordinating mechanism”; that such strategies should be presented by all countries — including the Community — by 2011, and that, although this obligation should not apply to the LDCs, they should be encouraged to move in this direction over an appropriate time-scale; that a bottom-up approach should involve the gradual integration of climate resilience into national plans; that existing institutions and structures should be used wherever possible; and that a High Level Forum on International Climate finance should be created to identify gaps and imbalances for mitigation and adaptation actions, give political guidance, and ensure that funds are distributed equitably.

The Government’s view

1.18 In his extremely detailed Explanatory Memorandum of 8 October 2009, the Secretary of State for Energy and Climate Change (Rt Hon Ed Miliband) sets out the Government’s views on the various aspects of the Communication.

1.19 As regards the *generation of adequate finance flows*, he says that the Government:

- welcomes the inclusion of a global figure for the finance needed (and its breakdown into public and private finance, and mitigation and adaptation components), and it hopes that the Community will use this to agree on an overall figure for the international community to work towards by 2020;
- will continue to look further into the Commission’s breakdown of international public financing needs, but notes that the UK has proposed \$100 billion (€68 billion) as a working figure;
- supports the Commission’s call for fast-start funding for 2010–2012, and has already invested significant sums for pre-2013 financing through the newly established Climate Investment Funds, the Global Environment Facility and UN Funds, whilst continuing to support countries on a bilateral basis (including through the Department for International Development);

- agrees with the Commission’s recognition of the role of the carbon market and the need for reform of existing mechanisms, in order to facilitate the scaling up of financial flows for mitigation and technology transfer to developing countries;
- supports Commission proposals for the phase-in of the sectoral carbon market crediting mechanism for economically more advanced developing countries and highly competitive economic sectors: and, although it believes that it is too early to set a phase in date, it welcomes 2012 as an ambitious starting point for discussion;
- believes that agreement to a clear timetable for the phase-in is needed to reduce investment uncertainty, but considers that the CDM will continue to have a role during this period, and in countries and sectors not covered by the sector mechanism, and that agreement on its reform is therefore important in the shorter term;
- emphasises that sector-based emissions trading in developing countries — an option not mentioned in the Communication — offers significant advantages over other mechanisms in terms of emissions certainty, upfront incentives and engaging private sector finance;
- welcomes the Commission options for financing emissions reductions from reducing deforestation and degradation, and recognises a role for offsetting and sector-sector trading in the forest sector before 2020, noting that it is unlikely there will be full access of forest emissions reductions to the market before 2020, not least because of the need for capacity building in developing countries;
- shares the Commission’s view on offset credits;
- welcomes the further analysis provided on innovative financing from international aviation and maritime transport, believing it is important that such emissions (which could also provide significant revenue for innovative climate financing) are brought into the Copenhagen agreement;
- believes that ensuring financial flows are predictable will be key, and is willing to support an international mechanism for the setting aside and auctioning of a small percentage of national emissions allowances;
- strongly agrees that a Copenhagen agreement should include a common international scale based on agreed principles to determine individual countries’ contributions to international public finance, based on the ‘ability to pay’ and ‘responsibility for emissions’;
- believes that, whilst the Commission’s estimate that the Community’s financial contribution would be between 10 and 30% are not final figures, it is important to put finance on the table, in order to help build trust with developing countries.

1.20 As regards the *Community’s contribution to public climate change finance*, he:

- says that the Government has a clear position on additionality, believing that public finance should be additional to Official Development Assistance targets, and that only a limited proportion (up to 10%) of that Assistance should be able to play a

role in helping fight climate change at the same time as meeting poverty reduction objectives;

- notes the Commission's proposals for the Community budget in 2010 and for the next financial perspective starting in 2014, adding that the UK supports fundamental reform, with a re-orientation of resources towards addressing climate change, and will continue to consider the suggestions for the use of the Community budget for international climate financing, as one of a number of options for meeting any commitments made at Copenhagen.
- says that the Government agrees with the European Council that the Community should be willing to contribute its fair share of the global financial effort and that 'ability to pay' and 'responsibility for emissions' should be the preferred principles.

1.21 As regards the *blueprint for decentralised, bottom-up climate finance governance*, the Minister says that the Communication puts forward some useful ideas, and that the Government particularly welcomes its views on a developing country-led approach to integrating both mitigation and adaptation into national plans and the planning process, regarding this as a crucial principle which should be reflected clearly in concrete proposals. He adds that the Government welcomes the suggestion of a new high level forum to ensure better coordination of financing flows, but would also like to see that body able to manage a portion of international climate finance, and allocate this to different spending themes, adding that there is a need for further substantial discussion with both developing and developed countries on the structure of this body, its exact functions and its relationship with the UNFCCC. However, the Government agrees with the Commission that the body should not be involved in country-level programmes or projects, with the emphasis being instead on national structures and donor coordination around country plans, which should help existing bilateral and multilateral institutions to scale up finance with a focus on recipient country priorities. Finally, he says that the establishment of a technical coordination mechanism for mitigation is consistent with Government thinking, though it would like to see that mechanism have some financial responsibility. It is also clear that the mechanism should be a technical not a political body, which should not have responsibility for assessing the level of mitigation ambition in national plans; that the review of the coordination mechanism should establish whether national plans will deliver this ambition, and that there is value in establishing a similar mechanism for adaptation.

1.22 As regards timing, the Minister says that, since this is not a legislative proposal, there is no formal timetable, but that the ideas in the Communication are being discussed in the run up to the ECOFIN Council on 20 October, the Environment Council on 21 October, and the European Council on 29–30 October.

Conclusion

1.23 **As is evident, this is a complex document, containing a plethora of figures which makes it difficult in places to distinguish the wood from the trees. Having said that, it is clearly also an important document, in both its substance and timing, given the crucial role which finance will play in securing any climate change agreement at Copenhagen. Moreover, the amount of international finance which may be required is not only potentially very large, and linked to the outcome at Copenhagen, but also dependent**

upon a number of assumptions as to the likely contribution of private finance, the extent to which the carbon market, particularly in other developed countries, can play a greater part, and the way in which any figure is apportioned between the Community and other contributors.

1.24 For all these reasons, we believe that the document raises important issues which the House would wish to consider further, and we are therefore recommending it for debate in European Committee A.

2 EU aid effectiveness

(30978) 13732/09 SEC(09) 1264	Commission Staff/Presidency Joint Paper: <i>An Operational Framework for the EU to Promote Aid Effectiveness</i>
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<i>Legal base</i>	—
<i>Document originated</i>	24 September 2009
<i>Deposited in Parliament</i>	7 October 2009
<i>Department</i>	International Development
<i>Basis of consideration</i>	EM of 15 October 2009
<i>Previous Committee Report</i>	None; but see (29616) 8408/08: HC 16–xxi (2007–08), chapter 1 (14 May 2008) and (30544) 8695/09: HC 19–xv (2008–09), chapter 10 (29 April 2009)
<i>To be discussed in Council</i>	16–17 November “development” General Affairs and External Relations Council
<i>Committee’s assessment</i>	Politically important
<i>Committee’s decision</i>	For debate in European Committee B

Background

2.1 The eight goals UN Millennium Development Goals (MDGs) that, in 2000, the UN set itself to achieve, most by 2015, are: eradicate extreme poverty and hunger; achieve universal primary education; promote gender equality; reduce child mortality; improve maternal health; combat HIV/Aids, malaria and other diseases; ensure environmental sustainability; develop a partnership for development — each with associated targets and benchmarks to measure progress.

2.2 On 14 May 2008, we considered Commission Communication 8408/08, *Speeding up progress towards the UN Millennium Development Goals*, and supporting Staff Working Papers, which provided a mid-term assessment of progress towards the MDGs and put forward priority areas for action and proposals in each area. The Commission’s aim was

“to make a contribution to the formulation of a European common position, with an eye to the Accra and Doha meetings⁶ and the high-level UN event in September 2008 in particular, and so confirm the EU’s key role on the international scene and its commitment to the MDGs.” The Commission said efforts needed to be redoubled to ensure the goals were met by 2015 and identified four priority areas for EU action: *Aid Volumes, Aid Effectiveness, EU policy coherence* and *Aid for Trade*.

2.3 Given the importance of the subject and the widespread interest in the House therein, we recommended that the Communication be debated in European Committee B prior to the June European Council at which it was to be adopted.⁷ That debate took place on 9 June 2008.⁸

2.4 A year later, the theme of a similar, pre-May “development” GAERC “April Package” was supporting developing countries in coping with the economic crisis. The Communication set out how the Commission would address the impact of the crisis on developing countries, whilst also encouraging Member States to join in particular initiatives. Broadly, it stressed: *Honouring existing commitments and leveraging new resources; providing counter-cyclical funding; improving aid effectiveness; cushioning the social impact whilst supporting the real economy, governance and stability*. The Commission identified four priority areas for action by the EU: *Aid for Trade; Aid Volumes; Millennium Development Goals; and Aid Effectiveness*. All of this is set out in detail in our relevant Report.⁹

2.5 The Minister at the Department for International Development (Mr Gareth Thomas) regarded the overall picture the four specific areas as mixed. A much greater effort was required to meet the 2010 and 2015 ODA targets, which were particularly important, but more challenging, in the current economic crisis. On “Aid for Trade”, he was pleased to note the commitment to increase grant funding for the EU-Africa Infrastructure Trust Fund, and was considering increasing DFID’s contribution; but other Member States had yet to commit. The Financing for Development Report gave a clear picture of EU implementation of its commitments; however, he shared the Commission’s concern that the collective EU commitment to reach 0.56% ODA/GNI might be missed, despite the fall in expected GNI which had reduced the level of ODA required to meet this commitment. The Government remained committed to provide 0.56% of GNI as ODA in 2010, and to reach 0.7% by 2013, had also set out its plans to meet ODA commitments to Africa, and already met the target to provide 0.15% ODA/GNI to the least developed countries; the Minister would continue to press other donors to meet their commitments — “a key issue for the EU and the G8 this year and for the UN High-Level Conference on the Financial Crisis in June and at Copenhagen in December.” He said that the Commission had rightly identified the sheer scale of the challenge in meeting the MDGs, particularly in the current economic climate, and correctly pointed to the EU’s leadership role on this and the importance of fulfilling its commitments, including “the helpfully highlighted, EU MDG

6 The Third High-Level Forum on Aid Effectiveness, Accra, 2–4 September 2008; Follow-up International Conference on Financing for Development, 29 November–2 December 2008.

7 See headnote: (29616) 8408/08 HC 16–xxiii (2007–08), chapter 1 (14 May 2008).

8 See <http://www.publications.parliament.uk/pa/cm200708/cmgeneral/euro/080609/80609s01.htm> for the record of the debate.

9 See head note: (30544) 8695/09: HC 19–xv (2008–09), chapter 10 (29 April 2009).

Agenda for Action.”¹⁰ UK officials would continue to be actively engaged in expert groups on improving the EU’s analysis and response to fragility and vulnerability in developing countries and policy coherence, and to ensure that the most off-track MDGs (those focused on education and health) were addressed.

2.6 The Minister said that the Financial Crisis reinforced the importance and urgency of meeting the Paris¹¹ and Accra targets on aid effectiveness; while the Commission had improved its aid predictability through the MDG Contracts,¹² the UK would lobby for greater prominence for this in the Council Conclusions (as lack of aid predictability increased costs by 15–20%), and for the Commission to encourage Member States to join the International Aid Transparency Initiative, as a way of meeting their commitments to aid transparency.

2.7 Given the Minister’s comprehensive and helpful analysis and assessment of this important set of papers, we both reported them to the House because of the widespread interest in the issues involved and forwarded them to the International Development Select Committee, so that they might be aware of them and of the Minister’s analysis and evaluation.¹³

The Commission Staff/Presidency Joint Paper

2.8 As is clear, there is much in these earlier documents about the importance of aid effectiveness. Against that background, this document, *An Operational Framework for the EU to Promote Aid Effectiveness*, has been prepared jointly by the Commission and the Swedish Presidency. It looks ahead to the Fourth High Level Forum on Aid Effectiveness (HLF IV), which will be held in Seoul in 2011. There:

“the European Commission and Member States will be held accountable for the commitments made in the 2005 Paris Declaration and the Accra Agenda for Action (AAA) of 2008. The EU was a driving force behind much of the content of these agreements, and therefore has a special obligation to ensure that we deliver on our commitments. While, individually, the Member States and the Commission are making progress on their commitments, achieving the targets in the short time

10 The EU Agenda for Action was adopted by the 20 June 2008 European Council. It sets a number of milestones which will contribute to the achievement of the MDGs and provides examples of EU actions and support as part of the commitments already taken by the EU. For example, the health section estimates that the additional finance to reach the health MDGs at € 13,4 billion by 2010 based on the WHO Commission on Macroeconomics and Health’s estimations; on the basis that the EU continues to provide 60% of ODA, this would mean the EU would increase its support to health by €8 billion by 2010, almost €6 billion of which would be for Africa. It is to be implemented in application of the European Consensus on Development, the EU Code of Conduct on Complementarity and Division of Labour, the Paris Declaration on Aid effectiveness and the EU commitments on Policy coherence for development. The EU will further ensure that the implementation of the Agenda for Action is fully in line with partner countries’ poverty reduction, development and reform strategies. The involvement of the private sector, both in the EU and in the partner countries, is seen as a key element for poverty reduction and for the achievement of the MDGs. For the full text, see <http://register.consilium.europa.eu/pdf/en/08/st11/st11096.en08.pdf>.

11 The Paris Declaration, endorsed on 2 March 2005, is an international agreement to which over one hundred Ministers, Heads of Agencies and other Senior Officials adhered and committed their countries and organisations to continue to increase efforts in harmonisation, alignment and managing aid for results with a set of monitorable actions and indicators.

12 The MDG Contract is described by the Commission as “a longer term, more predictable form of general budget support that the EC has launched in a number of countries at the start of EDF 10 [which] ... is part of the Commission’s response to international commitments to provide more predictable assistance to developing countries”: see http://ec.europa.eu/development/how/aid/mdg-contract_en.cfm for further information.

13 See head note: (30544) 8695/09: HC19–xv (2008–09), chapter 10 (29 April 2009).

remaining before Seoul presents a formidable challenge. The purpose of this operational framework is to catalyse EU action to achieve the massive change necessary to meet this challenge.”

2.9 The discussion paper directly responds to the Council’s May 2009 Conclusions which called for an operational framework to be presented before the end of 2009. The four EU aid effectiveness priorities agreed in Conclusions of May 2008 and 2009 are: *division of labour*; *use of country systems*; *predictability of aid*; and *mutual accountability for results, including less conditionality*.

2.10 The proposed Operational Framework identifies concrete actions to improve EU performance against its aid effectiveness commitments, including under the Paris Declaration, before the 2010 deadline. Three areas — *division of labour between donors*, *enhanced use of national systems by donors to deliver aid*, and *technical cooperation for improving capability* — are covered as follows:

Division of labour: EU approaches to the division of labour between donors in-country are well established in the EU Code of Conduct on Complementarity and Division of Labour, adopted in 2007. The Operational Framework calls on the Commission and member states to re-confirm their political commitment and speed up implementation. It proposes meetings between EU country and headquarters staff to make faster progress in selected countries. It also calls for a joint approach amongst EU members and the Commission on division of labour between countries.

Use of country systems has been a priority since 2005 when the EU committed to channel 50% of government-to-government assistance through national mechanisms and systems. However, the report notes that overall progress in using country systems is weak. The paper proposes practical steps on how to increase the use of partner country systems by the Commission and Member States whilst tackling issues including partner capacity and accountability to member states’ own tax payers, e.g.:

- Support the role of parliaments, civil society, the media, audit institutions, and public procurement monitoring agencies, in holding governments accountable for public expenditure;
- Support partner country capacity development for improving the quality of country systems;
- Initiate or continue dialogue with our Member States parliaments and national audit offices on the use of country systems.

Although not one of the four EU priorities on aid effectiveness, **technical cooperation** has been noted in the May 2008 and May 2009 Council Conclusions as an important area to make progress. The practical steps proposed in the discussion paper aim to make capacity building efforts better coordinated, more need-driven and better integrated into the wider development policies of countries.

The Government's view

2.11 In his Explanatory Memorandum of 15 October 2009, the Parliamentary Secretary at the Department for International Development (Mr Michael Foster) says that the UK is “strongly committed to deliver on its aid effectiveness commitments, ensuring that development is driven by partner countries and helps build capable, accountable, and responsive states”, and continues as follows:

“We strongly support the EU’s focus on aid effectiveness. The urgent need for EU members and the Commission to step up efforts on implementing aid effectiveness commitments was recognised in the Commission’s 2009 report on EU performance against its aid volume and aid effectiveness commitments.¹⁴ The analysis in that report indicates that in 2008 the EU as a whole was off-track on at least four of the ten 2010 Paris targets. Increased effort is also important as the EU, influenced by the UK and other donors, played a lead role in securing an ambitious international agreement on aid effectiveness at the Accra High Level Forum in 2008. The concept of the Operational Framework was originally proposed by Sweden, current EU Presidency. The UK welcomes the Operational Framework as a way of achieving meaningful and concrete actions before the 2010 deadline for the Paris targets.”

2.12 Noting that the Operational Framework does not yet cover all four EU aid effectiveness priorities agreed in previous Council Conclusions, the Minister says that it is proposed that actions on other aid effectiveness commitments will be agreed and added to the Framework in future.:

“We are working with other EU member states such as Ireland and Spain to ensure mutual accountability (between donors and partner countries, one of the four EU priorities) is referenced as an urgent area for the EU to agree operational actions as soon as possible. International progress on mutual accountability remains extremely slow. This area is fundamental to improved aid effectiveness and development results.”

2.13 The Minister welcomes the measures on division of labour to improve progress on what he regards as an area of strong EU leadership. He notes that in 2007, all EU Development Ministers agreed an EU Code of Conduct on the division of labour between donors in country: “DFID is supporting the Code, with country offices working with the European Commission to promote division of labour in a number of countries. The UK leads on an initiative to fast track the EU Code of Conduct in Kyrgyz Republic and Rwanda”

2.14 The Minister is, however, concerned about the proposal in the Operational Framework for meetings of donor country and headquarters staff to be held in EU capitals on two grounds:

14 Commission Staff Working Paper accompanying the Communication Supporting developing countries in coping with the crisis: ‘Aid Effectiveness after Accra: Where does the EU stand and What more do we need to do?’ Full text available at http://ec.europa.eu/development/icenter/repository/COMM_NATIVE_SEC_2009_0443_4_Aid-Effectiveness-after-Accra.pdf

“... cost, and the danger that decisions will be made about division of labour in a particular country in isolation from that country’s government and non-EU donors. We are working with our EU partners to ensure decisions on division of labour are made with partner governments and other donors at the country level, as agreed in the Accra Agenda for Action, and that this is reflected in the Operational Framework.”

2.15 The Minister supports actions proposed on the “use of country systems” which, he says, are broadly in line with the UK’s own practices:

“With a score of 66% on use of country systems in the last 2008 Paris Declaration Survey, the UK already meets the EU’s commitment of channelling 50% of government to government assistance through partner country systems and the EU as a whole has almost met the target. The UK will seek clarification of the practical implication of the proposed action on allowing aid from EU donors to be subject to democratic scrutiny within the partner country processes.”

2.16 The Minister also welcomes actions on technical cooperation which are “in line with DFID’s current guidance, emphasising the need for technical cooperation to be demand-driven, country-led and coordinated with other donors.” However, the Minister says that he would have preferred to see the Operational Framework first address the EU’s four priorities on aid effectiveness before introducing technical cooperation:

“We support most of the concrete actions proposed, but would prefer that detailed approaches to technical cooperation in situations of fragility are not included at this stage. The issues around fragile states are many and complex and the EU’s aid effectiveness technical group has not had time to debate them fully or link with the technical group on conflict and fragility. Fragility is a cross-cutting issue and would need to be addressed across all areas of an Operational Framework.”

2.17 The Minister concludes by noting that:

- there has been no external consultation by DFID on this proposal;
- there are no additional costs to the UK as the proposal is in line with the Government’s aid effectiveness commitments;
- the proposal is currently under discussion in the EU Working Group on Development Cooperation (CODEV);
- in order for the operational framework to be adopted, EU agreement will be required at the GAERC on 16–17 November 2009.

Conclusion

2.18 “Effectiveness” is generally understood as the capacity to achieve the results desired. On that basis, it is plain that, notwithstanding all that has gone before (the previous Communications, the Paris Declaration, the Accra Agenda for Action), the EU has much room for improvement. Given that the EU — the Commission and its Member States — provides nearly 60% of development assistance to the world’s

neediest countries, it is all the more important that the Commission and the Member States respond to the “formidable challenge” to which the document refers at the outset, and achieves “the massive change necessary to meet this challenge”.

2.19 It is with these considerations in mind that we recommend that this document be debated in the European Committee.

3 Cod recovery plan: effort limitation restrictions

(a) (30944) 13632/09 COM(09) 505	Draft Council Regulation amending Regulation (EC) No 754/2009 excluding certain groups of vessels from the fishing effort regime laid down in Chapter III of Regulation (EC) No. 1342/2008
(b) (30945) 13633/09 COM(09) 506	Draft Council Regulation amending Regulation (EC) No. 43/2009 as regards fishing opportunities and associated conditions for certain fish stocks

<i>Legal base</i>	Article 37EC; consultation; QMV
<i>Documents originated</i>	23 September 2009
<i>Deposited in Parliament</i>	28 September 2009
<i>Department</i>	Environment, Food and Rural Affairs
<i>Basis of consideration</i>	EMs of 13 October 2009
<i>Previous Committee Report</i>	None
<i>To be discussed in Council</i>	19–20 October 2009
<i>Committee’s assessment</i>	Politically important
<i>Committee’s decision</i>	Not cleared; further information requested

Background

3.1 Regulation (EC) No 1342/2008,¹⁵ which establishes a long-term plan for cod stocks, allocates fishing effort to Member States on an annual basis, but it also enables the Council, on the basis of a proposal from the Commission and the advice of the Scientific, Technical and Economic Committee for Fisheries (STECF), to exclude certain groups of vessels from the application of the effort regime. Such an exclusion is subject to the provision of data on cod catches and discards, to cod catches not exceeding 1.5% of the total catches of the vessels concerned, and the likelihood that there would be a disproportionate administrative burden. In August 2009, the Commission put forward a proposal recommending that

¹⁵ OJ No. L.348, 24.12.08, p.20.

vessels from Sweden and Spain should be subject to this exemption, and this amendment was subsequently incorporated into Council Regulation (EC) No 754/2009.¹⁶

The current proposals

3.2 At the same time, it also noted that similar requests had been submitted by France, Germany, Ireland, Poland and the UK, and the Commission has now proposed in document (a) that further changes should be made to accommodate requests from Germany, France and Poland (and Spain), with corresponding changes being made (document (b)) to the effort limits set out Council Regulation (EC) No 43/2009,¹⁷ which established the fishing opportunities in Community waters for 2009. However, the Commission says that, for all other requests — including those put forward by the UK — the information submitted was considered as insufficient to establish compliance with the necessary conditions.

The Government's view

3.3 In his Explanatory Memoranda of 13 October 2009, the Minister for the Natural and Marine Environment, Wildlife and Rural Affairs at the Department for Environment, Food and Rural Affairs (Mr Huw Irranca-Davies) says that, although it is encouraging that the Commission may be prepared to exclude a group of Queen Scallop vessels, the UK is very much of the view that it should ensure that it has fully considered the other groups of UK vessels for which a similar exemption was sought. He also says that the UK's request fits squarely within the terms of the exemption, since the data shows that the cod catches of its vessels was considerably less than 1.5%: and he adds that the UK is looking for a fair and reasonable application of the cod recovery plan, with this being put into question by what appears to be an over-rigid interpretation of the relevant provision.

Conclusion

3.4 It is not entirely clear from the information provided by the Government exactly what exemptions were requested by the UK, whether the request from Ireland has run into similar difficulties, and whether the requests from the Member States to which this proposal applies were granted in their entirety. Nor, since the Minister appears to be confident that the information provided in support of the UK request was robust, is it clear why that request was rejected — or indeed what steps may now be necessary to persuade the Commission to take a more favourable view.

3.5 Either way, it is disturbing that a request from the UK should have been rejected in this way, whilst those from other Member States appear to have been accepted, and we would therefore welcome further clarification from the Government as to why this was so, as well as information on the points we have raised above. In the meantime, we are holding these two documents under scrutiny.

¹⁶ OJ No. L 214, 19.8.09, p.16.

¹⁷ OJ No. L.22, 26.1.09, p.1.

4 Policy Coherence for Development: a “Whole-of-Union Approach”

(30918) 13323/09 COM(09) 458	Commission Communication: Policy Coherence for Development — Establishing the Policy Framework for a Whole-of-the-Union Approach
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<i>Legal base</i>	—
<i>Document originated</i>	15 September 2009
<i>Deposited in Parliament</i>	18 September 2009
<i>Department</i>	International Development
<i>Basis of consideration</i>	EM of 7 October 2009
<i>Previous Committee Report</i>	None; but see (28929) 13135/07: HC 41–xxxv (2006–07), chapter 8 (17 October 2007); also see (26496) 8137/05; (26497) 8138/05; and (26498) 8139/05: HC 34–v (2005–06), chapter 4 (12 October 2005)
<i>To be discussed in Council</i>	17–18 November 2009 General Affairs and External Relations Council
<i>Committee’s assessment</i>	Politically important
<i>Committee’s decision</i>	Not cleared; further information requested

Background

4.1 Policy Coherence for Development (PCD) recognises that aid alone cannot address the needs of the developing world; that there is a need for greater coherence in policies across sectors that affect developing countries, with policy in areas like agriculture, trade, investment, migration and others having a profound impact on developing countries, yet often working at cross-purposes.¹⁸

4.2 The policy framework was set in 2005, as part of the package of measures adopted to accelerate progress towards the Millennium Development Goals — in particular Commission Communication 8137/05: “Policy Coherence for Development: accelerating progress towards attaining the Millennium Development Goals”¹⁹ — and the European Consensus on Development.²⁰ The 12 EU-recognised PCD areas:

- Trade;
- Environment;
- Climate change;

¹⁸ See http://www.oecd.org/department/0,3355,en_2649_18532957_1_1_1_1_1,00.html for further discussion of PCD.

¹⁹ Which we considered on 12 October 2005, see headnote, and which were debated in European Standing Committee on 3 November 2005.

²⁰ Joint Statement by the Council and the representatives of the governments of the Member States meeting within the Council, the European Parliament and the European Commission — ‘The European Consensus on Development’, December 2005 (OJ 2006/C 46/01).

- Security;
- Agriculture;
- Fisheries;
- Social dimension of globalisation, employment and decent work;
- Migration;
- Research;
- Information Society;
- Transport; and
- Energy.

4.3 In chapter 9 of this Report we consider the second biennial Report by the Commission on its and Member States' performance so far.²¹ There, the Commission says that reporting on PCD progress in the 12 policy areas “has been important as a way to raise awareness and to demonstrate the importance of the broader EU policy agenda for development”, and the strengthening of the PCD instruments was necessary in order “to better harness the potential of EU policies for development.” However, in order to make real progress:

“the EU needs to change its approach. Rather than monitoring the impact of all policies on developing countries the EU could promote PCD more effectively through a more focussed approach. The EU should select some key development challenges, analyse how it can contribute to achieving them through the broad array of its policies and instruments, and ensure political mobilisation around these challenges.

“In this third phase the EU should also move towards a partnership approach to PCD. The EU and developing countries could for instance launch a reflection on the consultation mechanisms provided for in the impact assessment guidelines, the Cotonou Agreement and possibly also the Africa-EU Partnership and improve them if necessary.”

The Commission Communication

4.4 The Commission says that although there is clear evidence of the importance of PCD, and although there is a general commitment to PCD, as evidenced by Council Conclusions in May 2005 and Nov 2007, and the European Consensus on Development, sustaining the development aid effort requires Official Development assistance (ODA) to be complemented by other financial sources; and that harnessing the development potential of these additional financial flows depends on efforts by developing countries and their external partners such as the EU to “design development friendly policy frameworks”.

21 (30920) 13468/09: Commission Communication: EU Report on Policy Coherence for Development.

4.5 Three key factors are identified: “developing countries own policies; development cooperation; and the global policy framework, including EU policies and their impact on developing countries.” “Acknowledging the importance of all three categories”, this Communication seeks to look at the EU’s approach to PCD and “make suggestions to the Community and the Member States on how to use PCD in a more targeted, effective and strategic way.”

4.6 Though the PCD commitments agreed in 2005 have provided “a useful framework for the EU’s PCD work so far, ... new developments make it necessary to rethink our approach to PCD”:

- *The growing impact of internal policies in external relations:* Closer interactions and ever intensifying globalisation means that the impact of other EU policies on developing countries has become much more systematic; as the dividing line between external and internal policies is becoming more blurred, the concept of PCD needs to be taken into account more systematically;
- *Growing non-ODA financial flows to developing countries:* the total financial flows to developing countries are much larger than Official Development Assistance (ODA); their impact on development depends on the quality and “development-friendliness” of the policy framework;
- *Using the EU’s strengthened PCD mechanisms and prioritisation:* progress reports thus far have developed awareness and expertise, resulting in the EU being in a position to take “a more pro-active and focussed approach”;
- *The developing countries’ perspective:* Developing countries are becoming increasingly interested in broader EU policies; PCD has been notified by both sides as an issue for the 2010 revision of Cotonou. In the meantime, revised Commission guidelines for Impact Assessment underline the importance of ensuring that stakeholders in developing countries are informed about forthcoming initiatives.

4.7 The Commission accordingly proposes that the EU should develop a “Whole-of-the-Union” approach by “establishing a policy framework to better harness other policies and non-ODA financial flows to development objectives.” Three key lessons need to be taken into account in adjusting PCD “to the changing political reality”:

- focus on a few PCD priorities and “pro-actively take account of development objectives in formulating its selected initiatives;
- do more to mobilise non-ODA resources and better harness the potential of these public and private financial flows for development;
- strengthen dialogue with developing countries on PCD issues.

4.8 In close cooperation with the Member States the Commission will accordingly “elaborate a PCD work programme identifying the priority issues and outlining how the EU through all its instruments and processes contribute to development objectives”. The

aim would be “to create the political momentum, identify the financial means needed for the PCD priority issues, and help develop a clear set of objectives and targets.”

4.9 The Communication goes on to propose a focus on specific global challenges:

- combating climate change;
- ensuring global food security;
- making migration work for development;
- seeking opportunities to use intellectual property rights for development;
- promoting security; and
- building peace for development.

4.10 The criteria for these choices are that the issue must:

- be high on the EU’s agenda;
- be important for developing countries and the attainment of the MDGs;²²
- present concrete opportunities for incorporating development objectives; and
- be linked to a long term agenda.

The Government’s view

4.11 In his Explanatory Memorandum of 7 October 2009, the Minister of State at the Department for International Development (Mr Gareth Thomas) says that although this Communication narrows the focus of PCD “it provides little tangible detail on how this will make PCD more effective or how the Commission will concretely implement it.” He says that he “will push for these details to be set out in the forthcoming Council Conclusions.”

4.12 The Minister nonetheless welcomes “in broad terms ... the overhaul of the PCD framework and in particular welcomes the recognition of the need for an increased voice for developing countries in broader EU policies.”

4.13 The Minister also professes himself “pleased to see the Commission focus PCD on the major global challenges to development such as climate change and growth and fragility, which draw together many strands of PCD and help to give it a practical application.”

4.14 He also recognises the importance of non-ODA financial flows for development, especially in middle-income countries. But he is “concerned about any potential re-

22 The Millennium Development Goals (MDGs) are eight goals to be achieved by 2015 that respond to the world’s main development challenges. The eight MDGs break down into 21 quantifiable targets that are measured by 60 indicators: Goal 1: Eradicate extreme poverty and hunger; Goal 2: Achieve universal primary education; Goal 3: Promote gender equality and empower women; Goal 4: Reduce child mortality; Goal 5: Improve maternal health; Goal 6: Combat HIV/AIDS, malaria and other diseases; Goal 7: Ensure environmental sustainability ; Goal 8: Develop a Global Partnership for Development.

opening of the ODA definition, which would distract attention from the need for donors to meet their existing targets”.

4.15 The Minister would also like to see “more information on how the ‘whole of the union’ approach proposed by the Commission impacts on different developing countries (for instance Middle Income Countries as opposed to Low Income Countries)”, and says that “it is a UK priority that the focus remains on poverty reduction and on attainment of the Millennium Development Goals.”

4.16 Finally, the Minister says that the Communication is currently under consideration by the Development Cooperation Working Group, and expects Council Conclusions on this Communication to be agreed at the 17th and 18th November 2009 GAERC.

Conclusion

4.17 The Minister has made his concerns clear. We would like the Minister to write to us ahead of the GAERC meeting with details of the Conclusions that he expects to be adopted, which we hope will meet them. In the meantime we shall retain the document under scrutiny.

4.18 We also noted in our consideration of the related the Commission Communication, 13468/09, *EU 2009 Report on Policy Coherence for Development*, that we understand that the Conclusions will also incorporate Conclusions on that Report. We reiterate the hope that we expressed there: that they will again provide both a basis upon which both to drive this important process forward and assess progress in two years time, and that he or his successor will provide his views on their success in doing so.

5 Value added taxation

(30967) 13868/09 COM(09) 511	Draft Council Directive amending Directive 2006/112/EC as regards an optional and temporary application of the reverse charge mechanism in relation to supplies of certain goods and services susceptible to fraud
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<i>Legal base</i>	Article 93 EC; consultation; unanimity
<i>Document originated</i>	29 September 2009
<i>Deposited in Parliament</i>	2 October 2009
<i>Department</i>	HM Treasury
<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>	Not cleared; further information requested

Background

5.1 The Community legislation governing VAT requires the vendor of a good or service to account for tax due. A reverse charge mechanism requires the recipient of such a supply, rather than the vendor, to account for the tax.

The document

5.2 This draft Directive would allow a change to the normal VAT rules to permit Member States to opt to apply a reverse charge mechanism until 2014 to a maximum of three categories of supplies drawn from a short list contained in the proposal. Member States would be able to specify a maximum of two supplies of goods, from mobile telephones, computer chips, perfumes and certain precious metals, together with supplies of emissions allowances forming part of the Emissions Trading Scheme under Directive 2003/87/EC. The Commission presents the proposal as part of its response to Missing Trader Intra-Community fraud. The categories selected are the supplies where the Commission has most evidence of such fraud and where, in some cases, alternative treatment already applies. A reverse charge would ensure that a seller could not disappear with tax which has been charged and paid, but not accounted for to the tax authorities.

5.3 The list of supplies proposed by the Commission is limited so as to help it to evaluate the anti-fraud and wider effects of the introduction of the reverse charges. Therefore the option offered in the draft Directive is:

- subject to conditions and reporting requirements, for both Member States and businesses, designed to help with the evaluation; and
- given the experiment represents a new and systematic departure from the normal rules, limited to December 2014.

The Government's view

5.4 The Financial Secretary to the Treasury (Mr Stephen Timms) says that the Government welcomes the production of a Community solution to Missing Trader Intra-Community fraud in relation to emissions allowances and which will allow the continuation of the Government's existing reverse charge for mobile telephones and chips. The Minister adds that in July 2009 the Government acted promptly to prevent the growth of Missing Trader Intra-Community fraud using emissions allowances by introducing a zero rate and that the proposed reverse charge will be equally effective as a solution.

5.5 However, the Minister comments further that:

- the Government has some reservations as to whether the appropriate balance has been achieved in the proposal between burdens on business and the need for information to control, monitor and evaluate the temporary arrangement;
- the draft Directive would require Member States to introduce additional reporting requirements for both the vendor and the purchaser involved — in terms of the benefit to tax authorities and the burden on business a mandatory requirement may not in all cases be justified; and
- the Government would like to explore whether the proposed commodities are the most appropriate and whether a restriction to three, from a list of five options, best serves the interests of Member States in tackling fraud and of the analysis of the experiment.

The Minister says also that there are likely to be financial implications arising from the proposal for both the tax authorities and business.

Conclusion

5.6 Any attempt to reduce Missing Trader Intra-Community fraud is welcome and we assume that there will be a willingness to adopt the legislation for this experiment without undue delay. Nevertheless, before we consider this document further we should like to hear from the Government:

- **about progress in addressing the concerns expressed on the potential reporting burden on businesses and on the choice of commodities covered by the proposal; and**
- **with more detail about possible financial implications for tax authorities and businesses.**

Meanwhile the document remains under scrutiny.

6 Financial services

(a) (30950) 13648/09 COM(09) 499	Draft Regulation on Community macro prudential oversight of the financial system and establishing a European Systemic Risk Board
(b) (30951) 13645/09 COM(09) 500	Draft Council Decision entrusting the European Central Bank with specific tasks concerning the functioning of the European Systemic Risk Board
(c) (30952) 13652/09 COM(09) 501	Draft Regulation establishing a European Banking Authority
(d) (30953) 13653/09 COM(09) 502	Draft Regulation establishing a European Insurance and Occupational Pensions Authority
(e) (30954) 13654/09 COM(09) 503	Draft Regulation establishing a European Securities and Markets Authority
(f) (30955) 13656/09 SEC(09) 1233	Commission Staff Working Document: accompanying document to the draft Regulation establishing a European Banking Authority, the draft Regulation establishing a European Insurance and Occupational Pensions Authority and the draft Regulation establishing a European Securities and Markets Authority: Possible amendments to financial Services legislation
(g) (30956) 13657/09 SEC(09) 1234	Commission Staff Working Document: accompanying document to the draft Regulation on Community macro prudential oversight of the financial system and establishing a European System Risk Board, the draft Council Decision entrusting the European Central Bank with specific tasks concerning the functioning of the European Systemic Risk Board, the draft Regulation establishing a European Banking Authority, the draft Regulation establishing a European Insurance and Occupational Pensions Authority and the draft Regulation establishing a European Securities and Markets Authority: Impact Assessment
(h) (30957) 13658/09 SEC(09) 1235	Commission Staff Working Document: summary of the impact assessment

<i>Legal base</i>	(a) and (c)-(e) Article 95 EC; co-decision; QMV (b) Article 105(6); assent; unanimity (f)-(h) —
<i>Document originated</i>	(a)-(h) 23 September 2009
<i>Deposited in Parliament</i>	(a)-(h) 30 September 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 December 2009
<i>Committee's assessment</i>	Politically important
<i>Committee's decision</i>	Not cleared; further information requested

Background

6.1 Following the financial and economic crisis the Commission has, at the behest of the European Council, been examining the need for and presenting various proposals relating to the financial services sector. In May 2009 the Commission published its ideas about legislation needed for Community regulation and supervision of financial services in its Communication *European financial supervision*.²³

6.2 In June 2009 the European Council called on the Commission to bring forward legislative proposals by early autumn 2009, covering the establishment of:

- three European Supervisory Authorities with binding mediation powers, rulemaking powers, the power to directly supervise credit rating agencies and to undertake enforcement and peer review; and
- a new European Systemic Risk Board to warn of risks.

At Annex A to this chapter is the precise text of the European Council's request.

6.3 On 15 July 2009 the City of London Corporation²⁴ published its response to the Commission Communication.²⁵ At Annex B we reproduce the introductory and welcoming "Overview", together with the following cautionary "Clarification", in the Corporation's response.

The documents

6.4 These documents are the Commission's response to the European Council's request. The draft Regulation, document (a) would establish a European Systemic Risk Board. The

23 (30660) 10511/09 + ADDs 1–2: see HC 19–xviii (2008–09), chapter 3 (3 June 2009) and *Stg Co Deb* European Committee, 29 June 2009, cols 3–24.

24 The Corporation says of itself "The City of London aims to promote and reinforce the competitiveness of the Square Mile and in particular UK-based international financial services. The City of London works closely with practitioners, trade associations and other stakeholders in order to shape the future direction of financial services policy. It focuses on issues created by EU economic, legislative, fiscal and regulatory developments which may impact or threaten to impact on the open, efficient and competitive environment for doing business in the City."

25 See http://www.cityoflondon.gov.uk/NR/rdonlyres/5D0D4E41-A9E4-4B12-9DE0-4185B68ED143/0/BC_PR_CityresponsetoCommissionCommunicationFINAL.pdf.

Board would be responsible for the macro-prudential oversight of the financial system within the Community. It is intended to prevent or mitigate systemic risks within the financial system so as to avoid episodes of widespread financial distress and contribute to a smooth functioning of the internal market. The Board's tasks would be to:

- collect and analyse all appropriate information;
- identify and prioritise risks;
- issue warnings where risks were deemed to be significant;
- issue recommendations for remedial action where appropriate;
- monitor the follow up to such warnings and recommendations;
- cooperate closely with proposed European Supervisory Authorities;
- where appropriate, provide them with the information on systemic risks required for the achievement of their tasks; and
- coordinate with international institutions, particularly the International Monetary Fund and the Financial Stability Board, as well as the relevant bodies in third countries, on matters related to macro-prudential oversight.

The Board's recommendations would not be legally binding and it would not have any power to impose measures on Member States or national authorities.

6.5 The Board would have a General Board, a Steering Committee, an Advisory Technical Committee and a Secretariat. Members of the General Board, with voting rights, would be:

- the President and Vice-President of the European Central Bank;
- the governors of the national banks;
- a member of the Commission; and
- the chairmen of the three proposed European Supervisory Authorities.

Non-voting members would be the President of the Economic and Financial Committee one high level representative for each Member State of the competent national supervisory authorities. The Chairman and Vice-Chairman of the Board would be elected by and from the members of the General Board who are also members of the General Council of the European Central Bank. Decisions of the Board would be voted by simple majority.

6.6 The members of the Steering Committee would be:

- the Chairman and Vice-Chairman of the General Board;
- five other members of the General Board elected by and from the members of the General Board who are also members of the General Council of the European Central Bank;
- a Member of the Commission;

- the chairmen of the three proposed European Supervisory Authorities; and
- the President of the Economic and Financial Committee.

6.7 The members of the Advisory Technical Committee would be:

- a representative of each national central bank and a representative of the European Central Bank;
- one representative per Member State of the competent national supervisory authority;
- one representative each of the three proposed European Supervisory Authorities;
- two representatives of the Commission; and
- one representative of the Economic and Financial Committee.

6.8 The draft Council Decision, document (b), would require the European Central Bank to provide the Secretariat for the European Systemic Risk Board. The Secretariat would:

- assist in the preparation of the Board's meetings and the collection and processing of information, including statistical information, on behalf of and for the benefit of the fulfilment of the Board's tasks;
- prepare analysis necessary to carry out the Board's tasks; and
- support the Board's Advisory Technical Committee.

6.9 The draft Regulations, documents (c)-(e) would establish three new European Supervisory Authorities — respectively a European Banking Authority, a European Insurance and Occupational Pensions Authority, and a European Securities and Markets Authority. The proposals include significant detail of how the new bodies would operate, be staffed and be funded, and of their powers and roles. The key proposed powers and roles are:

- rulemaking — the authorities would develop technical standards in all sectors (with current legislation being amended to set out where they can make rules);
- enforcement — the authorities would have powers to ensure consistent application of Community rules', in a process similar to the current infraction process, except that it would be the authority finding a Member State or supervisor in non-compliance with the law;
- emergency powers — the authorities would have powers over firms and supervisors in emergency situations;
- direct supervisory powers — the authorities would have powers to directly supervise cross-border institutions where provided for in Community legislation;
- settlement of disagreements — the authorities would have powers to mediate in disputes between supervisory authorities, being able to settle disputes and decide on an appropriate outcome;

- peer review — the authorities would be required to conduct peer review of supervisors and ensure a common supervisory culture;
- other — the authorities would maintain a database of supervisory information, take part in colleges of supervisors, have an international role and provide information to the European Systemic Risk Board; and
- safeguard clause — the mediation and emergency powers would be subject to a safeguard clause, whereby a Member State could opt-out of an authority decision if it believed the decision impinged on its fiscal responsibilities, but subject to approval by a qualified majority vote in the Council.

The authorities would take over the role of the Lamfalussy Level 3 Committees.²⁶

6.10 Each authority would have:

- a Board of Supervisors consisting of the heads of the relevant supervisory authority in each Member State, each being able to vote and a non-voting chairman and representatives of the Commission, the European Central Bank, the European Systemic Risk Board and each of the other two authorities. Decisions would be taken by qualified majority voting for rulemaking and budgetary matters, for all other decisions a simple majority would be required;
- a Management Board consisting of the chairman, a representative of the Commission and four other others elected by and from the Board of Supervisors. Decisions would be by simple majority vote;
- a chairman appointed by the Board of Supervisors, with the approval of the European Parliament; and
- an Executive Director appointed by the Board of Supervisor.

6.11 The three authorities would have, also and jointly, a Board of Appeal, to consider appeals against their decisions, consisting of two members appointed by each of the Boards of Supervisors from short-lists proposed by the Commission. Decisions on appeals would be adopted by at least four of the six members of the Board of Appeal.

6.12 The legislation proposed in documents (a)-(e) would apply to the European Economic Area.

26 The Lamfalussy processes are a four-level approach to regulation of the European financial services industry. At the first level the European Parliament and Council adopt legislation, setting framework principles and the Commission's implementing powers, on the basis of Commission proposals on which it is advised by sector-specific committees of high-level representatives of Members States chaired by the Commission. At the second level sector-specific committees of national regulators prepare and advise on implementing measures to be adopted by the Commission. At this level the committees of high-level representatives perform a "comitology" role (comitology procedures regulate exercise by the Commission of implementing powers conferred on it by the Council and the European Parliament and are essentially intended for detailed measures to implement Community legislation) of voting on the Commission's implementing measures before their adoption. At the third level the committees of national regulators work on strengthening coordination of regulation, for instance by establishing common interpretations of legislation and peer group review of regulatory practice. At the fourth level the Commission strengthens compliance with and enforcement of EU rules.

6.13 In the Commission Staff Working Document, document (f), the Commission considers possible amendments to financial services legislation to sit alongside creation of the three European Supervisory Authorities. The amendments outlined, which it is expected the Commission will propose at the end of October 2009, are divided into four broad categories:

- technical standards — where the Commission will propose the new authorities have powers to develop technical standards in specific areas of the legislation;
- direct supervision of credit rating agencies — where the Commission will propose the Regulation on Credit Rating Agencies gives the new European Securities and Markets Authority general competence in matters relating to registration and on-going supervision of these agencies;
- settlement of disagreements — where the Commission will propose the new authorities have a role in settling supervisory disputes where the legislation requires cooperation, coordination or joint decision making; and
- general amendments — where the Commission will propose ensuring the legislation accurately refers to the new authorities instead of the Lamfalussy Level 3 Committees they will replace, so as to ensure they receive information, to give them roles in interacting with third countries and to require them to keep registers and lists of financial institutions and actors in the Community.

The annex to the working document is an indicative list of possible amendments where the new authorities could be given a role in developing technical standards.

6.14 The Commission Staff Working Documents, documents (g)-(h), are the Commission's impact assessment for its five legislative proposals, documents (a)-(e), and its summary of that assessment.

The Government's view

6.15 The Financial Services Secretary to the Treasury (Lord Myners) first tells us that the Government believes that the Commission proposals are justified under the principle of subsidiarity, saying that:

- identification of systemic risks in the Community financial system, and issuing of warnings and recommendations to address such risks, has to be done supranationally; and
- the need for supranational activity is relevant also to the tasks of the new supervisory authorities -- of harmonising regulation and supervisory practice and raising standards across the Community.

6.16 In relation to creation of a European Systemic Risk Board and three new European Supervisory Authorities, documents (a)-(e) the Minister then says that:

- the Government supports the broad objective of the legislative proposals — that is, to raise the quality and consistency of national supervision, to improve rulemaking

and enforcement in the Community and to better identify risks in the financial system;

- it strongly supports, in particular, measures to improve supervision and regulation in the Community by establishing a single rulebook;
- it welcomes the new European Supervisory Authorities’ strong role in rulemaking, which in doing they will need to consult and conduct cost benefit analysis;
- it welcomes the authorities’ strong role in improving the quality of supervision, through peer review and strong enforcement action;
- these authorities should improve stability by settling disputes through a binding mediation process and the new European Systemic Risk Board will better warn Member States of risks;
- in some instances, the proposals appear to go further than what was agreed by the June 2009 European Council — so the Government will seek to bring them more into line with the Conclusions, in cases where they diverge and where practicable;
- specifically, the European Council agreed that decisions by the new bodies could not impinge in any way on the fiscal responsibilities of Member States — so the Government will seek to ensure that no European Supervisory Authority decisions can have a fiscal impact on a Member State. In practice this means some improvements to the fiscal safeguard and limiting direct supervision to credit rating agencies, as agreed by Heads of Government;
- the provisions for emergency roles need to be assessed to ensure they improve the Community and Member States’ ability to respond to a crisis — so the Government will be examining this particularly carefully; and
- “the Government will also seek to ensure that the new bodies operate in a legal way, reflecting the institutional balance in Europe, and respecting the legal judgments of the ECJ [European Court of Justice]. Therefore we [the Government] will work to ensure that the legal basis for the proposals, as well as the powers they grant to the Commission and the new authorities, are correct and legal within the Treaty.”

6.17 Turning to the Commission Staff Working Document on possible amendments to financial services legislation, the Minister comments that:

- the Government supports the European Supervisory Authorities having a wide-ranging role in developing technical standards and in providing a home Member State/host Member State dispute resolution mechanisms;
- it supports the authorities having a role in supervising credit rating agencies; and
- although the document is not a formal legislative proposal, it usefully gives an indication of where and how the proposed European Supervisory Authorities’ roles will take effect.

6.18 On the financial implications of the proposals the Minister says that:

- it is envisaged that the staff of each the European Supervisory Authorities will rise to about 90;
- it is proposed that the cost be divided between the Community budget and Member States;
- since the authorities will be exercising powers over national supervisors, it is possible that supervisory costs among national supervisors will also increase to deal with the greater level of coordination required, including contributing to peer review, being a party to binding mediation, helping draft European Supervisory Authority rules and seconding staff to the authorities;
- it is not possible to predict whether the rules that the authorities make will lead to a net increase or reduction in costs on firms;
- it might lead to a reduction if a single rule-book were the result and this would in particular benefit firms that undertake cross border business;
- if, however, the rules were disproportionate, were not outcomes focused and were not informed by the economic analysis of markets, the costs might outweigh the benefits;
- in this regard, it will be important to ensure that the European Supervisory Authorities are required to analyse the costs and benefits of their proposed rules; and
- the purpose of establishing a Community system of financial supervision is also to raise supervisory standards across the European Economic Area through measures such as peer review, investigation of breaches of Community law, and binding mediation — if these provisions have their intended effect, the risk to UK consumers and tax-payers of poor supervisory standards in other European Economic Area states should be reduced.

6.19 Finally, the Minister tells us that:

- Council Working Groups have been examining the legislative proposals, documents (a)-(e) up until 23 October 2009;
- the legislative proposals are to be discussed at ECOFIN Council meetings on 20 October and 2 December 2009 and European Council meetings on 28–29 October and 10–11 December 2009;
- the Swedish Presidency is looking for Council agreement on the proposed legislation by the end of the year;
- the European Parliament process will take longer [we understand being unlikely to start before the first quarter of 2010]; and
- agreement of the package between the Council and the European Parliament “is likely to be by Easter 2010.”

Conclusion

6.20 The proposals in documents (a)-(e) and the likely proposals in document (f) are likely to lead to important changes to the regulatory and supervisory regime for the Community's financial services sector. However, although the need for an emergency response to the immediate consequences of the financial, and wider economic, crisis has been well understood, we are concerned at what appears to us to be a precipitate rush to finalise this proposed legislation. Rushed legislation proves all too often to be poor legislation and we would expect the Government to insist that these proposals are properly negotiated to a sensible timetable.

6.21 Such a timetable would allow, amongst other matters, proper national parliamentary scrutiny. We, for instance, are likely to recommend these documents for debate, once we have had elucidation from the Government on a number of points. These matters on which we wish to have further information from the Government are:

- the Minister addresses the issue of subsidiarity in his Explanatory Memorandum, but is the Government convinced of the proportionality of the proposed measures;
- is the Government satisfied, particularly in the light of the importance of the financial services sector for the UK economy, that the architecture of the proposed new bodies, including their membership, particularly of the Steering Committee of the European Systemic Risk Board, members' voting weights and the relationships of the European Court of Justice to these bodies are acceptable;
- does the Minister's use of the qualification "where practicable", in relation to bringing the present proposals into line with what has been agreed by the European Council, mean that the Government is planning to concede points previously won;
- what is the purport of the Minister's comment about ensuring "the new bodies operate in a legal way" — what might be illegal about the operations proposed;
- are members of the European Economic Area content to be subjected to bodies on which they have no representation;
- to what extent does the Government agree with the "clarifications" in the City of London Corporation's response to the Commission Communication *European financial supervision* and to what extent have these points been met in the proposals; and
- do the proposals fit in with what is being established at the international level and in third countries with significant financial services sectors?

6.22 The debate we are likely to recommend should be on the Floor of the House and should exceptionally last for three hours. It should take place, not only in the light of our report of the responses to the points we raise here, but with the benefit of the views of the Treasury Committee on the proposals. Ideally, if the timetable allows, as it

should, these views might flow from a formal inquiry. But we would welcome whatever Opinion the Treasury Committee is able to offer.

Annex A: Extract from the Presidency Conclusions of the European Council, 18–19 June 2009

“The financial crisis has clearly demonstrated the need to improve the regulation and supervision of financial institutions, both in Europe and globally. Addressing the failures exposed by the present crisis will contribute to preventing future ones. It will also help restore confidence in the financial system, in particular by enhancing the protection of depositors and consumers, and will thus facilitate the recovery of the European economy.

“Significant progress has already been achieved on improving the EU’s regulatory framework, in particular with the agreement reached on the Capital Requirements Directive, the Credit Rating Agencies Regulation and the Solvency II Directive. The European Council calls for further progress to be made in the regulation of financial markets, notably on the regulation of alternative investment funds, the role and responsibilities of depositaries and on the transparency and stability of derivatives markets. The European Council also calls on the Commission and the Member States to accelerate their work and make rapid progress on countering the pro-cyclical effects of regulatory standards, e.g. as regards capital requirements and impaired assets. It also invites the Member States to take action rapidly on executives’ pay and on remunerations in the financial sector, taking account of the recommendations made by the Commission.

“The communication presented by the Commission on 27 May 2009²⁷ and the Council conclusions of 9 June 2009²⁸ set the way forward to the establishment of a new framework for macro- and micro-prudential supervision. The European Council supports the creation of a European Systemic Risk Board which will monitor and assess potential threats to financial stability and, where necessary, issue risk warnings and recommendations for action and monitor their implementation. The members of the General Council of the ECB will elect the chair of the European Systemic Risk Board

“The European Council also recommends that a European System of Financial Supervisors, comprising three new European Supervisory Authorities, be established aimed at upgrading the quality and consistency of national supervision, strengthening oversight of cross-border groups through the setting up of supervisory colleges and establishing a European single rule book applicable to all financial institutions in the Single Market. Recognizing the potential or contingent liabilities that may be involved for Member States, the European Council stresses that decisions taken by the European Supervisory Authorities should not impinge in any way on the fiscal responsibilities of Member States. Subject to this and supplementary to the Council conclusions of 9 June 2009, the European Council agrees that the European System of Financial Supervisors should have binding and

27 See footnote 23.

28 See http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ecofin/108392.pdf.

proportionate decision-making powers in respect of whether supervisors are meeting their requirements under a single rule book and relevant Community law and in the case of disagreement between the home and host state supervisors, including within colleges of supervisors. ESAs should also have supervisory powers for credit rating agencies. The European Council further emphasizes the importance of ensuring that the new framework supports sound and competitive EU financial markets.

“The European Council welcomes the Commission’s intention to bring forward, by early autumn 2009 at the latest, the legislative proposals to put in place the new framework for EU supervision, fully respecting the balance of competences and financial responsibility and taking full account of the Council conclusions of 9 June 2009. These proposals need to be adopted swiftly in order for the new framework to be fully in place in the course of 2010. The European Council will take stock of progress at its meeting in October 2009 and will if necessary provide further direction.

“It is equally important to further advance work on building a comprehensive cross-border framework for the prevention and management of financial crises. The European Council invites the Commission to make concrete proposals for how the European System of Financial Supervisors could play a strong coordinating role among supervisors in crisis situations, while fully respecting the responsibilities of national authorities in preserving financial stability and in crisis management in relation to potential fiscal consequences and fully respecting central banks’ responsibilities, in particular with regard to the provision of emergency liquidity assistance.

“The European Union will continue to play a leading role at the global level, in particular within the G20. It calls on its international partners to implement fully the commitments given in Washington and London, in particular as regards providing additional resources to international financial institutions and accelerating the reform of the financial and regulatory framework. The European Council invites the Council and the Commission to ensure that a coordinated EU position is thoroughly prepared in advance of the 24/25 September 2009 G20 Summit. It also calls on the Presidency and the Commission to take up the issue of global regulation and supervision systematically in their contacts with international partners, including at the highest level.”

Annex B: Extract from the City of London Corporation’s response of 15 July 2009 to the Commission Communication “European financial supervision”

“Overview:

“1. We support the broad objectives set out by the Commission: a more efficient framework for financial supervision, enhanced financial stability, greater safeguards of the interests of consumers and investors, increased competitiveness of EU financial markets and more integration of EU financial markets.

“2. In creating the new structures, it is essential that policy makers remain focused on the outcomes, such as better and more consistent supervision. Key objectives must be to support open markets, to increase competition by encouraging a level playing field and to ensure as far as possible consistency of arrangements globally, regionally and locally, recognising that so many EU firms and markets, as well as their users, have a global presence.

“3. Before we set out our detailed commentary and proposals for further developing the objectives of the Communication, we wish to identify several areas where we believe further clarification is required as the legislative proposals to bring effect to the new structures are developed over the summer

“Clarification:

“4. It is essential to be clear on the distinction between supervision and regulation. Regulation — the act of agreeing and setting new rules, together with amending existing regulation — should focus on delivering convergence towards a consistent single rule book. Supervision on the other hand, which involves the oversight of individual firms, must allow for a (high) degree of professional judgement to understand the circumstances of specific firms. That said, supervisors need to converge their supervisory practices and ensure that like firms are treated similarly.

“5. In the case of “Disagreement between national supervisors” (point 4.2 (2)) it will be important to specify what sort of “diverging opinions” would be covered. The scope of “Full supervisory powers for some specific entities” (point 4.2 (4)) also needs clarification. More fundamentally still is the definition and concept of “binding cooperation” in relation to cooperation between the European Systemic Risk Board and the European System of Financial Supervisors.

“6. We would also question whether it is appropriate for representatives from the European Supervisory Authorities to be present on supervisory colleges.”

7 EURODAC

(a) (30917) 13263/09 COM(09) 342	Draft Regulation concerning the establishment of “EURODAC” for the comparison of fingerprints for the effective application of the Regulation establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection (Recast).
+ ADDs 1–2	Commission staff working documents: impact assessment and summary of assessment
(b) (30919) 13322/09 COM(09) 344	Draft Council Decision on requesting comparisons with EURODAC data by Member States’ law enforcement authorities and Europol for law enforcement purposes

<i>Legal base</i>	(a) Article 63(1)(a) EC; co-decision; QMV (b) Articles 30(1)(b) and 34(2)(c) EU; consultation; unanimity
<i>Documents originated</i>	(Both) 10 September 2009
<i>Deposited in Parliament</i>	(a) 18 September 2009 (b) 21 September 2009
<i>Department</i>	Home Office
<i>Basis of consideration</i>	(Both) EM of 7 October 2009
<i>Previous Committee Report</i>	(Both) None; but see (30256) 16934/08: HC 19–iv (2008–09), chapter 4 (21 January 2009)
<i>To be discussed in Council</i>	No date set
<i>Committee’s assessment</i>	(Both) Politically important
<i>Committee’s decision</i>	(Both) Not cleared; further information requested

Introduction

7.1 EURODAC is an EC database containing the fingerprints of applicants for asylum, third-country nationals and stateless people who have been apprehended in connection with an illegal crossing of a Member State’s borders and people who have been found illegally present in a Member State. It is mainly used to help decide which Member State should examine an application for asylum by checking whether the applicant’s fingerprints match those of someone who has previously or simultaneously applied to another Member State. The Commission proposes this Regulation and Decision to update and improve the existing EURODAC Regulation; give Europol and national law enforcement authorities access to EURODAC and specify the conditions for their access; and make provision for the protection of personal data.

7.2 Paragraphs 7.3 to 7.13 of this Report provide the background to the proposals. The subsequent paragraphs summarise the proposals and the Government's views on them and sets out our conclusion.

Legal background

7.3 Title IV the EC Treaty (Articles 61 to 69) makes provision on visas, asylum, immigration and other policies related to the free movement of persons. Article 69 and Protocol 4 to the EC Treaty provide that the UK is not bound by any legislation adopted under Title IV unless the Government of the UK expressly opts into it.

7.4 Article 63(1)(a) of the EC Treaty authorises the Council of Ministers to adopt measures on the criteria and mechanisms for deciding which Member State is responsible for examining an application for asylum made by a third country national in a Member State.

7.5 Article 29 in Title VI of the EU Treaty says that the EU's objective includes providing citizens with a high level of safety in an area of freedom, security and justice through common action by the Member States in the field of police and judicial cooperation in criminal matters. Article 30(1)(b) of the EU Treaty provides that common action in police cooperation includes the collection, storage, processing and exchange of relevant information, subject to appropriate provisions to protect personal data. Article 34(2)(c) of the EU Treaty authorises the Council to adopt Decisions for any purpose consistent with the objectives of Title VI.

Existing EU legislation on access to national fingerprint databases

7.6 In most, if not all, Member States, the law enforcement authorities of a Member State have access to the national database containing asylum seekers' fingerprints and their asylum applications.

7.7 The Prüm Decision of 2008²⁹ empowers a law enforcement authority in one Member State to search another Member State's "AFIS" (that is, the automated fingerprint identification system established in that State for the prevention and investigation of criminal offences) to see if it contains a match with the prints held by the enquiring authority. Unless the enquiring authority has reason to expect that the AFIS of a particular Member State is likely to contain a match, it will not know which country's databases to search. Moreover, a law enforcement authority seeking a match for the fingerprints of an asylum seeker will not obtain a match from another Member State's AFIS unless that country has chosen to store the fingerprints of asylum seekers on its AFIS.

7.8 Similarly, unless it knows in advance that a particular Member State is likely to hold a matching fingerprint, an enquiring law enforcement authority will not know which country's database to search for a match using the provisions of the Framework Decision of 2006 on simplifying the exchange of information between law enforcement authorities.³⁰

29 Council Decision 2008/615/JHA: OJ No. L 210, 6.8.08, p.1.

30 Framework Decision 2006/960/JHA: OJ No. L 386, 29.12.06, p.89.

Access to European databases on asylum, immigration and visas

7.9 In 2005, the Commission published a Communication which, for the purpose of preventing and investigating terrorism and serious crimes, advocated giving Member States' law enforcement authorities access to three European databases containing personal information about asylum (EURODAC), immigration (the Schengen Information System — SIS) and visas (the Visa Information System — VIS).³¹ The Communication was debated in the European Standing Committee on 27 March 2006.

7.10 In 2008, the Council adopted a Regulation giving Europol and law enforcement authorities access to VIS data about applications by third-country nationals for short-term visas to enter the Schengen area.³²

Previous draft of the EURODAC Regulation

7.11 Last January, we considered the Commission's proposal for the repeal of the EURODAC Regulation of December 2000 and its replacement by a new one.³³ While the draft Regulation contained some new provisions, most of its Articles re-enacted, with amendments, the substance of the current EURODAC legislation. For example, the draft Regulation:

- widened the purpose of EURODAC to include the provision of assistance in determining which Member State should examine applications for subsidiary protection (at present, it is confined to assisting in the determination of responsibility for examining applications for refugee status);
- provided for a Management Authority, funded from the EU budget, to be responsible for the operational management of EURODAC;
- gave Member States up to 48 hours to transmit to EURODAC the fingerprints of applicants for asylum and third country nationals and stateless people apprehended in connection with an irregular crossing of a Member State's borders (at present, no time limit is specified);
- provided that, within a year of the collection of the fingerprints of people apprehended in connection with an irregular crossing, the data must be erased from the EURODAC database (at present, it is deleted after two years); and
- provided additional safeguards for data subjects and made provision to reflect the responsibilities of the European Data Protection Supervisor for oversight of EURODAC.

7.12 The Minister of State at the Home Office (Mr Phil Woolas) told us that the Government welcomed some of the Commission's proposals, such as the extension of EURODAC to people applying for subsidiary protection and the additional safeguards for

31 (27064) 15122/05: see HC 34–xv (2005–06), chapter 5 (18 January 2006).

32 Council Regulation (EC) No. 767/2008: OJ No. L 218.13. 8.08, p.60.

33 (30256) 16934/08: see HC 19–iv (2008–09), chapter 4 (21 January 2009).

data subjects. But it had reservations about or wanted clarification of some of the other provisions.

7.13 We concluded that there appeared to be no doubt about the practical value of EURODAC. We welcomed the Commission's aim of making it yet more useful and efficient. Most of the changes proposed in the draft Regulation appeared to be minor and desirable but we could understand the Government's practical reservations about some of them. Because of its link to an important proposal to revise an EC Regulation on the determination of the Member State responsible for examining an application for international protection, we recommended both documents for debate in European Committee B. The debate was held on 10 February 2009. In March, the Government decided to opt into the draft Regulation (see paragraph 7.3 above).

Document (a): revised proposal for a new EURODAC Regulation

7.14 The Commission now proposes a revised draft of the new Regulation:

- to incorporate many of the amendments proposed by the European Parliament when it considered the previous draft in May ;
- to incorporate minor changes agreed in the course of the Council's negotiations on the previous draft; and
- to give Europol and Member States' law enforcement authorities access to EURODAC data for the purposes of the prevention, detection and investigation of terrorist and other serious criminal offences.

7.15 Most of the amendments derived from the European Parliament's amendments are editorial or clarify the text of the draft Regulation. But some are significant. For example, the Commission accepts the European Parliament's proposal that the deadline for taking and sending fingerprints should be 72 hours, rather than 48 hours as proposed in the previous draft.

7.16 The proposed extension of access to Europol and the law enforcement authorities is consistent with the Commission's Communication of 2005 (see paragraph 7.9 above). In June 2007, the JHA Council asked the Commission to propose legislation to grant the extension of access. The proposed extension closes the gap left by the present EC legislation on law enforcement authorities' access to information (see paragraph 7.7 and 7.8 above).

The Government's view on document (a)

7.17 In his Explanatory Memorandum of 7 October, the Minister tells us that the Government is content with most of the amendments the Commission has made to the previous draft and included in document (a). For example, it welcomes the proposal that fingerprints should be transmitted to the EURODAC Central System within 72 hours, rather than 48 hours. The Government also supports the proposal to give Europol and national law enforcement authorities access to EURODAC.

7.18 The Minister notes that the previous draft of the Regulation included provision to reduce from two years to one the maximum storage period for data on third-country

national or stateless people apprehended in connection with the irregular crossing of the borders. The Commission has retained the reduced period in the revised draft .

7.19 The Minister says that:

“The Commission argues that after one year the data loses its relevance for the purpose of the facilitation of the Dublin Regulation.³⁴ This position has been supported by the European Data Protection Supervisor on the basis that it is proportionate. As stated previously in [the Minister’s Explanatory Memorandum on the previous draft of the Regulation] the Government acknowledges that this reduced storage period proposal mirrors that of responsibility for cases falling under the Dublin Regulation on the basis of illegal entry. However, we note that Member States are currently notified of ‘hits’³⁵ beyond the period of one year and in our experience later ‘hits’ provide information that has been significant in addressing credibility issues about the claim for protection. We also believe that the new aspects of the proposal to permit law enforcement access strengthen the argument to retain the longer two year storage period.

“We have made our reservations on the proposed reduced storage period known in negotiations on the December proposal, with support from other Member States. We will continue to press our concerns in negotiations in support of a longer storage period of two years.”³⁶

7.20 The Government has not yet decided whether to opt into the revised draft Regulation. The Minister notes, however, that the UK would automatically be bound by the Council Decision (document (b)) if it were adopted because the legal base for it is in Title VI of the EU Treaty. The Government will need to consider, therefore, to what extent it would be feasible to agree to the Council Decision if the Government were not to opt into the draft Regulation.

Document (b): the draft Decision

The draft Decision is consequential on the draft Regulation. It lays down the conditions under which Europol and the designated authorities of the Member States³⁷ may request a comparison of fingerprint data with fingerprints stored on EURODAC. It also specifies rules for the protection of personal data.

The Government’s view on document (b)

7.21 In his Explanatory Memorandum of 7 October, the Minister says that the Government supports the draft Decision. He comments that:

34 The Regulation on the determination of the Member State responsible for the examination of an application for asylum.

35 A “hit” is a match between the fingerprints taken by the Member State and those held in the EURODAC database.

36 Minister’s Explanatory Memorandum, paragraphs 34 and 35.

37 Designated authorities are defined as the authorities of Member States which are responsible for the prevention, detection or investigation of terrorist and other serious criminal offences.

“The proposal is attractive to law enforcement authorities because it will make use of an existing information system rather than creating a new one. Furthermore, the Commission has in its proposal put in place safeguards to ensure that access and consultation of EURODAC in law enforcement cases is specific and proportional and relates only to serious offences and terrorism. Chapters I and II of the Decision ensure that Member States’ designated competent authorities’ rights of access should be proportionate and relate to the prevention, detection or investigation of terrorist or serious crime. The UK concurs with this safeguard in that the rights of the individual are upheld and that EURODAC is not perceived as being a criminalising database.”³⁸

Conclusion

7.22 We are grateful to the Minister for his comprehensive and helpful Explanatory Memorandum on documents (a) and (d).

7.23 EURODAC was not created for the purpose of preventing, detecting or investigating terrorist and other serious criminal offences. The question whether it is justifiable to use a database for purposes other than those for which it was originally intended was considered in March 2006 during the debate in the European Standing Committee on the Commission’s Communication on providing law enforcement authorities with access to SIS, VIS and EURODAC (see paragraph 7.9 above). We see no need to repeat the arguments here.

7.24 We note that the Government has not yet decided whether to opt into the draft Regulation. We ask the Minister to tell us the eventual decision and the reasons for it. We should also be grateful for progress reports on the negotiations on documents (a) and (b). Meanwhile, we shall keep both documents under scrutiny.

38 Minister’s Explanatory Memorandum, paragraph 41.

8 Transfer of criminal proceedings

(a)	
(30729)	Draft Council Framework Decision on transfer of proceedings in Criminal Matters
11119/09	
—	
+ ADD 1	Draft Framework Decision on transfer of proceedings in Criminal Matters — Explanatory report
(b)	
(30935)	Draft Council Framework Decision on transfer of proceedings in Criminal Matters
—	
—	

<i>Legal base</i>	Articles 31(1)(a) and 34(2)(b) TEU; consultation; unanimity
<i>Deposited in Parliament</i>	(a) 2 July 2009; (b) 24 September 2009
<i>Department</i>	Justice
<i>Basis of consideration</i>	EM of 6 October; Minister's letter of 8 October
<i>Previous Committee Report</i>	HC 19–xxv (2008–09), chapter 8 (21 July 2009)
<i>To be discussed in Council</i>	30 November 2009
<i>Committee's assessment</i>	Legally important
<i>Committee's decision</i>	(a) Cleared; (b) Not cleared; further information requested

Background

8.1 The draft Framework Decision is an initiative of 15 Member States³⁹ to establish a common set of rules within the EU for the transfer of criminal proceedings between Member States. The Presidency aims to reach political agreement on it at the JHA Council on 30 November.

8.2 We first reported on it in July,⁴⁰ and had the following reservations. We were not aware of any evidence for the necessity for this legislation; we considered that it overlapped confusingly with the recently adopted Framework Decision on conflicts of jurisdiction in criminal proceedings; we raised an alarm over the proposed transfer of jurisdiction between Member States to prosecute an offence in circumstances where the offence was not recognised as criminal under the law of the receiving State (as set out in Article 5); and we regretted the lack of emphasis in the draft on defence rights.

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

40 See headnote.

The Minister's letter of 8 October

8.3 The Parliamentary Under-Secretary of State at the Ministry of Justice (Lord Bach) writes in response to our concerns. (A revised version of the draft instrument was produced by the Council on 21 September and has been deposited in Parliament. The relevant Explanatory Memorandum is considered further below.)

Need for legislation

8.4 We asked to be provided with details of the assessments undertaken by Member States demonstrating that the *status quo* on the transfer of criminal proceedings was unsatisfactory and that EU legislation was necessary. The Minister reports that on 11 March 2009 the General Secretariat distributed a questionnaire drawn up by the then incoming Swedish Presidency on the practice and experience of national authorities when dealing with transfer of criminal proceedings. Responses to the questionnaire revealed the different mechanisms currently used by Member States including the European Convention on Mutual Assistance in Criminal Matters 1959, the Convention on Mutual Assistance in Criminal Matters between the member States of the European Union (2000 EU MLA convention), the European Convention on the Transfer of Proceedings in Criminal Matters 1972 and bi-lateral agreements. The most common problems with current procedures cited in response to the questionnaire related to lack of communication between Member States prior to a transfer, lack of information on the results of the transfer, difficulty receiving an answer from the transferring authority and the delay that surrounded many replies. These problems persuade the Minister that there is potential utility in an appropriately framed Transfer of Proceedings Framework Decision that focuses on overcoming problems surrounding transfer.

Overlap with the Framework Decision on Conflicts of Jurisdiction in Criminal Proceedings

8.5 We asked for clarification of the distinction between the proposed legislation and the recently adopted Framework Decision on conflicts of jurisdiction. We were concerned that both legislate for transfer of proceedings in cases of double jeopardy. This, the Minister says, is not strictly the case. Whilst both instruments look to promote co-operation between Member States, which will help to prevent occurrences of double jeopardy, there are important distinctions. The Framework Decision on Conflicts of Jurisdiction is very focused in its scope. It deals with instances where there are ongoing parallel proceedings in relation to the same facts involving the same person. The aim of the Framework Decision on conflicts of jurisdiction is wider: to ensure that a Member State shares information with another Member State if it believes that the latter is conducting parallel proceedings. The intention is to avoid adverse consequences arising from the existence of such proceedings.

8.6 The Minister addresses the point made by the Committee at paragraph 8.34 of its previous Report on problems caused by having different consultation procedures under each Framework Directive. He informs us that negotiations are still on-going and the method of consultation is under discussion. He will ask officials to give thought to the Committee's concerns on consultation.

Transfer of competence to prosecute

8.7 We asked the Minister why the UK did not ratify the 1972 Council of Europe Convention on the Transfer of Criminal Proceedings, as the mechanism for the transfer of competence in Article 5 of the draft Framework Decision was said to be based on this Convention. The Minister replies that officials have attempted to find background papers relating to the UK's position on the 1972 Convention but unfortunately have not been able to find discussion of why the UK did not ratify. He can, however, surmise that the chief obstacle would have been the same as today; that the provision on competence runs contrary to the general position taken by the UK, (and indeed other common law countries) that territory should be the foundation of our jurisdictional rules.

8.8 We also asked whether the provision on competence was consistent, firstly, with national criminal law and, secondly, with the requirement for double criminality in Article 11. The Minister replies that, as currently drafted, the Government does not believe Article 5 is consistent with national criminal law, and new legislation would certainly be required to implement it.

8.9 In relation to double criminality, the Minister explains that officials are continuing to explore Article 11 and its relationship with Article 5 during the working groups as these two Articles need to be read together.

8.10 We stated that we could not conceive of situations in which transferring jurisdiction under Article 5 of the Framework Decision would improve the efficient and proper administration of justice. The Minister responds that Eurojust has cited examples where there have been British holiday makers in Greece or Spain who have attacked another British holiday maker, all the witnesses are British and have since returned to the UK. In these cases there may well be utility in being able to prosecute in the UK, although the exact circumstances would need to be examined carefully.

Defence Rights

8.11 In Article 8 we thought it should be obligatory for the national authority to inform a suspect that a request for transfer of proceedings has been made. The Minister says that the Government is happy with the current wording that states “where appropriate” a suspect will be informed. The reason the Government thinks it is important to look at whether informing the suspect at that stage is appropriate, rather than making it obligatory in all cases, is because the Framework Decision might apply from investigative stages onwards. In the early stages it could be the suspect is not aware of ongoing investigations and informing the suspect could jeopardise the relevant operation. The risk of absconding would also increase in some cases. It is important therefore that discretion is built into the provision. This discretion must, however, be applied responsibly.

8.12 We also felt that the Defendant's rights should be set out more fully. The Government considers the Article strikes the right balance in which matters of detail and the particular domestic procedures are left to Member States to take forward.

8.13 We were unclear about what was meant by “if the suspected person presents an opinion”. The Minister replies that it is anticipated that if the wording of this Article

remains the same then where the defendant is informed of a request for transfer any comment they choose to make would then be relayed from the transferring State to the receiving State.

Deposit of EU documents

8.14 We asked the Minister to explain why the Council Explanatory Report, which originated on the 3 July, was only deposited on the 20 July. He replies that the Explanatory Report was unusually not published at the same time as the Framework Decision and was received after the Government had deposited the draft Framework Decision in Parliament. It was then an unfortunate oversight that this second document was not deposited. He offers his apologies for this oversight.

The Minister's Explanatory Memorandum of 6 October

Recitals

8.15 Recital 9bis explains that transfer may take place at various stages of proceedings, pre-trial and trial stage. The operative text has been amended to reflect this as well by amending wording in Articles 7 and 8 to refer to the suspected or accused person (it had previously just referred to the suspected person.) The Government considers this clarification in the text, supported by 9bis, is helpful in articulating the scope of the Framework Decision.

Recital 13bis and 13ter deal with victims. 13bis flags up an existing Framework Decision (2001/220/JHA on the standing of victims in criminal proceedings) and 13ter confirms that the Framework Decision should not be interpreted as preventing Member States from granting more extensive rights under national law. As this does not purport to create new rights, and merely explains the purpose of the instrument is not to restrict Member States in that respect, the Government is content.

Chapter 1: General Provisions

8.16 Article 5 deals with competence. The purpose of this Article is to ensure the Member State receiving the transfer has jurisdiction (competence under the Framework Decision) to prosecute under its national law any offence which another Member State has competence to prosecute. The Article is also now tied to the circumstances set out in Article 7.2 and encompassed within one provision. The Government continues to have strong reservations about this Article as it would run contrary to the UK's normal approach to jurisdiction.

Chapter 2 Transfer of Proceedings

8.17 Article 7 has been amended to split the criteria for requesting transfer between instances when a State would already have competence to take the case and cases when competence is based on Article 5. Article 7.1 sets out the conditions for requesting transfer when the receiving Member State already has jurisdiction. The transferring State would need to be satisfied the proceedings would improve an efficient and proper administration

of justice. Conditions (a)-(h) set out examples of situations that might lead to an improvement in the efficient and proper administration of justice. These are illustrative and as existing competence is required this would not be a concern.

8.18 Article 7.2 sets out the conditions for requesting a transfer when competence is based on Article 5. The conditions are that transfer would improve the efficient and proper administration of justice and one or more specific criteria are fulfilled. As currently drafted the Government believes that the specific criteria given under 7.2 are too wide and so would support the narrowing of these criteria. The Government believes that it is important that strong reasons for requesting a transfer are demonstrated.

8.19 In the current draft Article 11 has changed from just dealing with double criminality and is now headed “conditions for acceptance of transfer”. 11.1 deals with double criminality, as before, and states that a request for transfer shall not be accepted if the act underlying the request for transfer does not constitute an offence under the law of the receiving state. 11.2 goes on to add that transfer will not be accepted if criminal proceedings cannot be brought against the suspect or accused person under the national law of the receiving Member State. These are important qualifications but need to be read in conjunction with Article 5. Article 12 is different from the previous version in that it sets out a single, but general ground for refusing a transfer; transfer can be refused if it is not considered to improve the efficient and proper administration of justice. The Government welcomes this change as it gives Member States a wider degree of control over refusing cases that will not improve the efficient and proper administration of justice. Under Article 15 Member States may call on the assistance of Eurojust or the European Judicial Network when determining what constitutes efficient and proper administration of justice.

Chapter 4 Final Provisions⁴¹

8.20 Article 22bis amends the previous draft to insert a provision on review of the application of the Framework Decision in Member States. The Government is content with this insertion

Conclusion

8.21 We thank the Minister very much for his letter and Explanatory Memorandum.

8.22 Evidence of necessity is fundamental to the subsidiarity test the Committee applies in assessing EU proposals. (For future reference, we would be grateful if evidence which justifies the need for legislation could be fully set out in the initial Explanatory Memorandum on a proposal.) We take note of the evidence to which the Minister refers in his letter, and also his comments that it is practical, rather than legal, obstacles to transfer that should be addressed.

8.23 In the revised draft there is greater clarity between the operation of this Framework Decision and that on conflicts of jurisdiction, but we remain concerned

41 In the current draft there is no Chapter 3. This is a drafting error which will be resolved in future drafts.

that different consultation procedures will apply. We also suggest a reference to the Framework Decision on conflicts of jurisdiction be incorporated into Article 11(2)(a).

8.24 Like the Government, we remain deeply concerned by Article 5, and its effect on the common law presumption of territorial jurisdiction. We also fail to see how Articles 5 and 11 co-exist, as one appears to negate the other. Given that the legislative intent is to overcome practical obstacles to transfer by encouraging better cooperation between Member States, we question whether Article 5 is necessary.

8.25 We also remain deeply concerned that the proposal contains no provisions which effectively safeguard the rights of the person subject to transfer, in particular in all cases to be informed of the decision and to have the right to appeal to a judge against the transfer decision. We would like to see such a provision inserted and do not think that it would inevitably jeopardise an investigation if at some stage the suspect had to be told of the decision to transfer. If the Minister continues to think otherwise, we would be grateful for an explanation, beyond that contained in his letter, of how he sees these defence rights being protected under the Framework Decision.

8.26 Given the potential impact of this proposal on prosecution authorities, we ask the Minister to confirm whether the Attorney General's Office has been consulted, and if so, for its views to be sent to the Committee. If there has been no consultation, we ask the Minister to consult the Attorney General's Office for its views as soon as possible. We would be grateful to be informed of its response.

8.27 In the meantime, we clear the first draft of the Framework Decision, document (a), from scrutiny but retain the revised draft, document (b), under scrutiny.

9 Policy Coherence for Development

(30920) 13468/09 + ADD 1 COM(09) 461	Commission Report: EU Report on Policy Coherence for Development
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<i>Legal base</i>	—
<i>Document originated</i>	17 September 2009
<i>Deposited in Parliament</i>	21 September 2009
<i>Department</i>	International Development
<i>Basis of consideration</i>	EM of 7 October 2009
<i>Previous Committee Report</i>	None; but see (28929) 13135/07 HC 41–xxxv (2006–07), chapter 8 (17 October 2007); also see (26496) 8137/05; (26497) 8138/05; and (26498) 8139/05: HC 34–v (2005–06), chapter 4 (12 October 2005)
<i>To be discussed in Council</i>	To be determined
<i>Committee’s assessment</i>	Politically important
<i>Committee’s decision</i>	Cleared

Background

9.1 Policy Coherence for Development (PCD) recognises that aid alone cannot address the needs of the developing world; that there is a need for greater coherence in policies across sectors that affect developing countries, with policy in areas like agriculture, trade, investment, migration and others having a profound impact on developing countries, yet often working at cross-purposes.⁴²

9.2 The policy framework that serves as a reference for this report was set in 2005, as part of the package of measures adopted to accelerate progress towards the Millennium Development Goals — in particular Commission Communication 8137/05: “Policy Coherence for Development: accelerating progress towards attaining the Millennium Development Goals”⁴³ — and the European Consensus on Development.⁴⁴

9.3 We considered the first such report two years ago. Based on responses to a questionnaire issued to EU institutions and Member States, the report found that the EU was at an early stage of PCD development. Despite increased awareness and the existence of high level commitments and tools for implementation, non-development staff awareness of PCD remained low, and the systems promoting coherence were not used effectively. The report also found that most Member States believed that more progress on

42 See http://www.oecd.org/department/0,3355,en_2649_18532957_1_1_1_1_1,00.html for further discussion of PCD.

43 Which we considered on 12 October 2005, see headnote, and which were debated in European Standing Committee on 3 November 2005.

44 Joint Statement by the Council and the representatives of the governments of the Member States meeting within the Council, the European Parliament and the European Commission — “The European Consensus on Development”, December 2005 (OJ 2006/C 46/01).

PCD had been made at the EU level than at national levels (though the Minister, Mr Gareth Thomas said that the reverse applied in the UK). Conflicting political priorities and/or a more short term approach were key constraints to national progress.

9.4 That report then discusses each of the 12 EU-recognised PCD areas:

- Trade;
- Environment;
- Climate change;
- Security;
- Agriculture;
- Fisheries;
- Social dimension of globalisation, employment and decent work;
- Migration;
- Research;
- Information Society;
- Transport; and
- Energy.

in terms of where the EU approach was positive (e.g., the EC’s relatively favourable market-access regime for developing countries) and what needed improving (e.g, the EU’s need to do more to build developing country capacity in science and technology without draining countries of talented staff). The main cross-cutting areas for further action included improving Council procedures to promote PCD; better integrating PCD in cooperation strategies; improving information sharing and the impact assessment process and making better use of the Rolling Work Programme (which set out objectives and action for each policy area). More details are set out in the Committee’s previous Report.

Our assessment

9.5 Although the Minister said that there was “much to be positive about” in the Report, it did not seem to amount to a great deal more than it being “a very useful tool for helping EU partners better understand and think more carefully about forward action”. This apart, the Minister implied that the Commission had pulled its punches when it came to analysing its and the Council Secretariat’s shortcomings.

9.6 The same might be said, we felt, of the way the Report handled the key issue of trade: while mentioning the WTO negotiations and those on the Economic Partnership Agreements, there was no assessment whatsoever of what contribution these negotiations had made to the “coherence” of development policy. We assumed that it was this, among others, to which the Minister referred when he said that “the report would be more

convincing if it provided more detail about the level of impact of current efforts, and the constraints affecting progress. The areas for forward action would ideally provide more suggestions about how to move forward to support more focused discussion of next steps.”

9.7 The Minister said that at the November 2007 GAERC, he would “encourage short, focused conclusions to drive organisational improvements to promote coherent policymaking” and, over the course of 2008, “use the report as a hook to further improve understanding and efforts towards PCD in concert with other Member States and Commission officials”. So, as well as clearing the document, we asked that, when he submitted the next report for scrutiny, he should include an assessment of that report against the Conclusions adopted and how effective a “hook” it had been, and for his views on how effectively it had addressed the shortcomings he had identified.⁴⁵

The 2009 Report

9.8 The Commission says that the 2009 Report embodies “A results based approach to assessing PCD”, the debate that followed the issuing of the 2007 PCD report, in particular with the OECD, having “led to a rethinking of the EU PCD methodology for the 2009 reporting exercise and to an increased focus on the impact on developing countries.” The 2009 Report has been prepared on the basis of “a two pronged approach”:

- an updated analysis of policy changes, on the basis of contributions from Member States and the various Commission services;
- in addition, “an overall conceptual framework linking the 12 EU policies areas to the Millennium Development Goals (MDGs)”⁴⁶ which “elaborates on three concrete case studies” in developing countries and specifically in Africa: two case studies focus on MDGs (MDG 1 on hunger and MDG 6 on fight against HIV/AIDS) in three developing countries (Ethiopia, Mozambique and Senegal for MDG 1; Rwanda, Tanzania and Zambia for MDG6); the third case study concentrates on the Africa EU joint Strategy as a framework with strong PCD potential.

9.9 The Commission says that it has taken its PCD work further by sharpening and making better use of inter-service consultation and impact assessments (whereby initiatives that may affect developing countries should be analysed for their coherence with the objectives of EU development policy including an analysis of their consequences), and working with the OECD. Work with the Council has had limited success. The European Parliament has taken “a keener interest during the second part of its term”. Member States have made progress individually; however, that for many there was a lack of awareness of development issues in Ministries not involved in development, compounded by difficulties of providing evidence about the ultimate impact of non-development policies on reducing poverty in

45 See headnote: (28929) 13135/07: see HC 41–xxxv (2006–07), chapter 8 (17 October 2007).

46 The Millennium Development Goals (MDGs) are eight goals to be achieved by 2015 that respond to the world’s main development challenges. The MDGs are drawn from the actions and targets contained in the Millennium Declaration that was adopted by 189 nations and signed by 147 heads of state and governments during the UN Millennium Summit in September 2000. The eight MDGs break down into 21 quantifiable targets that are measured by 60 indicators: Goal 1: Eradicate extreme poverty and hunger; Goal 2: Achieve universal primary education; Goal 3: Promote gender equality and empower women; Goal 4: Reduce child mortality; Goal 5: Improve maternal health; Goal 6: Combat HIV/AIDS, malaria and other diseases; Goal 7: Ensure environmental sustainability ; Goal 8: Develop a Global Partnership for Development. See <http://www.un.org/millenniumgoals/poverty.shtml> for full information.

developing countries (including problems of attribution). Progress made in the 12 policy areas “is uneven”. Reporting on PCD progress achieved in the 12 policy areas “has been important as a way to raise awareness and to demonstrate the importance of the broader EU policy agenda for development”, and the strengthening of the PCD instruments was necessary in order “to better harness the potential of EU policies for development.” However, in order to make real progress:

“the EU needs to change its approach. Rather than monitoring the impact of all policies on developing countries the EU could promote PCD more effectively through a more focussed approach. The EU should select some key development challenges, analyse how it can contribute to achieving them through the broad array of its policies and instruments, and ensure political mobilisation around these challenges.

“In this third phase the EU should also move towards a partnership approach to PCD. The EU and developing countries could for instance launch a reflection on the consultation mechanisms provided for in the impact assessment guidelines, the Cotonou Agreement and possibly also the Africa-EU Partnership and improve them if necessary.”

The Government’s view

9.10 In his Explanatory Memorandum of 7 October 2009, the Minister of State at the Department for International Development (Mr Gareth Thomas) says that PCD is essential if the MDGs are to be achieved:

“The EU is the world’s biggest donor, providing 59% of all aid, and is the largest trading partner for developing countries. So it is critically important that it is perceived by partner countries as a driver and exemplar of PCD.”

9.11 The Minister says that the primary purposes of this Report are: to raise policy makers’ and public awareness of PCD through establishing potential and concrete linkages between PCD efforts and progress in reducing poverty in poor countries; and to account for EC and EU progress on PCD implementation over the preceding two years; and that it has been “partially successful on meeting its two primary objectives, but more needs to be done on demonstrating real impact on the ground.” He continues as follows:

“The UK position is that there should be further strengthening of the technical and policy capacity of EC Delegations in partner countries: vital when dealing with multi-dimensional sectors such as Health. In particular we will be pressing for the next Report in 2011 to include evidence of how PCD implementation can have a beneficial impact on the most vulnerable in society such as women and children.”

9.12 The Minister nonetheless regards the Report as better in some respects than that of 2007:

“It records areas of good progress, but also identifies areas where more work needs to be done. Generally, the chapters are comprehensive and accurate (although the contexts of some of these areas; particularly Trade, Food Security and Climate Change, are fast-moving). But in some cases, other salient PCD initiatives could have

been taken into account. For example we are challenging certain conditions in the current framework of the Community of Andean Nations-EU Free Trade Agreement, specifically the provisions that extend patent periods and the exclusivity of test data (thereby delaying generic competition and sustaining high medicinal prices). A second example is energy. The Report contains a good account of various EU programmes and initiatives. However we would like to see more on the challenge of resource constraints related to energy.”

9.13 The Minister also notes that the Report sets out a framework for the assessment of PCD interventions:

“We welcome the intention to use MDG attainment as the primary criterion for assessing the PCD implications of EU policies (inspired by the DFID-supported EU research paper ‘MDGs at Midpoint: Where do we stand and where do we need to go?’), and we are working to see that this is translated into common practice. We would, however, have also liked to see a reference in the Report to the importance of maintaining agreed aid volume commitments.”

9.14 The Minister recalls that the Council Conclusions on the 2007 Report invited “the Commission (and MS) to further develop work on clarifying the role of development cooperation in promoting PCD and in supporting developing countries to reap the benefits of more coherent EU policies”, and says:

“In this respect we welcome the Commission’s intention to move to a ‘third phase’ of PCD implementation which will focus on partnership with beneficiary countries and supporting these countries in identifying EU policy and legislative proposals that might affect them. We look forward to seeing the fruits of this strategy in practice and stand ready to provide support to it.”

9.15 The Minister concludes by noting that, though there are no plans by the Swedish Presidency to take this Report forward to Council Conclusions, “the Commission has welcomed written comments from Member States which will presumably feed through to preparation of the next biennial report in 2011” and says that DFID “has contributed comments.”

Conclusion

9.16 **Notwithstanding what the Minister says, we understand that the Conclusions that the 19–20 November “development” GAERC will adopt on the other related Commission Communication, 13323/09, *Policy Coherence for Development—Establishing the Policy Framework for a Whole-of-the-Union Approach* (which we consider in chapter 4 of this Report), will incorporate Conclusions on this Report. We hope that they will again provide both a basis upon which both to drive this important process forward and assess progress in two years time, when we look forward to hearing his or his successor’s views on this matter.**

9.17 **In the meantime we clear the document, which we are reporting to the House because of the widespread interest in development issues.**

10 EU relations with Indonesia

(30948) 13698/09 COM(09) 492	Draft Council Decision on the signing of the Framework Agreement on Comprehensive Partnership and Cooperation between the European Community and its Member States and the Republic of Indonesia
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<i>Legal base</i>	Articles 133, 181 and 300(2) EC; QMV
<i>Document originated</i>	22 September 2009
<i>Deposited in Parliament</i>	29 September 2009
<i>Department</i>	Foreign and Commonwealth Office
<i>Basis of consideration</i>	EM of 8 October 2009
<i>Previous Committee Report</i>	None
<i>To be discussed in Council</i>	26–27 October 2009 General Affairs and External Relations Council
<i>Committee's assessment</i>	Politically important
<i>Committee's decision</i>	Cleared

Background

10.1 Indonesia's population is 234.3 million (UN, 2008), with main exports of oil and gas, plywood, textiles, rubber, palm oil and a GNI per capita of US \$1,650 (World Bank, 2007). The country has the world's largest Muslim population. Ethnically it is highly diverse, with more than 300 local languages. Its people range from rural hunter-gatherers to a modern urban elite. Indonesia has seen great turmoil in recent years, having faced the Asian financial crisis, independence demands from restive provinces, bloody ethnic and religious conflict and a devastating tsunami.⁴⁷

The Council Decision

10.2 The Council Decision authorises the signing of the Framework Agreement on comprehensive Partnership and Cooperation between the European Community and its Member States and the Republic of Indonesia. The text of the agreement is attached to the Council Decision.

10.3 In her Explanatory Memorandum of 8 October 2009, the then Minister for Europe at the Foreign and Commonwealth Office (Baroness Kinnock of Holyhead) explains that: negotiations with Indonesia on a Partnership and Cooperation Agreement (PCA) began in 2005; the UK and other EU Member States agreed the PCA text in June 2007; the Commission initialled the PCA in July 2007; and Indonesia initialled the PCA in July 2009 following the partial lifting of the EU flight ban on Indonesian airlines. She notes that this will be the first PCA with a South East Asian country, and that negotiations are at various stages with Thailand, Singapore, the Philippines, Malaysia and Brunei.

⁴⁷ http://news.bbc.co.uk/1/hi/world/asia-pacific/country_profiles/1260544.stm

10.4 The Minister also notes that the PCA will:

- allow for further engagement between the EU and Indonesia in the areas of climate change and energy, science and technology, maritime and aviation transport;
- address illegal migration, money laundering, illicit drugs, organised crime and corruption;
- ensure Indonesia’s commitment to respect human rights;
- constitute the political framework for the negotiation of the Free Trade Agreements between the EU and the Association of South East Asian Nations (ASEAN).

10.5 The Minister goes on to say that these negotiations have been informally, but not publicly, suspended due to a lack of progress, but that “individual ASEAN countries who are ready to take the next step may sign a bilateral FTA” and that “Indonesia is interested to take this approach.”

The Government’s view

10.6 The Minister says that the UK has been stepping up its engagement with “the world’s largest Muslim majority country and the third largest democracy”, which she says is “becoming increasingly important to our interests in a range of areas” and “is well disposed to our priorities on climate change and energy, counter terrorism and the global economy.”

10.7 She describes the PCA as key to strengthening the EU’s relationship with Indonesia:

“The conclusion of the PCA negotiations will send a clear signal to Indonesia that the EU is keen to continue to work with them and recognise the progress Indonesia has made over the last decade in many areas including human rights and democratisation. The PCA contains a legally binding commitment by Indonesia on the respect of human rights (as well as obligations in the areas of counter terrorism and weapons of mass destruction). While we recognise that challenges still remain, we believe it is important to acknowledge the vast progress the country has made in many areas, including its human rights record, over the past 10 years. We will continue to raise human rights concerns with the Indonesian authorities. We believe that the best way to help Indonesia deal with this issue is through engagement and assistance and not isolation.”

10.8 Finally, the Minister says that the Council Decision should be “signed off” at the GAERC on 26–27 October.

Conclusion

10.9 The Council Decision and PCA raise no questions. We nonetheless consider that it warrants a Report to the House because of its intrinsic importance.

10.10 We now clear the document.

11 European Satellite Centre

(30976) 13224/09 —	Council Joint Action amending Joint Action 2001/555/CFSP on the establishment of a European Union Satellite Centre
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<i>Legal base</i>	Article 14 EU; unanimity
<i>Department</i>	Foreign and Commonwealth Office
<i>Date deposited</i>	7 October 2009
<i>Basis of consideration</i>	EM of 19 October 2009
<i>Previous Committee Report</i>	None; but see (28082) —: HC 16–xxviii (2007–08), chapter 9 (22 July 2008) and HC 41–iii (2006–07), chapter 18 (6 December 2006)
<i>Discussed in Council</i>	To be determined
<i>Committee’s assessment</i>	Politically important
<i>Committee’s decision</i>	Cleared

Background

11.1 Established by a Council Joint Action on 20 July 2001, the European Union Satellite Centre purchases imagery from commercial sources and also receives some images from space assets owned by EU nations. The data is analysed and used to support assessments required for Council CFSP discussions and ESDP operations.

11.2 Based in Torrejon, near Madrid, it is funded by Member States according to a gross national income scale. Member States exercise political supervision, including setting its priorities and budget, while the Secretary General/High Representative (SG/HR) and his staff provide operational direction.⁴⁸

11.3 In 2006, the then Committee considered an Explanatory Memorandum from the then Minister for Europe at the Foreign and Commonwealth Office (Mr Geoffrey Hoon) concerning a “five-year review” report by the SG/HR (which he enclosed with his EM) containing “a number of practical recommendations intended to improve the running of the Centre and clarify its role”, which were incorporated in a revised Joint Action:

- *Mission*: supporting ESDP operations was already being performed by the Centre but a specific reference was being added to the mission statement for clarity;
- *Budget*: The original Joint Action required the budget to be set annually. The Centre would now have a Financial Framework agreed by the Council every three years, allowing it to plan its expenditure further in advance. Annual budgets would be approved by the Board within the constraints of this Framework;

⁴⁸ For further information, see http://www.eusc.europa.eu/index.php?option=com_frontpage&Itemid=1. Regrettably, it contains no information on staff numbers or budget.

- *Deputy Director*: Term limits had been set at a maximum of two three year terms;
- *Association with the Commission*: A new article, Article 20a, had been inserted to ensure that the EUSC “can benefit from the EU-wide expertise available in these areas while avoiding duplicating activities carried out elsewhere in the EU”. The Minister mentioned in particular the Commission’s Joint Research Centre (JRC).

11.4 The then Minister strongly supported the Centre’s work, particularly its capacity to provide imagery and analysis that can be supplied to all Member States for CFSP discussions without the normal difficulties associated with sharing classified national material with a wider audience. In addition the Centre’s work was frequently complementary to, and supported, work in this area undertaken by the UK military. The UK’s annual contribution was approximately 17% of the then budget, or £1.2 million at then exchange rates. The proposals would result in practical improvements to the running of the Centre. He strongly supported the addition of an article relating to the Commission into the Joint Action “to prevent duplication of work being done elsewhere”.

11.5 For our part, we noted that the Joint Research Centre had been integral part of the European Commission since its creation in 1957: a Directorate-General of the European Commission under the responsibility the European Commissioner for Research, whose Board of Governors assisted and advised the Director General on matters relating to the role and the scientific, technical and financial management of the JRC, and with a principal task of providing the Commission and its policy-making Directorates-General, as well as the Council, European Parliament and Member States, with independent scientific and technical advice.

11.6 It was therefore not altogether clear to us how an agency whose primary purpose was the analysis of commercially-provided satellite imagery for CFSP/ESDP purposes did or could relate to the work of the JRC, and vice-versa; or how one might encroach upon the other. But that is what the Article in question and the Minister’s comments thereon suggested, with the implication that, over the past five years, there had been duplication of activity and wasteful expenditure that, if unchecked, would continue or even multiply.

11.7 We had no wish to hold up a Joint Action designed to improve the effectiveness and economy of the EUSC’s operations, and accordingly cleared it.

11.8 However, we asked the Minister for further information on what the possible synergies between the EUSC and the JRC were, and what the areas of actual and potential overlap had been or could be; and what arrangements were in place to measure the extent to which the Joint Action’s objectives were met, ahead of the next five-year review.⁴⁹

The then Minister’s letter of 13 July 2008

11.9 The then Minister explained that the primary objective of the JRC is to use the analysis of satellite imagery in its research work to support EU Commission policy in a number of areas, for example, measuring deforestation and environmental monitoring, but was also active in a number of policy areas related to CFSP/ESDP, such as nuclear security, disaster

⁴⁹ See headnote: HC 41–iii (2006–07), chapter 18 (6 December 2006).

response and maritime policy. While this might lead to a limited overlap between work programmes, the “SatCen” and JRC liaised closely to “deconflict their work and ensure complementarity where policy work strands are related.”; for example, he said, the JRC and SatCen worked jointly on providing situational awareness during the Lebanon crisis of 2006, and were currently working together on providing situational awareness of the security barrier and settlements in the West Bank. Looking ahead, he saw “potential for synergies between SatCen work to support EUFOR Tchad/RCA and JRC work to support humanitarian work in Darfur.”

11.10 With regard to the monitoring the SatCen’s achievement of its objectives, the then Minister said that its Director reports at least annually, to the Political and Security Committee to explain the SatCen’s annual work programme; and that the SatCen’s Board, consisting of representatives from Member States and the EU Commission, “also provides political oversight and guidance on the activities of the SatCen on a regular basis.”

Our assessment

11.11 The growth in the range and geographical spread of the security challenges facing the European Union, and the then-ongoing review of the 2003 European Security Strategy, had led, among other things, to a heightened discussion of the satellite capacity able to support the prosecution of European Security and Defence Policy and Common Foreign and Security Policy. We accordingly reported this further information to the House.⁵⁰

The Joint Action

11.12 In his Explanatory Memorandum of 19 October 2009, the Minister for Europe at the Foreign and Commonwealth Office (Chris Bryant) explains that on 3 September 2009 the Political and Security Committee (PSC; the ambassador-level Committee of senior officials from Member States’ permanent representations in Brussels which is tasked with the direction of Common Foreign and Security Policy) agreed that all members of NATO should be entitled to be involved in the Centre’s activities and that products of the Centre resulting from requests by the Council could be distributed to third States by a decision of the PSC; and that this Joint Action amends Joint Action 2001/555/CFSP accordingly.

The Government’s view

11.13 Recalling that the Centre provides geospatial products resulting from the analysis of satellite imagery and collateral data in order to support the operations and missions of the European Union and its member states, the Minister says that:

“Allowing all NATO members to become involved in the EU Satellite Centre and receive related products from it will enable the US and Canada to be treated the same way as Iceland, Norway, Turkey and EU accession States who, in accordance with Article 2.3 of the Joint Action, are entitled to be involved in the Centre’s activities, for example to second image analysts to the Centre. It is strongly in the UK’s interests to support the principle of full co-operation between the EU and NATO, as

⁵⁰ See headnote: HC 16–xxviii (2007–08), chapter 9 (22 July 2008).

international security is enhanced by a combination of the crisis management tools that each can provide. The two organisations work together on the ground in operations including Afghanistan, Kosovo and counter-piracy. Many other third parties provide valuable contributions to ESDP civilian and military operations and to receive the same information as EU Member States will support their involvement.”

11.14 The Minister also reports that a joint pilot cooperation project regarding the 2010 South Africa World Cup is being considered between the EUSC and the US National Geospatial Intelligence Agency, with a view to further possible cooperation: “This proposed amendment will facilitate this cooperation and may enable future collaboration between the EU, NATO member states and third parties in support of international security.”

11.15 The Minister concludes by noting that there are no resource implications for the UK resulting from this amendment and that he hopes that the amendment to the Joint Action will be approved by Economics and Finance Ministers on 10 November 2009, “if not earlier.”

Conclusion

11.16 Although this straightforward amendment raises no questions, we consider that it warrants a report to the House because of the widespread interest in European Security and Defence Policy.

11.17 We now clear the document.

12 Cyprus: the Green Line Regulation

(30977) 13289/09 + ADD 1 COM(09) 478	Annual Report on the implementation of Council Regulation (EC) No. 866/2004 and the situation resulting from its application
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<i>Legal base</i>	Article 2 of Protocol 10 and Article 6 of Protocol 3 of the Act concerning the conditions of accession of the Republic of Cyprus; unanimity.
<i>Document originated</i>	14 September 2009
<i>Deposited in Parliament</i>	7 October 2009
<i>Department</i>	Foreign and Commonwealth Office
<i>Basis of consideration</i>	EM of 14 October 2009
<i>Previous Committee Report</i>	None; but see (29947) 12728/08 HC 16–xxxiii (2007–08), chapter 8 (29 October 2008) and HC 16–xxx (2007–08), chapter 8 (8 October 2008)
<i>Discussed in Council</i>	To be determined
<i>Committee’s assessment</i>	Politically important
<i>Committee’s decision</i>	Cleared

Background

12.1 Since Turkish troops landed in Cyprus in 1974 the island has been effectively partitioned, with approximately 36% of the territory of the Republic not under the control of the Government of the Republic of Cyprus (RoC). A “Green Line” buffer zone divides the island and is patrolled by United Nations forces. A significant Turkish troop presence remains in the northern part of Cyprus.

12.2 Pending a settlement of the Cyprus problem, Article 1 of Protocol 10 of the Act of Accession provides that the application of the EU’s *acquis* will be suspended in those areas in which the Government of the Republic of Cyprus does not exercise effective control — that is, the northern part of the island — while Article 2 states that the Council should define the terms under which the provisions of EU law should apply to the line dividing the island (i.e., the Green Line). Protocol 3 of the Act of Accession puts in place special arrangements for the Sovereign Base Areas (SBAs).

12.3 Regulation No 866/2004 established a regime under Article 2 of Protocol 10 with special rules concerning goods, services and persons crossing the line between those areas of the RoC in which the RoC Government does not exercise effective control and those areas in which it does. The Regulation, which came into force on 1 May 2004, followed the rejection in April 2004 of the UN’s settlement plan for Cyprus (the Annan Plan) by the Greek Cypriots. To ensure its effectiveness, this also covered the boundary between the northern part of Cyprus and the Eastern Sovereign Base Area. Several amendments have been adopted designed to further facilitate trade across the Green Line, while safeguarding proper functioning of EU rules and policies within the single market.

The Commission Report

12.4 The Report covers the period from 1 May 2008—30 April 2009. It concludes that the Green Line Regulation continues to provide a workable basis for allowing the passage of persons and goods to the government-controlled areas of the Republic of Cyprus. The total value of recorded trade across the Green Line during the reporting period amounted to €6,111,030, compared to €4,473,408 in the previous reporting period; 30% of this is accounted for by trade in potatoes.

12.5 The report notes, however, that the overall scale of Green Line trade remains rather limited, due, in part, to a continuing number of obstacles to cross-communal trade. These include the fact that Turkish Cypriot commercial vehicles cannot move freely across the island; and the difficulties Turkish Cypriot traders have in stocking their products in stores and shops in the government controlled areas. However, Green Line trade has increased to 12% of total Turkish Cypriot trade.

12.6 The report also notes that smuggling of goods, particularly cigarettes and other forms of tobacco, remains widespread, underlining the continued need for effective surveillance of the Line by the Government of the Republic of Cyprus and by the Sovereign Base Areas Administration.

12.7 The report further notes that the Regulation provides a stable legal framework for the free movement of Cypriots and others across the Line at authorised crossing points. There was an increase in both Greek Cypriot and Turkish Cypriot crossings compared to the previous reporting period. No major incidents at the check points were reported.

12.8 But the report also highlights (as in previous Reports) the Commission's concern at the continuing high number of illegal migrants crossing the Green Line. According to statistics from the Republic of Cyprus, the total number of apprehended illegal immigrants decreased slightly from last year's record level of 5844 to 5560. The report notes recent steps by the Republic of Cyprus and the Sovereign Base Areas Administration to prevent illegal immigration but assesses that both need to strengthen further their surveillance of the Line.

The Government's view

12.9 In her Explanatory Memorandum of 14 October 2009, the then Minister for Europe at the Foreign and Commonwealth Office (Baroness Kinnock of Holyhead) says that the Government considers that the current Green Line Regulation is sufficient to protect the security of the EU, including by addressing illegal immigration and by regulating the flow of goods into the single market. She continues as follows:

“The Government remains committed to ending the isolation of the Turkish Cypriot community and to facilitating the reunification of Cyprus by encouraging the economic development of the Turkish Cypriot community. Increased trade between north and south will contribute to the integration of the island and reducing the disparity in economic activity between north and south. To this extent, the increase in trade highlighted in the report is a positive development, as it encourages greater cross-communal contact and highlights the many economic benefits of a settlement.”

12.10 The Minister notes that, in the event of a comprehensive settlement to reunite Cyprus, the Green Line Regulation would become null and void, and “free-trade would flourish between the two communities.” She also notes that on 3 September 2008, the two leaders in Cyprus started direct negotiations aimed at reunifying Cyprus:

“These negotiations arguably offer the best opportunity in a generation to finally achieve a comprehensive and durable Cyprus settlement, which all Cypriots can accept. The UK will continue to engage closely with all parties, in the region and wider, to support the efforts of the two leaders.”

12.11 Responding to the report’s observations on the importance of both the Republic of Cyprus and the Sovereign Base Areas Administration tackling effectively the problem of illegal immigration across the Green Line, the Minister says:

“The report notes that both have reinforced their surveillance of the Line during the reporting period. Particularly in the light of the Commission’s suggestion that further strengthening of surveillance would be important, the Sovereign Base Areas authorities will continue to work closely with their Cypriot counterparts and the Commission to ensure that we present a united front against illegal migration in the Eastern Mediterranean.”

12.12 The Minister also observes that the continued implementation of the Regulation does not have significant financial implications for UK public expenditure or the EC budget; though the Regulation “already imposes additional monitoring requirements on the Sovereign Base Areas Administration ... the Government considers that this is consistent with their other activities.”

12.13 Finally, the Minister says that she understands that the report will not be considered by the Council but will be sent to the European Parliament.

Conclusion

12.14 Though the Report raises no questions, we draw it to the attention of the House because of the widespread interest in developments in Cyprus.

12.15 We now clear the document.

13 CFSP: EU support for the Democratic Republic of Congo

(30992)	Council Joint Action amending Joint Action 2007/405/CFSP on the
—	European Union Police Mission in the Democratic Republic of the
—	Congo

<i>Legal base</i>	Articles 14 EU; unanimity
<i>Department</i>	Foreign and Commonwealth Office
<i>Basis of consideration</i>	EM 13 October 2009 and Minister’s letter of 16 October 2009
<i>Previous Committee Report</i>	None; but see (30900)—: HC 19–xxvii (2008–09), chapter 26, (14 October 2009); (30686) 10358/09 — HC 19–xx (2008–09), chapter 7 (17 June 2009) and (30667) — HC 19–xviii (2008–09), chapter 21 (3 June 2009); also see (29722) — and (29734) — : HC 16 xxiv (2007–08), chapters 6 and 14 (18 June 2008), and (28650) — (28651) —: HC 41–xxiii (2006–07), chapter 19 (6 June 2007)
<i>To be discussed in Council</i>	19 October 2009
<i>Committee’s assessment</i>	Politically important
<i>Committee’s decision</i>	Cleared, but further information requested

Background

13.1 The original police mission in the Democratic Republic of Congo (EUPOL Kinshasa) was launched in April 2005 to support the development of the Integrated Police Unit and play a key role in the protection of the transitional government, crowd control and public disorder leading up to the elections in 2006.

13.2 Its mandate was extended and amended in April 2006 to allow a temporary reinforcement to cover the elections that were successfully held in September 2006, and allowed the formation, in 2007, of a government which adopted a programme prioritising reform in the police, the armed forces, and the judiciary.

13.3 Against this background, the EU indicated in September 2006 that it was prepared to undertake, in close co-operation with the UN, the coordination of international efforts in security sector reform in order to support the Congolese authorities in this area. Following two fact-finding missions in October 2006 and March 2007, two Joint Actions were agreed by the Council on 12 June 2007, which aimed:

- to establish a police mission leading on Security Sector Reform and its justice interface in the Democratic Republic of Congo (EUPOL DRC);
- to allow, via a new and revised mandate, to build on the substantial progress already made during the previous two years and continue to contribute to the integration of the

different armed factions in the DRC, and assist Congolese efforts to restructure and reconstruct the army, to be known as EUSEC RD Congo.⁵¹

13.4 Our previous Reports outline our subsequent consideration of these two Joint Actions.⁵²

13.5 One of the common concerns of all Ministers for Europe from the outset has been that members of the security sector are the perpetrators of what has been regularly described as “a large proportion of violent crimes in the Democratic Republic of Congo, including rape and human rights violations.”

13.6 Earlier this year, on 3 June, the Committee cleared a Joint Action amending Joint Action 2007/405/CFSP on the European Union police mission, EUPOL DRC, and extending it until June 2010. In so doing, it noted that, although the extension raised no questions in and of itself, and there was more information on this occasion about activity than there had been a year ago, there was still a paucity of assessment of outcomes, i.e., the extent to which all this activity and expenditure had produced measurable improvements in behaviour and security. In particular, in the critical area of violent crime, sexual violence and human rights violations, the words chosen by the then Minister for Europe (Caroline Flint) were identical to those of her predecessor 12 months earlier: “EUPOL continues to work with the Congolese police in this field and to encourage officers to react to incidents appropriately” — notwithstanding that, a year ago, we had said that we would have liked evidence of how effective the mission’s advice had been, and how Congolese officers’ attitudes and practices had been changed by the “encouragement” to which the then Minister referred.

13.7 We therefore asked the then Minister to say something about this, and about the effectiveness of EUSEC RD Congo, when she submitted an Explanatory Memorandum on the forthcoming mandate extension of this latter.⁵³

13.8 On 11 June we considered a proposal is for a three month extension, at no additional cost, of EUSEC RD Congo’s mandate. The Minister (Chris Bryant) explained in his 11 June 2009 Explanatory Memorandum that this was to take account of recent changes in leadership, which meant that more time was required for further detailed analysis on the needs and priorities of the Congolese in the field of Security Sector Reform. He said that:

- “strategic indicators” would be used to assess Congolese political commitment in the medium term;
- a revised General Concept would be formed including possible mission restructuring and detailed measures of progress to assist further review of longer term engagement;
- a three month extension would allow this work to take place and permit a better judgement when considering any further mandate extension.

51 See (28650) — (28651) —: HC 41 xxiii (2006–07), chapter 19 (6 June 2007) for our consideration of that Joint Action.

52 See headnote.

53 See headnote: (30667) — HC 19–xviii (2008–09), chapter 21 (3 June 2009).

13.9 On 11 June, in a separate letter, the Minister (Chris Bryant) also responded as follows to our earlier observations on EUPOL DRC:

“The lack of professionalism, poor discipline and conduct within the security services is directly related to poor terms and conditions of service, lack of proper training, and poor command and control. Human rights training which focuses on awareness raising and similar interventions around SGBV (Sexual and Gender based Violence) training must be accompanied by concrete measures to improve pay, conditions of service, professional training and strengthen systems for ensuring internal discipline and conduct. The latter is part of longer term institution-building, to which EUPOL DRC is a part, to secure behaviour change at an institutional level.

“Such improvements in the attitudes and behaviour of the Congolese National Police are inherently difficult to measure. Changes tend to be incremental, rather than representing a noticeable step change, and the process of reform is fundamentally affected by changes in national leadership. However, there are some positive signs of progress. For example, EUPOL has supported national seminars with some success to build up the awareness of the Congolese National Police to policing in a democratic state such as how police should deal with meetings and public demonstrations. The mission has also succeeded in pushing forward local ownership of Police Reform which is a key step towards changing attitudes and behaviours. The Police Reform Monitoring Committee (CSRP) is now considered both by the Congolese authorities and by international partners as truly owned and run by the Congolese.

“Violent crimes, sexual violence and human rights violations continue to be areas of grave concern in the DRC. For this reason, the Political and Security Committee requested that Council Secretariat ‘examine the options for strengthened ESDP action to combat sexual violence and impunity in the DRC in view of assessing a possible scope of action for EUPOL’. Work in Brussels in [sic] on-going to discuss further measures that the mission can implement. It is likely that the Operational Plan will be adjusted to strengthen the ability of EUPOL DRC to combat sexual violence and impunity.”

13.10 Notwithstanding the Minister’s views, we continued to feel that it should not be difficult to measure change in a situation in which, still, it seemed that a large proportion of violent crime, sexual violence and human rights violations was committed by members of the Congolese police and military: either the number of such violations of human dignity and rights, and the part of the security sector in them, was falling, or it was not. We also asked the Minister if, in due course, he would let us know the outcome of what the Political and Security Committee had asked the Council Secretariat to do, and how the Operational Plan was to be adjusted. We then cleared the extension.⁵⁴

13.11 Most recently, in dealing with the Joint Action extending EUSEC DRC from 1 October 2009 until 30 September 2010, we noted that, in her Explanatory Memorandum of 14 September 2009, the then Minister for Europe at the Foreign and Commonwealth

54 See headnote: (30686) 10358/09 —: HC 19–xx (2008–09), chapter 7 (17 June 2009).

Office (Baroness Kinnock of Holyhead) said that the revised Joint Action had a greater emphasis on tackling sexual violence and human rights issues within the army reform process. Additional staff positions were to be introduced to the mission's structure, and shared with EUPOL DRC, focusing on Human Rights and Gender issues and based both in Kinshasa and the cities of Goma and Bukavu, allowing the mission to have a wide geographical influence. As well as having several "strategic indicators", the then Minister particularly welcomed the new initiative to review mission progress at the six-month point against pre-defined indicators, which she said was in line with the wider FCO strategy "to develop more effective international interventions [which] ... will enable the mission to provide a progress report on the development of the reform of the FARDC and to evaluate the impact of the mission."

13.12 We noted that, by the time this latest extension was completed, the EU would have spent some €26.9 million on EUSEC RD Congo, and said that the strategic indicators should confirm whether or not the positive developments to which the Parliamentary Secretary referred in June, and which seemed fundamental to any further progress, had been consolidated. We also felt that it would have been helpful to have had some details of the "pre-defined indicators" that the then Minister welcomed, which we assumed were the "measures of progress to assist further review of longer term engagement" to which the Parliamentary Secretary had referred in June. In particular, we would have been interested to know how they would measure progress on the problem upon which the project would now be more focussed, i.e., sexual and gender based violence. We still could not see why, when a large proportion of violent crime, sexual violence and human rights violations was said to be committed by members of the Congolese police and military, it was said to be difficult to quantify the number of such violations, and the part of the security sector in them, and thus to see whether or not they fell: if this was more complex than we had imagined, we said that it would have been helpful if the then Minister had put the Committee straight. We noted that there was to be a review in six month's time, and accordingly asked the then Minister to report its findings and recommendations and comment on this particular matter.⁵⁵

Council Joint Action amending Joint Action 2007/405/CFSP on EUPOL RD Congo

13.13 The revised Joint Action outlines the financial implications for the period 1 November 2009 to 30 June 2010 (the first four months, from 1 July — 31 October, were of no extra cost).

13.14 In her Explanatory Memorandum of 13 October 2009, the then the Minister for Europe at the Foreign and Commonwealth Office (Baroness Kinnock of Holyhead) says that the estimated financial amount to cover EUPOL DRC expenditure from 1 November 2009 to 30 June 2010 is €5,150,000, broken down as follows;

- Personnel Costs: €2,961,258
- Missions: €220,910

⁵⁵ See headnote: (30900)—: HC 19—xxvii (2008–09), chapter 26, (14 October 2009).

- Running Expenditure: €1,169,280
- Capital Expenditure: €715,515
- Representation: €14,000
- Contingencies: €69,037

13.15 With the UK currently contributing 17% to the CFSP (Common Foreign and Security Policy) budget, the then Minister says that the cost to the UK will be €875,500 (£796,092). The Minister further explains that the funding for the eight month period will be used to purchase armoured vehicles and accommodation in the east in line with the new multidisciplinary teams, as well as ongoing mission expenditure.

The Government's view

13.16 The then Minister again recalls the contribution of the Congolese Police or Armed Forces in SGBV crimes within the DRC and again says that the revised Joint Action will allow EUPOL DRC to place a greater emphasis on tackling SGBV through its work advising and assisting the Congolese reform their National Police Force. She continues as follows:

“Two multidisciplinary teams of experts will be deployed to Goma and Bukavu in the eastern DRC in order to provide advice and assistance on combating SGBV and impunity as well as assisting with the stabilisation process. Although based in the east of the country the teams competence will cover the whole of the DRC territory. One of the main tasks of these multidisciplinary teams will be to help ensure that legal services are provided for victims of sexual violence and offenders are prosecuted.

“The mission works in close cooperation with EUSEC DRC (the EU’s Army Reform mission to the DRC) which has also recently been given a greater focus on combating SGBV. By giving EUPOL DRC a greater emphasis on tackling SGBV as well it will allow a more consistent approach to be taken on SGBV simultaneously across both the Congolese Police and Armed Forces. The UK government supports this increased emphasis as a means to achieve wider stability, and increased faith in the Police and Armed Forces. This is also an area that we believe the ESDP mission can make a meaningful difference.”

13.17 The Minister concludes by saying the Joint Action is to be agreed at the Agriculture and Fisheries Council on 19 October 2009.

The new Minister for Europe's letter of 16 October

13.18 In his letter, the Parliamentary Under-Secretary of State at the Foreign and Commonwealth Office and now Minister for Europe (Chris Bryant) says that he welcomes the Committee's interest in the ESDP mission mandates, and regrets that “due to the recent change of Ministerial portfolios, we were not able to provide you with the Explanatory Memorandum in sufficient time for it to be considered at your meeting on 15 October (sic)”. As a result, he says, he will have to agree for this Joint Action to be considered at the

Agriculture and Fisheries Council on 19 October without prior debate at Committee. He continues as follows:

“The Council Secretariat must proceed with the implementation of the Joint Action, which provides the mission with a greater emphasis on tackling sexual violence and, importantly, provides the necessary budget for the mission to continue its activities from 1 November 2009 until the expiry of its mandate on 30 June 2010.

“While there are Council meetings towards the end of October (Justice and Home Affairs on 23 October, and the GAERC on 26 October), were I to delay lifting the UK scrutiny reserve until 22 October, the Council Secretariat would not have enough time to properly administer the renewal of contracts. This would result in a gap in funding beyond 31 October 2009 until contractual positions were resolved. As the mission is looking to place a greater emphasis on tackling sexual and gender based violence and is looking to deploy two multidisciplinary teams to the eastern DRC to take this forward, this could have a serious operational impact.”

13.19 The Minister then says that he is taking this opportunity to provide further information on the levels of sexual violence committed within the DRC and the benchmarks being used by the mission to measure the success of the work undertaken to tackle this serious issue:

“The problem of rape and sexual violence is one of the most serious aspects of the conflict in the DRC. Sexual and gender based violence is used systematically as a weapon of war by the Congolese Army and by militia groups to humiliate and intimidate women and men of all ages. Conflict-affected areas continue to be the hardest-hit, with South and North Kivu in the eastern DRC recording the most cases. The UN Population Fund reported 5,204 cases during the period of January to June 2008 and the Congo Advocacy Coalition announced over 2,200 cases of rape recorded in North Kivu in the month of June 2008 alone. The more recent reports from the mission itself have indicated that the number of victims for the first half of 2009 (2,587) has exceeded the total cases reported for the whole of the previous year (2,383). The US Secretary of State visited the DRC in August 2009. Secretary Clinton’s visit highlighted the issue of sexual violence and reignited the international community’s interest.

“These figures reflect that the level of sexual crime in the DRC remains a serious concern. However, as my predecessor explained in the Explanatory Memorandum submitted on 13 October, the amended Joint Action now grants EUPOL DRC a greater emphasis on tackling sexual and gender based violence through its work assisting the Congolese to reform their National Police Force (PNC). Under the mission’s new operational plan, the success of the mission will be measured against the following benchmarks:

- “the reinforcement of the PNC’s capacity to deal with the victims of sexual violence;
- “participation in a project to help map the location of sexual violence incidents committed by the police force;

- “the development of an anti-sexual violence cell within the PNC; and
- “the implementation of a code of conduct for members of PNC which reinforces the unacceptability of SGBV.”

Conclusion

13.20 The Committee did not receive either his predecessor’s Explanatory Memorandum until 15 October or his letter until 19 October. Nor, with the Committee due to meet on 21 October, do we see why delaying submission of this document to the Council until 23 October, rather than 19 October, would not have provided the Council Secretariat with enough time to renew the relevant contract. If the documents were ready on 19 October, then a delay of three days would not have prevented their timely issue; and if they were not ready, ditto.

13.21 As to the contents of his letter, it is obviously worrying that, notwithstanding all the EU’s efforts thus far, the level of sexual and gender-based violence has increased so dramatically in 2009.

13.22 We accordingly find it odd that, if “one of the main tasks of these multidisciplinary teams will be to help ensure that legal services are provided for victims of sexual violence and offenders are prosecuted”, this is not included among the benchmarks to which the Minister refers.

13.23 He also makes no mention of any six-month review period here, as is the case with EUSEC RD Congo. We nonetheless ask that, when he reports on this review (c.f. paragraph 13.12 above), he also provides an assessment of how well the four benchmarks and the task referred to in the previous paragraph have been achieved.

13.24 We now clear the document.

14 Accreditation of Forensic Science Laboratories

(30720) 10964/09 — + ADD 1	Draft Council Framework Decision on the accreditation of forensic science laboratory activities Explanatory Memorandum
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<i>Legal base</i>	Articles 30(1)(c), 30(a), 31 and 34(2)(c) EU; consultation; unanimity
<i>Department</i>	Home Office
<i>Basis of consideration</i>	Minister's letter of 14 October 2009
<i>Previous Committee Reports</i>	HC 19–xxv (2008–09), chapter 6 (21 July 2009) and HC 19–xxvi (2008–09), chapter 9 (10 September 2009)
<i>To be discussed in Council</i>	23 October 2009
<i>Committee's assessment</i>	Legally and politically important
<i>Committee's decision</i>	Cleared

Background

14.1 ISO 17025 sets out general requirements for the competence of testing and calibration laboratories. The requirements apply to, for example, the laboratory's quality management system, the competence of the staff and the quality of the equipment. Accreditation of a laboratory to the ISO standard ensures that the methods the laboratory uses are valid, the equipment is appropriate for the method, the staff performing the analysis are competent and the organisation has the capacity to maintain the quality of its results.

Previous consideration of the document

14.2 In July, when we first considered this draft Framework Decision, we noted the view of its proposers (Sweden and Spain) that, with the growth in the volume of information exchanged between Member States for the purposes of police and judicial cooperation in criminal matters, it is becoming increasingly important to ensure that the quality of data is sufficiently high; this applies as much to forensic evidence as to other data.

14.3 Article 1 of the draft Framework Decision said that the measure's objective was to ensure that the results of the laboratory activities in one Member State are recognised as being equivalent to the results of laboratory activities in other Member States. The objective was to be achieved by ensuring that all laboratory activities are accredited to comply with ISO 17025.

14.4 The draft Framework Decision would:

- apply to “laboratory activities” related to DNA and fingerprints;
- define laboratory activities as any measure taken when handling, developing, analysing or interpreting forensic evidence;

- require every Member State to ensure that laboratory activities in its area are tested by the national accreditation body for compliance with ISO 17025; and
- require Member States to ensure that the results of accredited laboratory activities carried out in other Member States are recognised as equivalent to the results of domestic accredited laboratory activities.

14.5 In his Explanatory Memorandum of 15 July 2009, the Parliamentary Under-Secretary of State at the Home Office (Mr Alan Campbell) told us that the Government supported the proposed use of ISO 17025 for DNA and fingerprint evidence but that it would:

“take care to ensure that these provisions do not require the UK to accept the results of laboratory activities carried out in other Member States to be recognised as admissible for evidential purposes in UK courts ...”⁵⁶

14.6 In the conclusion to our report on the proposal, we questioned the accuracy of the proposed legal bases for the Framework Decision. We also noted that Article 1 of the draft Framework Decision states the objective of the measure as the mutual recognition by all Member States of forensic evidence about DNA and fingerprints emanating from laboratories which have been accredited to ISO 17025 wherever they are located in the EU. The Government said that it supported the use of ISO 17025 but also said that it would ensure that the requirements for mutual recognition would not apply in the UK. We did not understand why the Government appeared to oppose the objective of the Framework Decision. We asked the Minister to comment on these points and kept the document under scrutiny pending his reply.⁵⁷

14.7 In his reply of 1 September, the Minister told us that he agreed with our views about the defects in the citation of legal bases for the Framework Decision and would propose corrections.

14.8 In response to our suggestion that the Government appeared to oppose the objective of the draft Framework Decision, the Minister said that the Government firmly supports the aim of increasing “mutual trust” in DNA and fingerprint data exchanged between Member States by requiring conformity to a basic standard. The Government also believes, however, that there should be no attempt to prevent a Member State from setting a higher standard if it wishes. So accreditation to ISO 17025 should be seen merely as a minimum.

14.9 In the Government’s view, the Framework Decision should be limited to improving mutual trust by improving the reliability of DNA and fingerprint data in the interests of police and judicial cooperation. So the Government would propose the removal of the requirements for mutual recognition.

14.10 On 10 September, when we considered the Minister’s reply, we recognised that some Member States may require forensic laboratories in their territory to achieve higher standards than laboratories in other Member States. In those circumstances, it seemed to us necessary in the interest of justice that the courts should not be required to treat the

⁵⁶ Minister’s Explanatory Memorandum of 15 July 2009, paragraph 21.

⁵⁷ See HC 19–xxv (2008–09), chapter 6 (21 July 2009).

results of the laboratories which have achieved only the minimum standard as being the equivalent of results from a laboratory which has achieved higher standards. The courts should, therefore, have discretion to decide which evidence is to be admitted. Accordingly, we understood why the Government considers that the objective should be to increase mutual trust rather than to require mutual recognition.

14.11 We asked the Minister for further progress reports on the negotiations.⁵⁸

The Minister's letter of 14 October 2009

14.12 In his letter of 14 November, the Minister tells us that:

- the legal base for the proposal has been corrected;
- the text has been amended so that Member States will not be required to ensure that the results of accredited laboratory activities carried out in other Member States are recognised as equivalent to the results of domestic accredited laboratory activities;
- the definition of laboratory activities has been amended to require all police fingerprint laboratories to obtain accreditation;
- the period within which the DNA provisions must be implemented has been increased to four years from the date when the Framework Decision comes into effect; and
- the period within which the fingerprint provisions must be implemented has been increased to six years.

14.13 The Government is content with the amendments. The effect of the change to the definition of laboratory activities will be to reduce the cost of implementation in England and Wales to £30,000 in the first year and £10,000 a year thereafter; and the longer period for the implementation of the fingerprint provisions is more realistic.

14.14 The Government now supports the amended proposal and the Minister asks us to clear the document from scrutiny before the JHA Council is invited to agree it on 23 October.

Conclusion

14.15 The Minister has provided us with all the information for which we asked and has provided satisfactory answers to our questions. We are content, therefore, now to clear the draft Framework Decision from scrutiny.

⁵⁸ See HC 19–xxvi (2008–09), chapter 9 (10 September 2009).

15 Roadmap for the protection of suspects in criminal proceedings

(30985)	Draft Resolution on a roadmap for strengthening procedural rights of suspected or accused persons in criminal proceedings
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—	

<i>Legal base</i>	—
<i>Deposited in Parliament</i>	7 October 2009
<i>Department</i>	Justice
<i>Basis of consideration</i>	Minister’s Letter of 16 October 2009
<i>Previous Committee Report</i>	HC 19–xxvii (2008–09), chapter 12 (14 October 2009); and see (30753) — HC 19–xxvi (2008–09), chapter 10 (10 September 2009)
<i>To be discussed in Council</i>	23 October 2009
<i>Committee’s assessment</i>	Legally and politically important
<i>Committee’s decision</i>	Cleared

Background

15.1 We considered the roadmap for a second time in last week’s Report. We noted that several of our recommendations had been incorporated in the revised Resolution, particularly that it no longer bound the Government to *adopt* the measures in the roadmap, simply to *examine* them. We also welcomed the fact that the Council of Europe had been fully consulted on the proposal. In concluding, we raised three additional concerns. Two on Measures B and D where, following observations by the Council of Europe, the wording appeared to us to restrict too far the procedural safeguards in the respective measures (access to the file and communication with an employer/relative). And a third on a new recital intended to clarify the distinction between the European Convention on Human Rights (ECHR) and EU law in the field of procedural rights, which we concluded failed in its objective.

The Minister’s Letter of 16 October

15.2 The Minister has responded quickly to our Report, anxious that we clear the Resolution from scrutiny before the JHA Council meets on 23 October. He reminds us that the roadmap is only indicative of the areas where the EU has agreed to act, so should not be interpreted strictly.

15.3 He contends that the Council of Europe’s proposal for qualifying the rights in Measure B is not materially different from the current wording, to which all Member States have agreed. On Measure D, he says that Member States were inclined not to incorporate the reference to “third parties”, it being considered too broad in scope.

15.4 On the recital he says he “can see why the Committee thinks that the revised recital on ECHR standards is somewhat convoluted”. Nonetheless, he thinks that “its underlying aim is in line with what the Committee wanted. It seeks to clarify that the ECHR, while laying down the foundations of trust between Member States, is not always implemented consistently and that the roadmap aims to lay out ways for Member States to implement ECHR standards better”.

15.5 The Minister reiterates the Government’s support for the Resolution, and warns that if agreement cannot be reached at the JHA Council on 23 October, it is likely that the text may unravel, with the consequence that some of the procedural safeguards may be watered down.

Conclusion

15.6 We thank the Minister for his letter, and the speed of his reply.

15.7 We take note of the fact that Member States were not convinced that the Council of Europe’s proposed amendment to Measures B and D would significantly alter the application of the rights contained within those Measures.

15.8 The Minister sympathises with us that the additional recital on the ECHR appears “somewhat convoluted”, and we are grateful for the elucidation that his letter provides. Many who look at this Resolution will not, however, have the benefit of his explanation, so we continue to think that minor editing would go along way to clarifying what is an important distinction to draw in this field of EU activity. We therefore propose the following, in the hope that the Minister’s officials can raise it as a minor but helpful cleaning up of the text before it is adopted by general approach. The first sentence of the recital remains as it is. The second is amended as follows: “At the same time, there is room for further action *by* the European Union to ensure full implementation and respect of Convention standards *within the EU*, as well as, where appropriate, to raise existing *Convention* standards.” (“[C]onsistent application of the applicable standards” adds a layer of confusion and would be covered by “full implementation and respect of Convention standards”.)

15.9 We note the pressure on the Minister to be able to give his agreement to the Resolution and the JHA Council on 23 October, and the consequences of not doing so. Accordingly, we are prepared to clear the draft Resolution from scrutiny at this stage. But in so doing we urge the Minister to take our proposed drafting amendment into account, and to report back on the final text of the Resolution adopted by general approach.

16 Interpretation and translation rights in criminal proceedings

(a) (30984)	Council Framework Decision on the right to interpretation and to translation in criminal proceedings
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—	
(b) (31010)	Council Framework Decision on the right to interpretation and to translation in criminal proceedings
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—	

<i>Legal base</i>	Article 31(1)(c) EU; 34(2)(b) EU
<i>Deposited in Parliament</i>	(b) 19 October 2009
<i>Department</i>	Justice
<i>Basis of consideration</i>	Minister’s Letter of 16 October 2009
<i>Previous Committee Report</i>	(a) HC 19–xxvii (2008–09), chapter 13 (14 October 2009) (b) None
<i>To be discussed in Council</i>	23 October 2009
<i>Committee’s assessment</i>	Politically and legally important
<i>Committee’s decision</i>	(Both) Cleared; further information requested

Background

16.1 We considered the draft Framework Decision for a second time in last week’s Report. We noted that several of our recommendations had been incorporated in the revised draft, and that, overall, the text was much improved. We also welcomed the fact that the Council of Europe had been fully consulted on the proposal. We remained concerned, however, by how this draft legal instrument would co-exist with the European Convention on Human Rights (ECHR), noting that this was also a point raised by the Council of Europe.

The Minister’s Letter of 16 October

16.2 The Parliamentary under-Secretary at the Ministry of Justice (Lord Bach) has responded quickly to our Report, anxious that we clear the Framework Decision from scrutiny before the JHA Council meets on 23 October to agree a general approach.

16.3 The Minister welcomes the Committee’s focus on the relationship with the ECHR, agreeing with us that it is “crucial that this relationship has been thought through”. He explains it as follows (we cite the relevant extracts in full, given their importance):

“This issue of the relationship is complicated, at least at a theoretical level, by the fact that the ECHR is a living instrument to be interpreted in the light of current

conditions and of the ideas prevailing in democratic States. The extent to which this has a substantial impact in practice is likely to depend a bit on the ECHR rights (and qualifications) in question. Because of the nature of the right, the area of interpretation and translation may be one of those areas where we can expect less change in light of current conditions and new ideas, rather than more. But even so, it is a fact we have to consider that the precise ambit of ECHR rights are capable of evolving in particular cases through the development of the case law of the European Court of Human Rights (ECtHR). As I mentioned before it is also fair to say that Member States have different views on the precise ambit of the ECHR. It is within this dual context that in my view it is not helpful or feasible to insert a clause on the face of the instrument indicating where the draft Framework Decision departs from the ECHR. Given this, it is also problematic to insert a consistency of interpretation clause. That said, I am keen to ensure that the prism through which this Framework Decision is viewed is that of the ECHR and the interpretation of the ECtHR. The UK has therefore urged other Member States and the Presidency to agree to the inclusion of a recital to help shape the interpretation of the Framework Decision. You will therefore note that there is a new recital 19 which reads:

“Member States should ensure that the provisions of Articles 2 to 5 of this Framework Decision, where they correspond to rights guaranteed by the ECHR, are implemented consistently with those of the ECHR and as developed by the relevant case-law of the ECHR.

“I believe this assists in relation to legal certainty and to reinforce the relationship between this instrument and the ECHR.

“The report cited the Council of Europe view that the draft Framework proposal exceeds the relevant standards and the Committee expressed its concern that exceeding ECHR standards within the EU legal framework will undermine legal certainty. The report also asked me to state where I believe the Framework Decision exceeds the corresponding provisions of the ECHR (as interpreted by the ECtHR). I am very happy to do so and this also feeds into the concern about legal certainty. In summary, I would say the current text of the Framework Decision very substantially accords with the ECHR and does not go beyond it, with two exceptions. The first exception relates to extradition [by means of a European Arrest Warrant], and the second is the procedural provision about requests and reviews.

“I understand that European Arrest Warrant (EAW) proceedings do not themselves engage Article 6: see for example *Mamatkulov and Abdurasulovic v Turkey* (2003). Therefore Article 1 exceeds the ECHR, as do subsequent articles so far as they relate to the EAW. [...]

“Article 3.3 (requests) sets out an individual’s procedural right to request further documents which are necessary for the effective right of defence. This accords with the logic and good sense of the ECHR (see for example, para 80 of *Kamasinski v Austria*). It adds to the ECHR only to the extent it reinforces that procedurally a request for translation may be made. [...]

“You will therefore appreciate that, in my view, the draft Framework Decision does, as your report recommends, substantially adopt the same standards as those in the ECHR (as interpreted by the ECtHR). I am aware that other Member States see the Framework Decision as exceeding those in the ECHR to a greater extent. This, in my view, is an illustration of both the value of the approach set out in the roadmap and of this Framework Decision: by ensuring that there is precision in terms of what the obligations are, the more enforceable mechanism of EU law can ensure that there are high procedural standards throughout the EU, and that our citizens can travel and work abroad with greater confidence and trust in the judicial systems in other Member States.

“I do hope that explanation of where in our view the provisions of this Framework Decision correspond to ECHR rights (and they do so substantially) lessens the concern of the Committee regarding the issue of legal certainty. I do not consider this Framework Decision will inevitably lead to legal confusion

“Nor do I agree the point in the abstract. Suppose a Member State chooses in a particular area covered by an ECHR right to provide much greater protection to that laid down by the ECHR. Individuals in that State would benefit from such protection and would not be uncertain as to the rights they had. The same point could be made at EU level, had this instrument in isolation substantially exceeded the ECHR norms of interpretation. Member States would implement the Framework Decision. Individuals would be clear as to their rights.

16.4 The Minister then outlines further changes to the draft Framework Decision since we reviewed it last week.

Recitals:

- In recital 11 an additional sentence has been added to clarify that Member States can provide a higher level of protection than set out in the Framework Decision.
- Recital 12 is new and states that Member States are not obliged to provide interpretation assistance for communication between legal counsel and the suspect/accused person where they can effectively communicate in the same language. The Minister comments that this is a superfluous amendment. However, he does not believe that it will water down the right of a suspect/accused person, since it is clear in the recital that they must be able to communicate “effectively”.
- Recital 19 is new, and is set out above.

Articles:

- Recitals 8 bis (Framework Decision does not apply to sanctions imposed by anything other than a criminal court) and quarter (definition of when criminal proceedings begin and end) have been deleted and incorporated in part into Articles 1 and 2.
- Articles 2(1) and 3(1) have been amended to reflect the Committee’s earlier comment that the right to interpretation and translation is a right which attaches to the suspect/

accused person, rather than the proceedings. So the expression “where necessary for the purpose of ensuring the fairness of the proceedings” has now been replaced with “in order to safeguard his/her rights to a fair trial”. The Minister says: “In my last letter to you, I agreed with you and I am glad to tell you that this phrase, and all subsequent uses of that phrase, have been amended. It goes without saying that the Government welcomes this clarity.”

- Article 2(2) on the obligation on Member States to provide interpretation assistance for communication between legal counsel and the suspect/accused person has been incorporated in part in Article 2(1).

Conclusion

16.5 We thank the Minister for his further letter.

16.6 His explanation on the relationship between this Framework Decision and the ECHR is particularly helpful. Given its importance to EU legislative activity in this field, it is set out in full in the preceding paragraphs of this Report. In concluding his argument, the Minister states that “he does not consider this Framework Decision will inevitably lead to legal confusion”. There is nothing to be gained from rehearsing again why we are more sceptical about this than he is; we simply hope that he is right. In this regard, we welcome the addition of recital 19 on the need for consistency with the ECHR, inserted at the Minister’s request.

16.7 We also note, and consider it worth highlighting in the conclusion, his comment that some other Member States consider that this Framework Decision greatly exceeds the ECHR. The implication is that their standards fall below the UK’s. So we agree with him that one of the benefits in incorporating procedural safeguards into the enforcement mechanisms of EU law means that UK citizens can travel and work abroad with greater confidence in the judicial systems of other EU Member States.

16.8 We do not welcome the latest revisions to the text, but agree that they will not water down the rights contained in Articles 2 to 5. We are, however, grateful that our drafting recommendation to give greater emphasis to the rights attached to the suspect/accused person in Articles 2(1) and (3) has been incorporated.

16.9 In clearing documents (a) and (b) from scrutiny we ask the Minister to report back to us once the final draft of the text has been agreed after the next JHA Council.

17 Statistics

(a) (30876) 12732/09 COM(09) 404	Commission Communication on the production method of EU statistics: a vision for the next decade
(b) (30882) 12739/09 COM(09) 433	Commission Communication: <i>GDP and beyond: measuring progress in a changing world</i>

<i>Legal base</i>	—
<i>Documents originated</i>	(a) 10 August 2009 (b) 20 August 2009
<i>Deposited in Parliament</i>	(a) 1 September 2009 (b) 4 September 2009
<i>Department</i>	(a) UK Statistics Authority (b) HM Treasury
<i>Basis of consideration</i>	(a) EM of 7 October 2009 (b) EM of 4 October 2009
<i>Previous Committee Report</i>	None
<i>To be discussed in Council</i>	(a) Not known (b) possibly 23 October 2009
<i>Committee's assessment</i>	Politically important
<i>Committee's decision</i>	Cleared

Background

17.1 The European Statistical System is designed to provide comparable statistics at Community level. It functions as a network comprising Eurostat, a Directorate-General of the Commission, and the statistical offices, ministries, agencies and central banks that collect official statistics in Member States, Iceland, Norway, Liechtenstein and Switzerland.

17.2 Gross Domestic Product (GDP) is the market value of all final goods and services made within the borders of a country or region in a year.⁵⁹ The measure is commonly used as a benchmark by policy makers.

The documents

17.3 In its Communication on statistics, document (a), the Commission discusses (non-legislative) proposals for reforming the production systems of the European Statistical System, in order to coordinate approaches, exploit synergies and avoid duplication in the

⁵⁹ The most common approach to measuring GDP is that it equals private consumption + government spending + (exports — imports).

work of national statistical institutes (NSIs) in Member States. The Commission proposes a different way of working in order to adapt to a changing statistical environment:

- new requirements for statistics will continue to increase in terms of quality and quantity;
- the regulatory processes will continue to be improved and simplified; and
- new ICT tools will continue to be developed to improve efficiency and reduce burden.

It says this new way could be achieved by taking advantage of efficiency improvements made possible through the recently introduced European Statistics Regulation (Regulation (EC) No 223/2009 and by encouraging improved collaboration between European Statistical System partners.

17.4 The Commission describes the need to change the European Statistical System “business architecture” from a “stovepipe” model to an integrated model. It notes that the stovepipe model has evolved in a way which has seen statistics of particular domains being developed independently from each other. This has a number of advantages such as being flexible, low-risk and easily mapped to domain managers and specific regulations. However, the Commission argues that these are outweighed by the disadvantages such as imposing unnecessary burden on respondents, incurring high costs to NSIs and making it difficult to collect cross-domain statistics on, for example, globalisation and climate change. The proposed integrated model would introduce an holistic approach to enable improvements in efficiency through the integration of datasets and by combining data from different sources. Under this model statistics for specific domains would be produced as integrated parts of a comprehensive production system (or data warehouse) based on a common technical infrastructure, making use of all available quality data sources using standardised software.

17.5 The Commission states that such a change in business architecture would have consequences, presenting policy and management challenges for NSIs and for Eurostat:

- NSIs would need to shift emphasis from being “data-collectors” to being “re-users of data” so as to make maximum use of the availability of dynamic data sources;
- they would need to adapt their approach to risks, concepts and definitions to take account of changing circumstances concerning data ownership;
- they would need to support users with a comprehensive communication strategy;
- Eurostat would need to reconsider its approach to quality assurance in all its dimensions; and
- it would need to introduce a new generation of statistical legislation together with other instruments to cope with the increased complexity of integrated statistical production processes.

17.6 The Commission says that the next steps for the implementation of its proposals will be:

- to seek the support of the European Parliament and the Council together with NSIs;
- upon acceptance, submission to the Economic and Financial Committee for discussion; and
- engagement with user groups at an early stage through submission of the proposals to the European Statistics Advisory Committee.

17.7 In its Communication on the GDP measure, document (b), the Commission:

- asserts that GDP has come to be regarded as a proxy indicator for “overall societal development and progress in general;”
- says that it intends to work on creating more inclusive indicators, that will be internationally recognised and implemented;
- recalls that, with other organisations, it organised a ‘Beyond GDP’ conference in November 2007,⁶⁰ which revealed support for the development of indicators that complement GDP to help support policy-making decision; and
- notes that indicators already exist, which have been created to complement GDP — for example, the UNDP Human Development Index is a composite measure based on GDP, health and education.

17.8 The Commission lists five actions it intends to supplement the GDP measure:

- production of a comprehensive environmental index, a pilot version of which will be presented in 2010. Initially it will be published annually for the Community and Member States, with the longer-term goal of publishing it in parallel to GDP. In addition, the Commission has launched studies into the feasibility of well-being indicators;
- improving the timeliness of environmental and social data — GDP and unemployment figures are usually published within a few weeks of the period they assess whereas environmental and social data are in many cases published too far after the fact to provide pertinent information;
- more accurate reporting of distribution and inequalities between countries, regions and economic and social groups. Far reaching reforms such as those required to fight climate change can only be achieved if efforts and benefits are felt to be equitably shared. Indicators of equal access to services and infrastructure that are essential to participate fully in society are being developed;
- exploring the idea of a European Sustainable Development Scoreboard to provide a more up-to-date source of data; and
- extending, through the European Statistical System, National Accounts to environmental and social issues, with proposals in 2010 for a framework for

60 See <http://www.beyond-gdp.eu>.

environmental accounting and stepping up work on monetary valuation of ecosystem goods and services.

17.9 The Commission, in conclusion:

- says that it intends to report on the implementation and outcomes of the actions it puts by 2012 at the latest;
- notes that GDP is the best single measure of the performance of a market economy, whilst acknowledging that it is not meant to be an accurate gauge of longer-term economic and social progress; and
- says that future policies should be based on data that are rigorous, timely, publicly accepted and cover all essential issues.

The Government's view

17.10 The Minister of State, Cabinet Office (Angela E Smith), says that the Government is content with the Communication on statistics, document (a), commenting that:

- many of the initiatives outlined by the Commission, such as the increased use of administrative data, the introduction of improved ICT to realise efficiencies and the functional re-engineering of statistical systems, have already been implemented in the UK with good effect; and
- the document does not change Community law, nor does it impose any policy changes on the UK — rather “it gently encourages a different way of operating and identifies areas of significant efficiency savings”.

17.11 On the Communication about the GDP measure, document (b), the Economic Secretary to the Treasury (Ian Pearson) says that the Government welcomes the research proposed, as it will complement the large volume of data on quality-of-life issues already published, such as those on crime, working hours, social capital, social demography and health. He comments further that:

- although it is recognised that GDP is not a perfect measure of welfare it is important to recognise how crucial GDP data is to all kinds of economic surveillance, not least of all because the Government and the Bank of England rely heavily on GDP statistics in the setting of economic policy;
- measurement of GDP is well developed and easily understood and GDP is compiled using a set of internationally agreed definitions;
- measuring a broad set of quality of life indicators is desirable and the Government welcomes efforts to overcome the methodological challenges;
- it is important that the internationally agreed procedures for developing National Accounts, coordinated by the United Nations, are not overlooked; and

- the Office for National Statistics will continue to engage in international discussions with regards to developments in the National Accounts and the Government will continue to monitor developments in this area.

Conclusion

17.12 These Communications discuss important issues related to the production and use of statistics for policy makers and report useful Commission initiatives. So whilst we have no reason not to clear them from scrutiny we draw them to the attention of the House.

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

Department for Business, Innovation and Skills

(30792) 11909/09 COM(09) 324	White Paper on Modernising ICT Standardisation in the EU - The Way Forward.
(30891) 12905/09 COM(09) 442	Commission Communication on reviewing Community innovation policy in a changing world.
(30903) 13082/09 COM(09) 432	Commission Communication on the Final Evaluation of the eEurope 2005 Action Plan and of the multiannual programme (2003-2006) for the monitoring of eEurope 2005 Action Plan, dissemination of good practices and the improvement of network and information security (MODINIS).
(30930) 13410/09 COM(09) 480	Draft Council Decision on the conclusion, by the Commission, of the Agreement for co-operation between the European Atomic Energy Community and the Government of the Federative Republic of Brazil in the field of fusion energy research.
(30931) 12432/09 COM(09) 396	Draft Council Regulation amending Regulation (EC) No. 1890/2005 imposing a definitive anti-dumping duty on imports of certain stainless steel fasteners and parts thereof originating, inter alia, in Vietnam.
(30958) 13682/09 COM(09) 487	Commission Report on progress in quality assurance in higher education.

Department for Communities and Local Government

(30927) 13353/09 COM(09) 469	Commission Report on the application and effectiveness of the directive on strategic environmental assessment (Directive 2001/42/EC).
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Department for Energy and Climate Change

(30975)
13144/09
COM(09) 438

Draft Council Decision on the signing of the “Terms of Reference for the International Partnership for Energy Efficiency Cooperation” (IPEEC) and the “Memorandum concerning the hosting by the International Energy Agency of the Secretariat to the International Partnership for Energy Efficiency Cooperation” by the European Community.

Department for Environment, Food and Rural Affairs

(30820)
12177/09
SEC(09) 983

Commission Recommendation on the participation of the European Community in negotiations on a legally binding instrument on mercury further to Decision 25/5 of the Governing Council of the United Nations Environment Programme (UNEP).

(30913)
13266/09
COM(09) 476

Draft Council Regulation opening and providing for the management of autonomous Community tariff quotas for certain fishery products for the period 2010 to 2012.

(30922)
13326/09
COM(09) 477

Draft Council Regulation on certain provisions for fishing in the GFCM (General Fisheries Commission for the Mediterranean) Agreement Area.

(30939)
13541/09
COM(09) 483

Draft Council Decision on the establishment of the Community position to be adopted in the Commission for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean.

Foreign and Commonwealth Office

(30812)
12191/09
COM(09) 331

Commission Report on the application in 2008 of Regulation (EC) No. 1049/2001 regarding public access to European Parliament, Council and Commission documents.

(30937)
13529/09
COM(09) 497

Draft Council Regulation amending Council Regulation (EC) No. 329/2007 concerning restrictive measures against the Democratic People’s Republic of Korea.

(30943)
13617/09
COM(09) 496

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

Home Office

(30980)
13944/09
COM(09) 508

Draft Council Regulation amending Regulation (EC) No. 1104/2008 on migration from the Schengen Information System (SIS 1+) to the second generation Schengen Information System (SIS II).

(30981)
13945/09
COM(09) 509

Draft Council Decision amending Decision 2008/839/JHA on migration from the Schengen Information System (SIS 1+) to the second generation Schengen Information System (SIS II).

Department for Transport

(30911)
13203/09
+ ADDs 1–3
COM(09) 464

Commission Communication on a Progress Report on the implementation of the Railway Safety Directive and of the Railway interoperability Directives.

HM Treasury

(30914)
13284/09
COM(09) 471

Commission Communication — Completing SEPA: A Roadmap for 2009-2012.

(30926)
13401/09
COM(09) 459

Draft Council Regulation concerning authentication of euro coins and handling of euro coins unfit for circulation.

Formal minutes

Wednesday 21 October 2009

Members present:

Michael Connarty, in the Chair

Mr David S Borrow	Keith Hill
Mr William Cash	Kelvin Hopkins
Mr James Clappison	Angus Robertson
Jim Dobbin	Mr Anthony Steen
Mr Greg Hands	Richard Younger Ross
Mr David Heathcoat-Amory	

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 1.24 read and agreed to.

Paragraph 2, Headnote read. Amendment proposed, in line 12, to leave out the word “Cleared” and to insert the words “For debate in European Committee B” —(*Mr Greg Hands..*)

Question put, That the Amendment be made.

The Committee divided.

Ayes, 4	Noes, 1
Mr William Cash	Jim Dobbin
Mr James Clappison	
Mr Greg Hands	
Mr David Heathcoat-Amory	

Paragraphs 2.1 to 2.18 read and agreed to.

Paragraph 2.19 read, amended and agreed to.

Paragraphs 3.1 to 5.6 read and agreed to.

Motion made and Question put, That consideration of paragraphs 6.1 to 6.22 be deferred to the next meeting of the Committee—(*Mr William Cash.*)

The Committee divided.

Ayes, 3

Mr William Cash
Mr James Clappison
Mr Greg Hands

Noes, 6

Mr David S Borrow
Jim Dobbin
Mr David Heathcoat-Amory
Keith Hill
Angus Robertson
Richard Younger Ross

Paragraphs 6.1 to 6.22 read.

Paragraph 6, Headnote read.

Amendment proposed, in line 11, to leave out the words “further information requested” and to insert the words “For debate on the Floor of the House”. —(*Mr David Heathcoat-Amory.*)

Question put, That the Amendment be made.

The Committee divided.

Ayes, 3

Mr William Cash
Mr James Clappison
Mr David Heathcoat-Amory

Noes, 7

Mr David S Borrow
Jim Dobbin
Mr Greg Hands
Keith Hill
Kelvin Hopkins
Angus Robertson
Richard Younger Ross

Paragraph agreed to.

Paragraphs 7.1 to 8.25 read and agreed to

Paragraph 8.26 read, amended and agreed to

Paragraphs 9.1 to 18 read and agreed to

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

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

2. Standing Order No.143, the scrutiny reserve resolution and scrutiny of opt-ins

The Committee discussed these matters.

[Adjourned till Wednesday 28 October 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*)