



House of Commons
European Scrutiny Committee

**Fourth Report of
Session 2009–10**

Documents considered by the Committee on 15 December 2009, including the following recommendations for debate:

European Development Fund (EDF) expenditure

Financial management

European Defence Agency activity in 2009 and 2010

Report, together with formal minutes

*Ordered by The House of Commons
to be printed 15 December 2009*

HC 5-iv

Published on 22 December 2009
by authority of the House of Commons
London: The Stationery Office Limited
£0.00

Notes

Numbering of documents

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

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

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

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

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

Abbreviations used in the headnotes and footnotes

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

Euros

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

Further information

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

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

Staff

The staff of the Committee are Alistair Doherty (Clerk), Laura Dance (Second Clerk), David Griffiths (Clerk Adviser), Terry Byrne (Clerk Adviser), Sir Edward Osmotherly (Clerk Adviser), Peter Harborne (Clerk Adviser), Paul Hardy (Legal Adviser) (Counsel for European Legislation), Dr Gunnar Beck (Assistant Legal Adviser), Hannah Lamb (Senior Committee Assistant), Allen Mitchell (Committee Assistant), Mrs Keely Bishop (Committee Assistant), Dory Royle (Committee Assistant), Shane Pathmanathan (Committee Support Assistant), and Paula Saunderson (Office Support Assistant).

Contacts

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

Contents

Report

Page

Documents for debate

1	DFID	(31188) European Development Fund (EDF) expenditure	3
2	HMT	(31201) Financial management	6
		Annex: Specific References to the United Kingdom	13
3	MOD	(31194) (31195) (31198) European Defence Agency activity in 2009 and 2010	14

Documents not cleared

4	BIS	(31127) Enforcement of Patent Rights	25
5	DFT	(31093) Carbon dioxide emissions from new light commercial vehicles	32
6	HMT	(31177) Financial services	37
7	HO	(30877) (31206) EU Committee on Internal Security	39

Documents cleared

8	BIS	(30554) Combating late payments	43
9	BIS	(31082) Reaping the benefits of the digital dividend in Europe	46
10	DEFRA	(29727) Marketing standards for poultrymeat	49
11	DEFRA	(31095) Functioning of the food supply chain	52
12	FCO	(31167) EU- Republic of Korea relations	57
13	HMT	(30860) (31190) Draft Budget 2010	59
		Annex 1: Table 1: Summary of 2010 PDB, Draft EU Budget, EP first reading and Council second reading package — EUR million	66
		Table 2: Summary of 2010 PDB, Draft EU Budget, EP first reading and Council second reading package — GBP	67

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

14	List of documents	68
----	-------------------	----

Formal minutes

70

Standing order and membership

1 European Development Fund (EDF) expenditure

(31188)	European Court of Auditors' Annual Report on the Activities
—	Funded by the Seventh, Eighth and Ninth European Development
—	Funds (EDFs)

<i>Legal base</i>	Article 248 TEC
<i>Deposited in Parliament</i>	30 November 2009
<i>Department</i>	International Development
<i>Basis of consideration</i>	EM of 3 December 2009
<i>Previous Committee Report</i>	None; but see (30203) —: HC 19–iii, chapter 3 (14 January 2009)
<i>To be discussed in Council</i>	To be determined
<i>Committee's assessment</i>	Politically important
<i>Committee's decision</i>	Not cleared; for debate as part of the debate recommended in chapter 2 on the annual audit of the EU budget

Background

1.1 The European Development Fund (EDF) is the EU's main development cooperation instrument for 78 African, Caribbean and Pacific (ACP) countries and 20 Overseas Countries and Territories (OCTs). The 7th EDF was established in 1990 and the 8th EDF in 1995. The 9th EDF was signed in 2000 and came into force in 2003 under the Cotonou Agreement.¹ The 9th EDF provides €13.8 billion (£10.9 billion) for Community assistance for the period 2003–2007, in addition to all uncommitted funds from previous EDFs. The UK share of the 9th EDF is 12.69%.

The Court of Auditors' Report

1.2 The European Court of Auditors (ECA) report is a statement of assurance on the €2.7 billion of EDF expenditure in 2008. It focuses on the accounts, transactions and systems used. It is based on an assessment of a representative statistical sample of 225 items, comprising 45 financial and individual legal commitments and 180 payments made by EuropeAid² as well as audit visits to five countries and other data sources. The ECA concluded that the EDF accounts for 2008 present fairly the financial position of the EDF and are in accordance with the provisions of the Financial Regulation and accounting rules.

1.3 The ECA noted that EuropeAid has remedied some shortcomings observed in the previous ECA Report. In particular, the ECA welcomes the efforts made to improve the

1 EDFs 7 and 8 were established under the 3rd Lome Convention, which preceded the Cotonou Agreement.

2 The Commission's EuropeAid co-operation office manages EU external aid programmes, both those funded by the Union's budget and the European Development Fund. See http://ec.europa.eu/europeaid/index_en.htm for full information about its activities.

supervisory and control systems. The ECA noted a material level of error, however, which concerned expenditure incurred outside the implementation period, absence of invoices or other supporting documents and calculation errors. In response, EuropeAid will review its control strategy in 2010.

1.4 The ECA recommends that EuropeAid should improve checks by focusing more on key risks and prepare annual audit plans with more risk analysis and realistic assessments of available resources.

1.5 The ECA also looked at the Commission's provision of budget support. Its recommendations reflect those outlined in the 2007 ECA Annual Report, which focused on setting benchmarks and minimum standards for budget support. The ECA suggests that the Commission should take greater account of the strengths and weaknesses of partner countries' public financial management capabilities when deciding whether this form of assistance is appropriate. It also recommends that the Commission provide better evidence to support its decisions on the eligibility of budget support.

The Commission's response

1.6 The Commission disagrees with the call to set common benchmarks and minimum standards for budget support, noting that it implements budget support according to standards and improvement plans on a country-by-country basis. However, the Commission recognises the need for even greater transparency and therefore proposes in-depth coverage in future annual reports on the "European Community's Development and External Assistance Policies in their Implementation". Furthermore, while not using common benchmarks and minimum standards, the Commission accepts that improvements can be made by taking a more structured approach to assessing budget support, in line with the Cotonou Agreement, and says that it will refine its guidance on budget support to reinforce its approach.

The Government's view

1.7 In his Explanatory Memorandum of 3 December 2009, the Minister of State at the Department for International Development (Mr Gareth Thomas) welcomes the ECA's report and its statement of assurance on the EDF.

1.8 He also welcomes the steps the Commission has taken to address the ECA's points in both their last and this report. He says that he will continue to take a close interest in the Commission's financial management performance and use opportunities in the Council working groups to follow up on progress in addressing the issues raised.

1.9 Regarding budget support, the Minister is "broadly supportive of the approach taken by the Commission." He recalls that the 2007 Organisation for Economic Co-operation and Development Peer Review of the Commission noted that budget support may be an area in which the Commission has a particular advantage over many Member States and commended the Commission "for embracing what is a difficult but potentially high impact instrument". The Minister also recalls that the June 2006 House of Lords European Union

Committee report, *The EU and Africa: Towards a Strategic Partnership*,³ noted budget support “provides a better means of supporting the aim of African ownership in the Strategy for Africa than other support.” He also notes that, where there are shortcomings in key public financial management (PFM) areas, the Commission has taken action to stop or suspend budget support, and gives as examples 2006 in Chad and Tanzania in 2008. He continues as follows:

“An approach based on common minimum standards of PFM would give the Commission less flexibility and would prevent the Commission from providing budget support in countries where risks are high but the potential benefits justify the risks. Low Income Countries emerging from conflict may represent a strong case for budget support to enhance state credibility and stabilise the situation, even though fiduciary risks may be high.”

1.10 The Minister welcomes the Commission’s suggestion to improve transparency of budget support by reporting in-depth in their annual report and by refining the Commission guidance on budget support to take a more structured approach.

1.11 Turning to steps the Commission is taking to improve its risk mitigation and ensure proper accountability for Commission funds, the Minister says that his Department will continue to support them, including through the use of Seconded National Experts. He regards the ECA’s active engagement in independent reviews of Commission provision of budget support as an important part of the assurance process on use of EC funds. He further notes that Commission internal audit teams also review EC aid systems, including for budget support, to help provide assurance that risks are managed effectively; and that DFID’s Internal Audit Department maintains contact with these Commission audit teams to share best practice and improve the coordination of reviews.

1.12 Looking ahead, the Minister says that the Court of Auditors’ report will be considered by the Council’s African Caribbean and Pacific (ACP) Working Group in the new year, whereafter the Council will make a recommendation to the European Parliament to give the Commission a discharge on EDF expenditure in 2008.

Conclusion

1.13 The overall EU budget payments in 2008 were €117 billion; external aid, development and enlargement was c.5% of this sum, i.e. c.€6.2 billion. Cohesion was 32%, or €36.6 billion; of this, the Court estimates that at least 11% should not have been paid out. This perhaps puts the Court’s critical remarks about some of the control aspects of the EDF’s €2.6 billion in perspective, particularly as the continuing debate about budget support⁴ is essentially between the development professionals, who regard it as the key to the development of national capacity in developing countries, and the auditors, whose natural concern is over the inherent risks in such an approach.

3 Thirty-fourth Report from the European Union Committee, 2005–06, *The EU and Africa: Towards a Strategic Partnership*, HL 206-I and II.

4 cf. the Minister’s remarks in the Committee’s Report a year ago on the equivalent 2007 ECA Report: see headnote; (30203) —: HC 19–iii, chapter 3 (14 January 2009).

1.14 This is a debate that we are content for others to pursue. We therefore recommend that this Court of Auditors' Report be debated as part of the debate on the annual audit of the EU budget that we are recommending in chapter 2 of this Report.

2 Financial management

(31201)	European Court of Auditors: <i>Annual report on the implementation of the budget</i>
—	
—	

<i>Legal base</i>	—
<i>Department</i>	HM Treasury
<i>Basis of consideration</i>	EM of 2 December 2009
<i>Previous Committee Report</i>	None
<i>To be discussed in Council</i>	February 2010
<i>Committee's assessment</i>	Politically important
<i>Committee's decision</i>	For debate in European Committee B together with the Commission's 2008 report on the fight against fraud and related documents, which we have already recommended for debate

Background

2.1 The European Court of Auditors (ECA) is responsible for the external audit of the Community's public finances. It examines the legality, regularity and soundness of the management of all the Community's revenue and expenditure, and the revenue and expenditure of any body (agencies etc) created by the Community. The ECA publishes its main Annual Reports, on activity carried out under the General Budget and on the European Development Funds (EDFs),⁵ on a particular financial year about 12 months after the end of that year. In addition to these Annual Reports, the ECA also publishes annually Special Audit Reports on agencies etc and, throughout the year, Special Reports on its audits of particular areas of revenue or expenditure. We regularly, but not always, report on the Special Reports. The main Annual Reports include the ECA's Statements of Assurance for the financial year in question.

2.2 The Annual Reports and Statements of Assurance⁶ allow the Community's Budgetary Authority (the Council and the European Parliament) to consider the quality of Community budget implementation, and whether the budgetary processes for the year should be closed by the European Parliament granting, on the recommendation of the

5 For the latter see (31188) in chapter 1 in this Report.

6 The Statement of Assurance is often referred to as the DAS, from the French *déclaration d'assurance*.

Council, a “discharge” to the Commission. The Commission is required to act on any comments made by the Council and the European Parliament in granting the discharge, and to report back on the actions it has taken in response, if requested.

2.3 While the ECA’s Annual Reports contain some material relating to fraud and irregularities, they are not primarily concerned with fraud against the EC’s resources. We reported on the Commission’s 2008 Annual Report, *Protection of the financial interests of the Communities: Fight against fraud*, and related documents in October and December 2009, and have recommended them for debate once this present document is available.⁷

The document

2.4 This document is the ECA’s report of the audit of the General Budget accounts for 2008. It is over 250 pages long and in considering the report we have been assisted by the Explanatory Memorandum of 2 December 2009 from the Economic Secretary to the Treasury (Ian Pearson). As well as providing the Government’s views on the report, it contains a useful summary of the report’s introduction and of each of the subject-specific chapters in the report. It also lists references in the document to the UK, which we annex.

2.5 The first part of the report is a general introduction to the audit in which the ECA notes that:

- the report covers the second year of the 2007–2013 Financial Framework (or as previously known, the Financial Perspective), which sets the limits for each financial year’s budgets;
- its assessments are chiefly based on its testing of the regularity of transactions, as well as an evaluation of the effectiveness of the main supervisory and control systems governing the revenue or expenditure involved; and
- the conclusions of this work form the basis for the Statement of Assurance.

2.6 The report itself is set out, apart from the actual Statement of Assurance, in two columns with the ECA’s observations and comments in the first and the Commission’s responses (or, where appropriate, those of other EU institutions and bodies) alongside in the second. It has chapters on the Statement of Assurance and supporting information, the Commission internal control system, budgetary management — bringing together and consolidating information from individual revenue and expenditure chapters, revenue and each of the seven activity based budgeting (ABB) policy areas of expenditure (agriculture and natural resources, cohesion, research, energy and transport, external aid, development and enlargement, education and citizenship, economic and financial affairs and administrative and other expenditure). The report also lists in an annex the Special Reports published by the ECA since its last annual report.

2.7 The first chapter of the report contains the ECA’s Statement of Assurance. In this chapter the ECA:

⁷ (30811) 12139/09 + ADDs 1–2 (30819) (30864) 12668/09 + ADD 1: see HC 19–xxvii (2008–09), chapter 2 (14 October 2009) and (31051) 14998/09 + ADD 1: see HC 5–iii (2009–10), chapter 2 (9 December 2009).

- gives an unqualified positive Statement of Assurance on the reliability of the EU accounts for the second year running;
- gives an unqualified positive Statement of Assurance on the legality and regularity of the underlying transactions in the areas of revenue, education and citizenship, and administration and other expenditure, estimating that errors in these areas have a financial impact of less than 2% — that is, below the threshold of materiality;
- notes that in the area of agriculture and natural resources the underlying transactions are in all material respects legal and regular, except for rural development, where some issues need to be addressed;
- notes that in the area of economic and financial affairs the underlying transactions are in all material respects legal and regular, except for the Sixth Framework Programme for Research and Technological Development — within this policy area the supervisory and control systems in relation to enterprise need to be addressed, with particular attention to weaknesses in the Sixth Framework Programme;
- is unable to give a positive Statement of Assurance on the legality and regularity of expenditure in the areas of cohesion, research, energy and transport and external aid, development and enlargement — these policy areas are materially affected by error, though to differing levels;
- comments that complicated or unclear legal requirements have an impact on legality and regularity of transactions in the policy areas of agriculture and natural resources, cohesion, research, energy and transport and economic and financial affairs;
- identifies further progress in the Commission's supervisory and control systems, with particular reference to reservations given in the assurance of Directors-General and greater consistency of these with the ECA's findings; but
- notes that the Commission is not yet able to demonstrate that its actions to improve supervisory and control systems have been effective in mitigating the risk of error in areas of the budget identified in the Statement.

2.8 The second chapter of the report concerns the Commission's progress in improving the effectiveness of its internal supervisory and control systems in order to ensure the legality and regularity of transactions financed by the budget. In it the ECA says that:

- all Directors-General declared that they had reasonable assurance that the resources allocated to them had been used for the correct purposes and that the internal controls which they had established ensured the regularity of the underlying transactions;
- of the Directorates-General or services to issue a declaration in 2008, twelve contain at least one reservation, chiefly regarding the regularity of the underlying transactions;

- the number of reservations fell from 17 in 2007 to 15 in 2008;
- it scrutinised the 2008 Annual Summaries provided by the Commission to determine whether the requirements of the Financial Regulation have been met and whether Member States had provided supplementary information;
- not all Member States complied with the requirements, but the quality of the analysis in the Annual Summaries has improved in comparison to last year, adding value to the declarations of the Directors-General;
- the Commission has implemented the sub-actions in its action plan towards an integrated internal control framework; and
- however, the Commission is yet to show that its actions to improve supervisory and control systems have been effective in minimising the risk of error in some areas of the budget.

The ECA recommends that specific and further attention be focused on the areas of expenditure where it still finds high error levels and advocates an assessment of the cost and value of controls, simplified future policy proposals and progress in the mechanism through which financial corrections, withdrawals or recoveries are intended to rectify errors.

2.9 The third chapter of the report concerns budgetary management, that is the rate of implementation of the budget, execution of programmes, especially cohesion policy expenditure, amending budgets and outstanding commitments. The ECA, observing that total appropriations for commitments were €132.30 billion (£120.60 billion) and payments €117.00 billion (£106.70 billion) — respectively 4.7% and 1.7% higher than in 2007 — and overall the commitment and payment appropriations were below the Financial Framework ceilings by €2.20 billion (£2.00 billion) and €14.00 billion (£12.80 billion) respectively, says that:

- the ten amending budgets voted during the year 2008 meant an aggregate increase in appropriations for commitments of €1.40 billion (£1.30 billion) and a decrease in appropriation for payments of €4.60 billion (£4.20 billion);
- it welcomes the significant figure for payment appropriations, since reducing these through amending budgets is good financial management — adjusting flexibly to in-year changes and reducing budgetary surplus;
- it has noted an increase in outstanding budgetary commitments (which arise where expenditure programmes take a number of years to be completed and commitments are made in years before the consequent payments) of 11.8% compared to the previous year; and
- the largest components of the outstanding commitments are from Structural Funds, which represent around 66% of the total amount, and Cohesion Funds, which represent around 13.4%.

The ECA recommends the Commission to encourage Member States to transmit the remaining compliance assessment documents of the Management and Control Systems —

with emphasis on speed and quality — to avoid further delays in interim payments and higher outstanding budgetary commitments.

2.10 The fourth chapter of the report deals with the revenue for financing of the budget — consisting of 14.2% from Traditional Own Resources (customs duties, including those on agricultural products, and sugar levies), 14.8% from VAT-based contributions, 60.1% from GNI based contributions, 0.3% from the UK correction and 10.6% from miscellaneous revenue (including surplus from 2007, refunds and interest payments). In this chapter the ECA says it:

- found Member States' statements and payments on Traditional Own Resources were free from material error, as were their payments based on VAT and GNI levels, and other types of revenue were also free from material error; and
- detected as in previous years, problems with B accounts⁸ regarding delayed establishment and recovery of duties and a lack of national directions to estimate the amount of debts whose recovery is unlikely.

The ECA therefore recommends that the Commission:

- reinforces its work to ensure the correct use of B accounts and to keep under close scrutiny the establishment and recovery of these duties;
- should continue to use both physical checks at import and post-clearance audits of operators to safeguard the interests of the Community.

2.11 In this chapter the ECA also continues to highlight with concern the Commission's reservations regarding VAT and GNI-based own resources. It recommends that the Commission redoubles its efforts to reach a solution with the Member States concerned, so that the VAT reservations are lifted and the relevant corrections to VAT bases made as soon as possible. With regards to GNI, it recommends that the Commission puts in place specific rules for examinations of GNI inventories, since current on-the-spot control visits do not always give reasonable assurance on the accuracy of data.

2.12 The remaining seven chapters of the report examine implementation of the budget for each of the ABB policy areas of expenditure and report the detail of the problems uncovered by the audit, including those noted in earlier audits.

The Government's view

2.13 The Minister says that the Government welcomes the unqualified positive Statement of Assurance given by the ECA for the second time on the reliability of the EU accounts and the increase in the percentage of the budget receiving a green light, that is an error rate of below 2%, to 47% of the budget. He comments further that:

- the Government remains concerned about the level of errors in Cohesion Funds and the lack of a positive Statement of Assurance on the majority of payments made from the budget;

8 B accounts cover amounts that are challenged or not secured.

- having a qualified statement year after year affects confidence in EU expenditure and the public's perception of the value of membership of the Union;
- much more needs to be done by both the Commission and Member States to achieve the mutual aim of a positive statement of assurance on the budget;
- the Government remains committed to improving its management of EU expenditure and in October this year published the second *Consolidated statement on the use of EU funds in the UK*;⁹
- this statement is audited by the National Audit Office and presented to Parliament and helps to increase assurance of the UK's use of EU funds;
- the Government is taking the lead in encouraging Member States to take greater responsibility for the roughly 80% of the budget that is co-managed and hopes that such initiatives will contribute to the achievement of a positive Statement of Assurance in the future;
- the Government welcomes the ECA's comments that such initiatives promote transparency of EU expenditure and have the potential to reduce error rates by ensuring increased operational effectiveness of systems;
- the Government welcomes the recommendations of the ECA relating to the considerable impact of complex and unclear legal requirements on the legality and regularity of underlying transactions in the areas of agriculture and natural resources, cohesion, research, energy and transport and economic and financial affairs;
- the Government is committed to working with the Commission to simplify procedures and reduce errors that occur through complexities and unclear regulations;
- the Government notes the ECA's statements relating to the cost and value of controls and expects the Commission to bring forward proposals on the costs of controls of research, energy and transport, rural development, external aid and administrative expenditure in 2010;
- the Government welcomes this analysis, given its concerns over the costs of controls, but believes that before an informed view can be taken on any proposal for different levels of tolerable risk, further simplification of guidance and regulations must take place, and the impact of simplification must be analysed — in addition, both the methodological basis of the Commission's proposal about tolerable risk and information relating to 2007–13 programmes should be further analysed;
- the Government welcomes the ECA's assertion that the Commission has completed the sub-actions under the action plan towards an integrated internal control framework;

9 See http://www.hm-treasury.gov.uk/d/statement_eufunds151009.pdf.

- it will take time for the impact of this plan to take full effect but the Government is hopeful that it will have a positive impact on internal control systems and error rates; and
- in relation to the ECA's references to the UK, the Government is producing an official response for the Commission and will send us a copy.

Conclusion

2.14 As in previous years, the European Court of Auditors (ECA) identifies weaknesses in the procedures for financial control and management, such that again it is unable to give a wholly unqualified Statement of Assurance for the General Budgets. The document identifies some positive developments in improving management of the Community's financial resources and we note the Minister gives a relatively positive assessment of the situation. But the need for further improvements in financial management and control remains clear.

2.15 It is customary for the annual report of the ECA to be recommended for debate together with the Commission's annual report *Protection of the financial interests of the Communities and fight against fraud* and related documents. As mentioned above we have decided previously to recommend that once this present document was available it should be debated in European Committee with those documents and we now so recommend.

2.16 Such a debate will provide an opportunity:

- to consider again not only the continuing weaknesses in financial management but also the need for further improvement identified in the ECA's Report; and
- to examine the justification for the relative optimism about future improvements in financial management expressed by the Ministers.

Annex: Specific References to the United Kingdom

Chapter	Note/Paragraph reference
2	Table 2.1
4	4.16, 4.18, 4.26, Table 4.1, Table 4.2
5	5.11, 5.32, 5.36, 5.37, 5.38, Annex 5.1 — table 2.1, Annex 5.2
6	Annex 6.1 — table 2.1
11	Table 11.3

3 European Defence Agency activity in 2009 and 2010

(a) (31194) 16275/09 —	European Defence Agency Three Year Financial Framework postponement and 2010 Budget adoption
(b) (31195) 16462/00 —	Council Guidelines for the work of the Agency in 2010
(c) (31198) — —	Head of the European Defence Agency's Report to the Council on activities in 2009

<i>Legal base</i>	—
<i>Deposited in Parliament</i>	(a) 2 December 2009 (b) 2 December 2009 (c) 4 December 2009
<i>Department</i>	Defence
<i>Basis of consideration</i>	EMs of 10 December 2009
<i>Previous Committee Report</i>	None; but see (30175) —; (30176) 15442/08 —; and (30212) —: HC 19–ii (2008–09), chapter 10 (17 December 2008); also see (29701) HC 16–xxv (2007–08), chapter 15 (25 June 2008); and (28212) and (29268) HC 16–xi (2007–08), chapter 1 and (29341–3) HC 16–xi (2007–08), chapter 2 (6 February 2008)
<i>Discussed in Council</i>	17 November 2009 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

3.1 The European Defence Agency was established under 2004/551/CFSP on 12 July 2004, “to support the Member States and the Council in their effort to improve European defence capabilities in the field of crisis management and to sustain the European Security and Defence Policy as it stands now and develops in the future”.

Functions and Tasks

3.2 It has four functions, covering:

— developing defence capabilities;

- promoting Defence Research and Technology (R&T);
- promoting armaments co-operation;
- creating a competitive European Defence Equipment Market and strengthening the European Defence, Technological and Industrial Base.

3.3 According to its website, these functions all relate to improving Europe’s defence performance, by promoting coherence: “a more integrated approach to capability development will contribute to better-defined future requirements on which collaborations — in armaments or R&T or the operational domain — can be built. More collaboration will, in turn, provide opportunities for industrial restructuring and progress towards the continental-scale demand and market, which industry needs.”

3.4 On this basis, the Agency’s tasks include:

- to work for a more comprehensive and systematic approach to defining and meeting the capability needs of the European Security and Defence Policy (ESDP);
- to promote European defence-relevant R&T, as vital both to a healthy defence technological and industrial base and to defining and satisfying future capability requirements. This will involve pursuing collaborative use of national defence R&T funds, in the context of a European Defence R&T Strategy which identifies priorities;
- to promote European cooperation on defence equipment, both to contribute to defence capabilities and as a catalyst for further restructuring the European defence industry;
- to work, in close cooperation with the Commission, on steps towards an internationally competitive market for defence equipment in Europe.

3.5 The EDA says that its “comparative advantage” should be “its ability to comprehend all these agendas, and relate them so as to realise their synergies. Its special position should allow it to develop uniquely cogent analyses and proposals across the range of its activities.”

Structure

3.6 The EDA is an Agency of the European Union. The High Representative, Baroness Ashton of Upholland, is Head of the Agency and chairs its decision-making body, the Steering Board, which is composed of Defence Ministers of the 26 participating Member States (pMS — all EU Member States, except Denmark) and the European Commission. In addition, the Steering Board meets regularly at sub-ministerial levels, such as National Armaments Directors or Capability Directors.

3.7 The Steering Board acts under the Council’s Authority and within the framework of guidelines issued by the Council, and meets twice yearly — in May and November.

3.8 Unanimity is required for decisions on role, goals and targets; QMV for internal operations.

Way of working

3.9 The EDA's website explains:

“... the Agency faces outwards. Its main ‘shareholders’ are the Member States participating in the Agency; key stakeholders include the Council and the Commission as well as third parties such as OCCAR (fr. Organisation Conjointe de Coopération en matière d’Armement),¹⁰ LoI (Letter of Intent) and NATO. The Agency has a special relationship with Norway (through an ‘Administrative Arrangement’).”¹¹

3.10 The Committee was fully engaged in the development of the EDA, culminating in a debate in June 2004 in European Scrutiny Committee B.¹² There, the then Secretary of State stated that its principal purpose would be to improve Member States’ military capabilities.

Early results

3.11 The EDA says that its first major achievement was the approval by Ministers of a voluntary Code of Conduct on defence procurement in November 2005:

“This decision marked a turning point: it changed the establish practice of exempting defence procurement from cross-border competition under art. 296 of the EC treaties. On 1 July 2006 the Code of Conduct became operational. The subscribing Member States now publish their contract opportunities on the Agency’s website (the so-called Electronic Bulletin Board).”

3.12 The EDA notes that it presently manages a portfolio of over 40 Research & Technology collaborations:

“Defence Ministers acknowledged that they need to ‘spend more’ and spend ‘more together’ on Research and Technology. As a practical first step towards this goal, in November 2006, a ground-breaking Joint R&T Investment Programme has been approved, with the aim to develop new technologies helping to provide better protection for the European armed forces. 20 governments pledged a budget of more than €55 Mio into it.”

3.13 The EDA also notes that in October 2006 Ministers endorsed the Long Term Vision, which:

“defines capability and capacity needs in the timeframe of 2020–2030. Thus, the LTV assists in steering Defence R&T and armament collaborations to provide the right capabilities in the longer term.”

10 The **Organisation Conjointe de Coopération en matière d’Armement** was established by an Administrative Arrangement on 12th November 1996 by the Defence Ministers of France, Germany, Italy and the UK. Its aim is to provide more effective and efficient arrangements for the management of certain existing and future collaborative armament programmes. The four founding Nations went on to sign a Treaty, the “OCCAR Convention”, which came into force on the 28th January 2001. Belgium and Spain joined OCCAR in 2003 and 2005 respectively. The Netherlands, Luxembourg and Turkey are also participating in a programme, without being members of the organisation. For further information on OCCAR, see <http://www.occar-ea.org/>.

11 For full background on the EDA and its activities, see <http://www.eda.europa.eu/>.

12 *Stg Co Deb*, European Standing Committee B, 22 June 2004, cols. 3–24.

3.14 The Government agreed that it would deposit the Agency reports to the Council referred to in Article 4 of the EDA Joint Action — its May report on activities during the previous and current year and its November report on current year activity and “draft elements” of the work programme and budgets for the following year — and the Council’s annual guidelines to the Agency that set the framework for its work programme. Also, initiated by the then Secretary of State (Dr John Reid), the appropriate MOD minister writes before and after EDA Steering Board meetings (not only to this Committee but also to the Defence Select Committee). We have thus been kept well-informed of developments during the EDA’s formative years.

3.15 At our meeting on 6 February 2008, we considered the report of November 2007 on that year’s activity and the following years’ budgets and the Council’s guidelines to the Agency that set the framework for its 2008 work programme, along with a Joint Action that embodied the outcome of the first review required by the original Joint Action (carried out by the Head, three years after adoption of the Joint Action; proposing no major changes and amendment to authorise two Deputy Chief Executives instead of one — one strategic, one operational; agreed in principle by the steering board, and in the 2008 budget — and a further review in 2010).

3.16 We also considered a Commission Communication (and related draft legislation) on defence procurement, which we recommended for debate in European Committee B. With the EDA entering the next stage of its development, and clear indications that, particularly during the French presidency of the European Union in the second half of that year, the future of European Security and Defence Policy would be put under the microscope, we also recommended that the Head of the Agency’s Report and the guidelines for 2008 be debated at the same time, to enable the House to consider the wider framework, and how the EDA might best contribute.¹³ That debate took place on 10 March 2008.¹⁴

3.17 Our subsequent Reports have dealt with the work of the Agency since then, within the framework outlined above. A recurrent feature has been a failure by pMS to reach agreement on the level of growth in the financial framework, with the UK favouring annual budgets rather than a three year framework.

Our assessment

3.18 For our part, we have said that, so far, with significant UK involvement, the EDA appeared to be sticking to its brief; and that the Government had worked hard to try to ensure that the Agency learned first to walk, though impulses to run faster were still apparent, which applied in particular to some other Member States’ budgetary ambitions. When we considered a similar set of documents to those now submitted for scrutiny, we noted that the Government was continuing to pursue its pragmatic approach of broad, active participation, “ranging from maintaining a watching brief of progress to active participation where the projects align with our own UK objectives”, of maintaining

13 See headnote: (28212) and (29268) HC16–xi (2007–08), chapter 1 and (29341–3) HC16–xi (2007–08), chapter 2 (6 February 2008).

14 See <http://www.publications.parliament.uk/pa/cm200708/cmgeneral/euro/080310/80310s01.htm> for the record of this debate.

budgetary discipline and of encouraging the Agency to focus on where it can best add value.¹⁵

European Defence Agency Three-Year Financial Framework 2010–2012 Postponement and 2010 Budget Adoption

3.19 The Council document on the Agency’s three-year Financial Framework 2010–2012 and the Agency’s budget 2010 states that the adoption of the EDA budget by the Council resulted from the Council’s decision to postpone the establishment of a three-year financial framework for the Agency and provides details about the agreed budget for the Agency in 2010.

The Government’s view

3.20 The Minister for International Defence and Security (Baroness Ann Taylor) begins her first Explanatory Memorandum of 3 December 2009 (and the two others considered below) with the same general remarks: “The UK will continue to engage positively with the EDA to ensure that it is an effective tool in helping to improve military capability in Europe.”

3.21 The Minister explains that the Council’s adoption of the budget for 2010, €30.5 million, came as a result of its decision to postpone the establishment of a three-year financial framework for the Agency. She notes that the Council also agreed the Agency’s Staff Establishment plan, which will establish four additional posts in the Agency (one seconded national expert and three temporary agents) over 2009 levels.

3.22 By way of background, the Minister further explains that the Head of the Agency wrote to all Member States in June with “his thoughts on the budget for 2010”, which she says envisaged an increase by €2 million from 2009 with further rises for years 2011 and 2012: this, the Minister says, “started the process of budget negotiations with Member States through a number of official level meetings [t]he outcome [of which] was a budget of €30.5M for 2010, which was agreed by all Member States.”

3.23 The Minister continues thus:

“While we support fully the Agency’s efforts to introduce a three-year financial framework that would underpin its three-year work programme, collectively the Steering Board agreed a one-year programme. We believe that work programmes should be prioritised according to the level of funding available. The Agency has undertaken some excellent prioritisation work on its programme for 2010. The outcome is a work programme that is based on realism and delivering value for money. Incorporating this best practice into the Agency demonstrates sound business acumen and enhances its reputation. We will continue to work towards agreeing a three-year work programme and budget for the Agency... starting with the period 2011–2013.”

¹⁵ See headnote: see (30175) —; (30176) 15442/08 —; and (30212) —: HC 19–ii (2008–09), chapter 10 (17 December 2008).

Council Guidelines for the Agency's work in 2010

3.24 The Council Guidelines for the Agency's work assesses the report made by the Head of the Agency at the Council in November 2009 and makes recommendations about the direction of the EDA in 2010. They concentrate on the EDA strategic framework — the Capability Development Plan (CDP); its three endorsed strategies; and other important overarching initiatives. These include exploring synergies between military and civilian capability development, the establishment of a level playing field for defence equipment, the pooling and sharing of capabilities, harmonisation of military airworthiness regulations and co-ordination of efforts between the Agency and the European Union Military Committee (EUMC), the European Union Military Staff (EUMS), the European Commission and other European entities.

The Government's view

3.25 In her second Explanatory Memorandum of 3 December 2009, the Minister comments as follows:

Capability Development Plan

“The Council recognises the Capability Development Plan (CDP) as the strategic tool for military capability development that will give direction to the Agency's work programme for 2010. It agreed the Agency would benefit from an update and review of the CDP and highlighted the importance of close cooperation with relevant stakeholders such as the EUMC. The UK supports an update and review of the CDP.”

Exploring synergies between military and civilian capability development

“The Council welcomes the initiative on exploring synergies between military and civilian capability development to improve interoperability and cost effectiveness. In this regard the Council especially welcomes the Agency's work in Maritime Surveillance. It guides the Agency to play a more supporting role in fostering cooperation in the development of dual-use capabilities, taking into account the relevant work undertaken by the European Commission and the European Space Agency. The UK encourages greater co-ordination and synchronisation of military and civilian capability development and research and technology where clear synergies exist. This would reduce duplication, resources and result in greater efficiency of capability development in Europe and we welcome the drive to continue work in this direction.”

Level Playing Field for Defence Equipment

“The Council encourages the Agency to pursue the establishment of a level playing field for defence equipment through a capability-driven, competent and competitive EDTIB, and an open and transparent European Defence Equipment Market (EDEM). The UK supports this work and will continue to support initiatives which

aim to strengthen the European defence industrial base and make it more internationally competitive.”

Pooling and Sharing

“The Council encourages the EDA to submit proposals for developing capabilities with a special focus on specialisation, pooling and sharing. The UK agrees with the principles of pooling and sharing particularly where they allow smaller Member States to club together to provide a capability. To date the UK has not participated in any of the pooling options, but in principle we would support any proposals that were likely to generate increased effective capability amongst others and thereby improve burden-sharing across Europe.”

Military Airworthiness

“The Council presses the Agency to continue its work on harmonisation of military airworthiness regulations, recognising that the lack of a common approach increases the cost of air systems and causes delays in European aircraft programmes. The UK welcomes the Agency’s work on military airworthiness harmonisation and recognises that a lack of a coherent approach on military airworthiness within the EU results in duplication and disproportionately high costs for the certification of military air systems.”

Coordination between stakeholders

“The Council welcomes the effective coordination of efforts between the EUMC, EUMS and the Agency and emphasises the importance of close cooperation with the European Commission and other European entities. It also encourages the Agency to pursue effective co-ordination with NATO and the Letter of Intent (LoI) group. The UK agrees that improving coherence and collaborative working across EDA Member States, the EU Commission and with other European institutional stakeholders is important and should be encouraged.”

3.26 The Minister notes that the Guidelines were adopted by the Council in Minister of Defence composition on 17 November 2009, and that the next set of guidelines will be due in November 2010.

The Head of the Agency’s Report on key activities in 2009

3.27 As before, the report highlights progress made on the Agency’s major initiatives, provides details on the implementation of existing policies and developing policy/conceptual work and provides information of specific projects.

3.28 Among the major initiatives highlighted are the Capability Development Plan, the European Research and Technology (EDRT) Strategy, the European Armaments Cooperation (EAC) Strategy and the European Defence Technological and Industrial Base (EDTIB) Strategy. The report also provides information on specific projects such as the

Helicopter Training Programme, the European Air Transport Fleet (EATF) project, Maritime Surveillance (MARSUR) and the Agency's two Joint Investment Programmes.

The Government's view

3.29 In her third Explanatory Memorandum, the Minister comments as follows on each of the main parts of the Report:

Capability Development Plan (CDP)

“The CDP is designed to allow the EDA to address European defence capability and capacity needs, thereby informing nearer-term decisions on industrial, technological and investment issues. Member States have selected a first tranche of 12 priority Actions¹⁶ and directed the EDA to prepare a detailed way forward for each of them. The Agency has now produced Strategic Context Cases for the 12 priorities, describing ways for collaboration with the capability development. All Member States have agreed that the CDP will be updated and reviewed in the course of 2010. The UK supports the work of the Agency on the CDP and has been actively involved throughout this year on taking the twelve selected priorities forward. We also support an update and review of the CDP, which will ensure it remains an up-to-date strategic tool to guide the Agency's activities.

European Defence Research and Technology (EDRT) Strategy

“The European Defence Research and Technology (EDRT) Strategy is aimed at enhancing more effective research collaboration in science, technology and demonstrators in order to deliver the right technologies in support of military capabilities for short, medium and long term need. This strategy was adopted at the EDA Steering Board in November 2008. During 2009, the Agency has improved links between the CDP and the EDRT Strategy in particular in priority areas such as Maritime Mine Counter-Measures and Counter-Improvised Explosive Devices. The Agency has also developed closer coordination with civilian security research including the work carried out by the European Commission. The Agency proposes that the European Framework Cooperation (EFC) for Security and Defence Research presents the next step forward for establishing a systematic approach to connecting research efforts between the military and civilian security committees. The UK continues to support and engage with the EDA about its EDRT Strategy and agrees fully with the need for some coherence across the EDA, the EU Commission and with other European institutional stakeholders in all aspects of the EDA's work. However we would like to see some more information from the Agency on how the EFC for Security and Defence will be used to support capability development.

16 Network Enabled Capability, Increased Helicopters' availability, Counter-Improvised Explosive Device, Third Party Logistic Support, Chemical-Biological-Radiological and Nuclear Defence, Medical Support, Intelligence/Surveillance/Target Acquisition/Reconnaissance Architecture, Military Human and Cultural/Language training, Comprehensive approach/military implications, Maritime Mine Counter Measures, Computer Network Operations, Counter Man Portable Air Defence Systems.

European Armaments Cooperation Strategy

“In October 2008 the Steering Board endorsed the ‘European Armaments Cooperation Strategy’ to promote and enhance more effective European Armaments Cooperation in support of European Security and Defence Policy through generating, promoting and facilitating co-operative programmes. The implementation of this strategy has contributed to reducing costs and increasing effectiveness of European co-operative capability development, in particular by proposing ways to improve training for a collaborative-orientated approach to the preparation of armaments programmes. Another key enabler of this strategy will be the Agency’s improved relationship with the Organisation for Joint Armament Co-operation (OCCAR). The EDA has been working on an agreement with OCCAR to improve collaborative working arrangements on key military capability programmes. The UK supports this strategy and will continue to work with the Agency on establishing the agreement and its implementation.

European Defence Technological and Industrial Base (EDITB Strategy)

“The EDITB Strategy, adopted in 2007, sets out important policy objectives and enablers to consolidate demand, increase investment and competition and thereby ensure better security of supply in the European Technological Industrial Base. The first identified sector for consideration is Future Air Systems and in particular the future European Industrial Base requirements for Helicopters, Unmanned Aerial Vehicles and Combat Aircraft. As part of this work the EDA has also embarked on work to facilitate access for Small and Medium-Sized Enterprises to the European defence market, the creation of a level-playing field across the European Industrial Sector by looking at issues such as ownership, state aids and other market distorting factors. To support this wider EDITB work a Code of Conduct of Offsets was agreed by Participating Member States in July 2009, with the aim of mitigating the adverse impact of offsets on cross-border competition.

Increasing Helicopter Availability

“The EDA has established a programme on helicopter training which forms part of a wider helicopter initiative launched in March 2008 to address helicopter shortfalls in Afghanistan and ongoing EU and UN operations. The lack of suitable training for helicopter crews to prepare them for the conditions they would encounter on deployed operations was identified as a key factor in limiting availability of helicopters. The EDA Helicopter Training Programme, to be operational next year, will consist of exercises and symposia aiming to provide crisis management operations with highly trained and interoperable helicopter crews. The UK fully supports the Helicopter Training Programme and has played a key role in its development. We will continue to take a leading role and encourage Member States to actively support this activity.

“The EDA has also established a Future Transport Helicopter project, which is a Franco-German initiative to establish the long term approach needed to ensure a sustainable Heavy Vertical Lift capability with potential for transatlantic cooperation.

The UK support this project, however we do not participate as we have our own plans for Heavy Vertical Lift capability.

Third Party Logistics Support Platform

“This programme aims to create an EU industrial-based third-party logistic support platform. This includes mapping current outsourcing practices in crisis management operations and offering better visibility of contractor personnel and their capabilities to assist in improved coordination of support efforts and reduce duplication. The potential for savings in ESDP operations logistics needs to be fully exploited by actively marketing the use of this platform. The UK has engaged in this programme and there is potential for UK industry to benefit from this work.

Maritime Surveillance (MARSUR)

“The EDA set up its project on Maritime Surveillance (MARSUR) in 2006 when Member States recognised the benefits of improved Maritime Situational Awareness to support EDSP and wider related maritime missions. Since then significant progress has been made. The Agency has established a Wise-Pen team of five retired Admirals (the ‘Wise Pens’) who are contributing to the European cross-pillar development of a highly needed capability. The UK is fully engaged in the MARSUR project and we support the EDA’s appointment of the ‘Wise Pens’ to produce a think-piece paper. We have offered our Information Exchange system (TELESTO) to take part in the demonstration phase of the MARSUR project next year, subject to certain provisions that we have outlined to the EDA. We also regularly seek reassurance from the Agency that the work is being closely co-ordinated with other ongoing maritime surveillance projects in the EU and within NATO.

Joint Investment Programmes

“The Agency has continued work on the first Joint Investment Programme on Force Protection and has established a second Joint Investment Programme on Innovative Concepts and Emerging Technologies (ICET). The UK decided not to participate in the first Joint Investment Programme due to duplication with ongoing national work. We have decided not to participate in the second Joint Investment Programme on ICET as we do not judge this subject to be a priority for UK defence research funding.

Coordination between stakeholders

“The Agency has continued to enhance its contacts with key stakeholders. New synergies have been explored with the European Commission, OCCAR, NATO, the Letter of Intent (LoI) group, the European Space Agency and the United States. The UK agrees that it is important for the Agency to improve coherence with its key stakeholders in order to deliver interoperable capability solutions.

Other Projects Mentioned

“Other projects mentioned in the Head of Agency’s report include the European Air Transport Fleet programme, Counter-Improvised Explosive Devices (IED), Counter-Man Portable Air Defence Systems (MANPADS), and Network Enabled Capabilities (NEC). The level of the UK’s participation in many of the EDA’s projects varies according to how the project aligns with our national priorities and objectives. This will range from maintaining oversight of progress through to active participation.”

Conclusion

3.30 The Government is plainly continuing successfully to pursue its established approach.

3.31 As before, we again report these developments to the House because of the widespread interest in the development of a European defence industry and strategy and in ESDP, and draw this chapter of our Report to the attention of the Defence Committee.

3.32 On this occasion, however, the kaleidoscope has been given a significant shake by the Lisbon Treaty, into which — through the provisions on Common Security and Defence Policy in Articles 42 to 46 TEU — the European Defence Agency has been formally incorporated. There are also changes to the way in which Common Security and Defence Policy will be managed — not the least of which is that the EDA chair will now also chair the Foreign Affairs Council. We think that a debate in the European Committee would be timely, to allow a more thorough examination of the ways in which the Government and members see the EDA now developing.

3.33 We so recommend.

4 Enforcement of Patent Rights

(31127) 7928/09 —	Draft Agreement on the European and Community Patents Court and Draft Statute
-------------------------	--

<i>Legal base</i>	Art. 81 and 218(8) TFEU; OLP (Ordinary Legislative Procedure) — to be confirmed in amended proposal.
<i>Deposited in Parliament</i>	18 November 2009
<i>Department</i>	Business, Innovation and Skills
<i>Basis of consideration</i>	EM of 19 November 2009
<i>Previous Committee Report</i>	None
<i>To be discussed in Council</i>	No date fixed
<i>Committee's assessment</i>	Legally and Politically important.
<i>Committee's decision</i>	Not cleared; further information requested.

Background

4.1 In contrast to the existing EU trade mark or design systems, there is at present no unitary, centrally enforceable EU-wide system for patent protection. Nor is there any system of automatic mutual recognition. As a general rule, a patent granted for any one state in the EU is only valid for the territory of that state. However, the European Patent Office (EPO) provides a legal framework for the granting of 'European patents', which allows it to grant patents for up to 36 European states via a single, harmonized procedure. A single patent application, in one language, may be filed at the European Patent Office at Munich, at its branches at The Hague or Berlin or at a national patent office of a Contracting State, if the national law of the State so permits. However, after grant, a European patent is not a unitary right, but a group of essentially independent national patents which are enforceable and revocable in each jurisdiction separately. The applicant chooses which, and how many, of the 36 states he wishes to have patents for. 'European patents' require translation into the respective language of designated each state, as well as separate renewal and litigation procedures. The EPO is not an EU body and was established in 1973 by inter-governmental agreement.

4.2 Like any national patent, a patent granted by the EPO is territorially restricted in effect. The European Patent Convention seeks to harmonise national laws on patentability, but these laws are interpreted by individual national courts. As a result, the scope of protection of a European patent may vary from state to state. A European patent might be revoked by a court in one state and declared valid in another. Infringement might be held to have occurred in one state but not another. This leads to significant legal uncertainty for EU business, and may lead to companies "forum-shopping" for favourable jurisdictions, in order to gain unfair advantage over competitors.

4.3 In 2000, the Lisbon Strategy launched a proposal for a Community patent system. A Community patent would be a single patent covering all EU Member States, and would be enforceable centrally by a single Community patent court. However, proposals for a

Regulation on a Community patent were suspended in 2004, notably due to disagreement on patent languages and translations, and their legal effect.

4.4 In parallel with negotiations on a Community patent, a group of members of the European Patent Organisation began work towards a European Patent Litigation Agreement (EPLA). This agreement would establish a single patent court in those states negotiating it. That court was intended to be able to hear cases involving infringement or invalidity actions concerning European bundle patents and to enforce or revoke these in a single action.

4.5 In 2001 the Commission objected to the continuation of negotiations by Member States on the EPLA on grounds of competence in the light of Council Regulation 44/2001 on jurisdiction and the recognition of enforcement of judgments in civil and commercial matters (the Brussels Regulation). Nevertheless, Member States continued to negotiate a draft agreement on the establishment of a European patent litigation system and a draft Statute of the European Patent Court which was agreed by a working party in November 2003. By 2005, however, negotiations on the EPLA were also effectively suspended, due to persistent competence concerns.

4.6 In 2007, the European Commission sought to revive negotiations and presented a number of options in their Communication “Enhancing the Patent System in Europe”. In particular, this document sought to bring together elements of the Community patent court and EPLA proposals. One option was the creation of a unified and specialised patent judiciary with competence over European and Community patents, to be established by way of an international agreement.

The Document

4.7 This proposal which follows on from the 2007 Commission Communication has to be seen in the context of the related earlier proposal for a Community Patent as well as the existing patent enforcement regime in Member States. The European and Community Patents Court (ECPC) would have jurisdiction concerning the infringement and validity of both European bundle patents and Community patents. This would ensure consistent interpretation of the law relating to the infringement and validity of European and Community patents.

4.8 The ECPC would complement the Community Patent Regulation. The Community Patent Regulation envisages the creation of an EU-wide unitary system for patent protection, similar to the existing Community trade mark. The Community patent would be granted by the European Patent Office in the same way as any other European patent. The difference is that the Community patent would be uniformly valid and enforceable for the whole of the Community territory and the holder of a Community patent would not require a separate European patent in respect of each EU Member State.

4.9 The ECPC would be an international court, independent of Community courts and national courts, although with links to the ECJ to guarantee the interpretation and application of Community law. It is envisaged that the Contracting States to the Draft Agreement would be the EU Member States and the non-EU European Patent Convention

Contracting States, which comprise Norway, Liechtenstein, Iceland, Switzerland, Monaco, San Marino, Croatia, Turkey and the Former Yugoslav Republic of Macedonia.

4.10 The Draft Agreement confers on the ECPC exclusive jurisdiction over European and Community patents in relation, inter alia, to the following matters:

- actions for actual or threatened infringements of patents and supplementary protection certificates¹⁷ and related defences, including counterclaims concerning licences;
- declarations of non-infringement; and
- actions or counterclaims for revocation of patents.

The national courts of the Contracting States would continue to have jurisdiction in actions related to Community patents and European patents which do not fall within the exclusive jurisdiction of the ECPC, such as actions concerning patent ownership, as the ECPC is a specialised court whose jurisdiction is confined to European and Community patent validity and infringement matters.

4.11 The ECPC would comprise a Court of First Instance and a Court of Appeal. The Court of First Instance would be composed of local, regional and central divisions. The local divisions would be hosted by the Contracting States. A regional division may be set up by two or more Contracting States. The seat of the central division has yet to be decided.

4.12 The provisions relating to the jurisdiction of divisions of the Court of First Instance (ECPC) are set out in Article 15a of the Draft Agreement. In general, unless the Parties agree to bring an action before the central division, an action for patent infringement should be brought before the local division hosted by the Contracting State where the infringement occurred or where the defendant is domiciled or, if that State has no local division, the regional division in which that State participates.

4.13 The Commission has made recommendations to the Council to authorise the Commission to open negotiations for the adoption of the agreement establishing the ECPC. The Council has not yet authorised the Commission to open negotiations as the terms of the negotiating mandate and negotiating directives have yet to be agreed in Council. Furthermore, the Council has requested the opinion of the Court of Justice, under Article 300(6) EC, on the compatibility of the envisaged Agreement with the provision of the EC Treaty.

Basic provisions of the Agreement and Statute text

Draft Agreement

4.14 Article 1 establishes the creation of the Court to deal with litigation related to Europe and Community patents. Article 3 describes the scope of the Court's jurisdiction. Article 3a-3c deal with the legal aspects of creating a new Court.

¹⁷ Supplementary protection certificates are separate rights which grant limited extension to patent term for certain products subject to lengthy regulation procedures.

4.15 Article 4 specifies that the Court will be made up of a Court of First Instance, a Court of Appeal and a Registry. Articles 5–9 outline the functions of these parts of the Court.

4.16 Articles 10–14 outline the requirements for the judges of the Court, including the eligibility criteria, how judges are appointed and selected, and how they would be trained.

4.17 Articles 14a–14f set out the applicable law for the Court and list allowable defences before the Court. Articles 15–16 describe the jurisdiction of the Court. Article 17 allows for the creation of mediation and arbitration centres.

4.18 Articles 18–21 present the financial requirements of the new Court, including that the new Court fees should be set by a committee and reviewed periodically. Articles 21a–28 set out the organisational and procedural provisions relating to the Court.

4.19 Articles 29–31 describe the language arrangements of the Court. Articles 32–34 set out the procedures before the Court and the rules for evidence.

4.20 Articles 34a–44a deal with the powers of the Court, including the provision of temporary and permanent injunctions. Articles 45–47 set out how appeals will be dealt with in the system.

4.21 Article 48 describes the process for ensuring the primacy of Community law by allowing the Court of First Instance and requiring the Court of Appeal to refer questions on the validity and interpretation of acts of the European Community to the European Court of Justice, if they are required to give a decision. Article 48(2) makes it clear that such decisions by the European Court of Justice are binding on the Courts of First Instance and Appeal.

4.22 Articles 49–57 deal, inter alia, with enforcement and implementation.

4.23 Article 58 outlines the transitional arrangements for pre-existing European patents. In particular, it allows holders of European patents applied for or granted before the Court is created to opt-out of using the new Court system.

4.24 Articles 58a–60 set out the requirements for the entry into force of the agreement.

Draft Statute

4.25 The draft Statute is incomplete, but currently outlines the institutional and financial arrangements for the new Court. Articles 2–9a set out the requirements for judges, including the eligibility criteria, their appointment and how they should serve in office.

4.26 Articles 10–12a outline the arrangements for governing the new Court system. Articles 13–20 set out how the different parts of the Court should function, including the creation of local and regional divisions within Contracting States.

4.27 Articles 22–32 present the financial arrangements for the new Court. This includes the framework for adopting the budget each year.

4.28 Articles 33–37 deal with the process of reaching decisions within the Court and how dissenting opinions will be dealt with.

4.29 Annex II to the Statute lists the topics to be included within the Rules of Procedure. The Rules of Procedure are being drawn up by the Commission following consultation with a panel of experts. This panel includes judges and industry representatives from the UK.

The Government's view

4.30 In his Explanatory Memorandum the Minister of State for Higher Education and Intellectual Property (David Lammy MP) broadly welcomes the proposal on behalf of the Government. At the same time he highlights a number of concerns and adds that there are several issues which require clarification before this proposal which is currently 'on ice' can be revived and considered for adoption:

“Formal negotiations on this dossier are currently on hold as the Council have [sic] requested an opinion of the European Court of Justice on the compatibility of the draft Agreement and Statute with the EC Treaty (Opinion 1/09). However, the Swedish EU Presidency has continued negotiations in a few areas to try to make progress ahead of further negotiations next year. They are hoping that agreement can be reached on key aspects at the Competitiveness Council in December. The UK will be advising the Swedish EU Presidency of the UK's main priorities for reaching an agreement, in particular concerning the possibility of split jurisdiction and how existing patent holders would be affected by the new system.

Split Jurisdiction

In the UK and most Member States, related validity and infringement actions on a patent case are generally dealt with together. Current ECPC proposals allow for these actions to be dealt with separately. UK stakeholders generally oppose hearing these actions separately as it could mean that cases are more expensive and/or could reach inconsistent decisions. The Swedish EU Presidency is hoping to make progress on this issue at the Competitiveness Council in December.

Non-Exclusivity

4.31 Current proposals state that the new Court will have exclusive jurisdiction over actions involving European and Community patents. In the draft Agreement, there is a transitional period of seven years during which time litigants will have the option of using national patent jurisdictions instead. However, at December's Competitiveness Council there is expected to be discussion of whether this should be reduced to five years.

Current proposals allow owners of patents existing and applied for before the jurisdiction takes effect to opt out permanently on a per-patent basis. This will also be discussed at December's Competitiveness Council.

Role of the European Court of Justice (ECJ)

4.32 The extent to which the ECJ should be involved in the Court structure is as yet unresolved, with industry generally favouring a minimal role for the ECJ as they would like

the new jurisdiction to be specialist. Options range from a minimal role for the ECJ — only interpreting existing Community law, and not patent law, to a stronger role for the ECJ including jurisdiction over patent law, to a full appeal-court “cassation” role. Proponents of the former option argue that the Court needs to be a specialist civil jurisdiction with technical expertise. Proponents of a stronger ECJ role argue that a specialist Court will create inconsistency with the general body of EU law, so the ECJ should have a role akin to the Supreme Court or House of Lords. As indicated above, the ECJ has been asked whether the current agreement, which supports a minimal ECJ role, is compatible with the Treaty.

Affordability

4.33 There are a number of related issues which impact on the affordability of the Court for users. These include the costs to access the court, who is allowed to represent parties in court and whether parties will be able to get legal aid. There is expected to be some discussion of the financing of the Court at the Competitiveness Council in December.

Regionalisation and Homogeneity of Jurisdiction

4.34 The first instance of the Court will be regional, to allow local access, but European in character. Achieving this means local/regional court divisions (not national courts) at first instance which follow the same procedures and meet uniform standards of quality, consistency, efficiency. Large regional divisions and mixed judicial panels would encourage this. Local (national) divisions in each State could mean national practices would continue, which is likely to be inefficient.

Languages

4.35 There are a number of language issues with the Court and its divisions. These include the operational language of the division, the language of proceedings, the language of court documents and the language of judgments. Related is the issue of translation and interpretation. Different solutions could apply to each. Some Member States have concerns that their nationals may not be able to use their own language in the Court, and judgments may not be available in their language. However, industry is concerned that complex language requirements will create cost and uncertainty.

Technically-Qualified Judges

4.36 Patents are highly technical documents and this can present difficulties for judges if they do not have the technical know-how to understand the invention. Some European states use technically-qualified (non legally-qualified) judges and others, such as the UK, use technical experts to provide the necessary technical knowledge.

Court Location

4.37 Current proposals for the Court do not state the location of the central division of the Court of First Instance, the Court of Appeal and the Mediation Centre.

UK position

4.38 The UK will be advising the Swedish EU Presidency of the UK's main priorities for reaching an agreement, in particular concerning the possibility of split jurisdiction and how existing patent holders would be affected by the new system."

4.39 The Minister adds that the Presidency text is currently frozen pending the opinion of the European Court of Justice, following a request of the Council for the European Court of Justice to rule on whether the proposed agreement is compatible with the Treaty. Discussions on the European and Community Patent Court are expected to continue once the opinion of the European Court of Justice is delivered, expected during 2010. Notwithstanding this, further discussion on issues such as split jurisdiction, non-exclusivity and affordability are scheduled to take place at December's Competitiveness Council.

Conclusion

4.40 **We thank the Minister for his detailed comments. Like the Government we can see, at least in principle, the potential advantages of a new specialist patents court in Europe. At the same time we have a number of reservations.**

4.41 **First, we ask the Minister to explain in detail why the proposed court system could not be set up as part of the established institutional framework of the Court of Justice which expressly provides for the creation of further specialist tribunals in addition to the existing civil service tribunal. In this context we ask the Minister also to address and explain the reasons for proposed geographical scope of the jurisdiction of the new proposed patents court system.**

4.42 **Secondly, we remain unconvinced by the case for a decentralised first instance tier for the new Court. Similar proposals have repeatedly been rejected as possible solutions for reducing the caseload of the Court of Justice. We ask the Minister why such a reason might nevertheless work for the proposed patents jurisdiction and why, instead, the Government is not advocating a replication of the existing EU referral system for the new patents courts, which on the basis of existing national intellectual tribunals would ensure the uniform application of Community patents law through appropriate referrals to the central court units.**

4.43 **Thirdly, we ask the Minister to clarify with regard to each of the outstanding issues the precise conditions for future UK approval of the proposal.**

4.44 **Finally, we ask the Minister to clarify as soon as possible the appropriate legal bases, legislative and voting arrangements for any revised proposal for the new patents court system under the Treaty of Lisbon. We shall keep the current proposal under scrutiny until we have had further word from the Minister and have received the new, revised proposal.**

4.45 **We thank the Minister for his detailed summary of and comments on the proposal. We share the Government's view that there are a number of important issues which we would want to see addressed before this proposal should go further.**

4.46 We are unclear in particular about the case for the establishment of a two-tier intellectual property court system which would stand apart from the existing court system in Luxembourg. We ask the Minister whether it would not have been more cost effective to set up a new patent tribunal which would have operated along the civil service tribunal as part of the Court of Justice’s established institutional structure and appeal from which could lie to either the European Court of Justice or the General Court.

4.47 Finally, we ask how the new court will limit jurisdiction of domestic courts and when would appeals lie to the European Court of Justice.

5 Carbon dioxide emissions from new light commercial vehicles

(31093)
15317/09
+ ADDs 1–2
COM(09) 593

Draft Regulation setting emissions standards for new light commercial vehicles as part of the Community’s integrated approach to reduce CO₂ emissions from light-duty vehicles

<i>Legal base</i>	Article 175 EC; co-decision; QMV
<i>Document originated</i>	28 October 2008
<i>Deposited in Parliament</i>	6 November 2009
<i>Department</i>	Transport
<i>Basis of consideration</i>	EM of 4 December 2009
<i>Previous Committee Report</i>	None, but see footnotes 18, 19 and 20
<i>To be discussed in Council</i>	No date set
<i>Committee’s assessment</i>	Politically important
<i>Committee’s decision</i>	Not cleared; further information awaited

Background

5.1 Because of the large (and increasing) contribution which carbon dioxide from vehicles makes to overall emissions of greenhouse gases, the Community has taken a number of measures to address this issue, including voluntary agreements with European, Japanese and Korean manufacturers aimed at reducing the level of such emissions from new cars from 186g/km in 1995 to 140g/km by 2008–09. In addition, the European Council has endorsed a target of 120g/km by 2012, and, in its Energy Efficiency Plan,¹⁸ the Commission said that it would if necessary propose in 2007 legislation to ensure that latter target is

18 (27944) 14349/06: see HC 41–ii (2006–07), Para 8 (29 November 2006).

achieved — an aim subsequently re-iterated in a Communication it put forward in January 2007 about limiting global climate change.¹⁹

5.2 This was followed in February 2007 by a further Communication, in which the Commission set out the results of its review of the Community strategy to reduce carbon dioxide emissions from passenger cars and light-duty passenger vehicles. It said that the latest information available (for 2004) suggested that the 140g/km target for 2008–09 was unlikely to be met, and that additional measures, including a legislative requirement for vehicles to meet a target of 120g/km by 2012, were needed to complement the measures which it had already proposed on fuel quality.²⁰ Part of this reduction (to 130g/km) would be delivered by improvements in vehicle technology, and the remaining 10g/km by a range of other measures,²¹ notably mandatory targets for fuel efficiency in vans.

5.3 The Commission duly put forward in December 2007 a draft proposal²² — since adopted as Regulation (EC) No 443/2009 — specifying that the average specific emissions of new passenger cars should not exceed 130g/km as from 2012, and it is now proposing in this document a corresponding restriction in relation to light commercial vehicles.

The current proposal

5.4 This proposal would set a mandatory target of 175g/km for vehicles of category N1²³ from 2014. This would be phased in on the basis that 75% of a manufacturer's registrations would be taken into account in 2014, 80% in 2015, and full compliance required from 2016. There would also be an overall longer-term target of 135g/km for 2020, subject to a review before 1 January 2013 to confirm its feasibility, and the consideration would also be given before then to the feasibility of extending the measure to N2 and M2 vehicles,²⁴ which have been excluded as sufficient carbon dioxide data is not currently available.

5.5 More specifically, the proposal would;

- set individual targets for manufacturers according to the so-called “utility” of their vehicles (which in practice is proportional to their mass, as determined in the certification of conformity issued under Directive 2007/46/EC);
- enable manufacturers to apply these targets to the average of the emissions for all new cars they register in the Community in each calendar year, rather than to each individual model, and to credit up to 7g/km for new off-cycle emission-saving technologies (such as low-energy headlights) towards the targets;

19 (28275) 5422/07: see HC 41–x (2006–07), chapter 1 (21 February 2007).

20 (28348) 5389/07: see HC 41–x (2006–07), chapter 20 (21 February 2007) and (28351) 6145/07: see HC 41–xiv (2006–07), chapter 1 (14 March 2007).

21 These also included minimum efficiency standards for air-conditioning systems; the mandatory fitting of tyre pressure monitoring systems; maximum tyre rolling resistance limits; the fitting of gear shift indicators; and increased use of biofuels “maximising environmental performance”.

22 Category M1, as defined in Annex II of Directive 2007/46/EC, with a mass not exceeding 2,610kg.

23 As defined in Annex II of Directive/2007/46/EC, with a reference mass not exceeding 2,610 kg.

24 N2 vehicles are small lorries designed for the carriage of goods, and having a gross mass between 3500kg and 5000kg, whilst M2 vehicles are minibuses with more than eight seats and with a gross mass less than 5000kg.

- allow super-low emitting vans (with emissions under 50g/km) to be counted as multiples²⁵ of their actual sales, so lowering the manufacturer's recorded emissions and encouraging the development of these vehicles;
- allow different manufacturers to form, for a period up to five years, a pool, which would be treated as if it was one manufacturer for the purpose of determining compliance with the targets: however, in order to comply with Community competition rules, participants would be prohibited from sharing information except in relation to their carbon dioxide emissions target and actual emissions;
- require a manufacturer which fails to meet its target to pay an excess emissions premium of between €5 and €25 per gram for each calendar year between 2014 and 2018, calculated by reference to the number of its newly registered cars, and €120 from 2019 and each subsequent year, with the proceeds from the penalties imposed being considered as revenue for the Community budget;
- provide for estimations of emissions from multi-stage vehicles involving different manufacturers to be reached from those of whole vehicles made by the base manufacturer.

Certain categories of “special purpose” vehicles, such as emergency vehicles, or those with wheelchair accessibility, would be exempted from the proposals, and smaller, independent manufacturers registering fewer than 22,000 new light commercial vehicles a year would be able to apply to the Commission for a lower target, provided this was consistent with its technical potential to reduce its carbon dioxide emissions.

The Government's view

5.6 In his Explanatory Memorandum of 4 December 2009, the Minister for Transport at the Department for Transport (Rt Hon Sadiq Khan) says that the Government remains supportive of the Commission's intention to legislate, and that it intends to produce an Impact Assessment alongside its public consultation. He also suggests that the proposal is justified on subsidiarity grounds in relation to both environmental protection and the preservation of the internal market: and he points out that it does not attempt to regulate Member States in areas of national competence (such as taxation) and indeed explicitly identifies these as complementary actions which individual Member States could take to reduce emissions. In the meantime, he has the following comments on various aspects of the proposal.

Target level and date

5.7 Although comprehensive data on emissions of carbon dioxide from vans is not available, the best estimate is that these averaged 203g/km in 2007, so that the target proposed would represent a decrease of 14%. However, since the measure was unlikely to be agreed before late 2010, there would then be less than three years before it was due to come into effect.

25 A multiple of 2.5 would be used in 2014, and 1.5 in 2015.

Small-volume manufacturer derogation

5.8 The rationale for allowing smaller manufacturers different treatment is similar to that in the analogous Regulation for cars, namely that emissions reductions will be proportionately more expensive for small manufacturers as they do not enjoy the necessary economies of scale, and that subjecting them to the same emissions reduction target as larger manufacturers would potentially reduce competition in the van market. In particular, the 22,000 unit threshold broadly defines a natural break point between small producers and the rest of the market, the fact that this figure is higher than that applicable to cars also reflecting the different nature of the market for vans (and in particular the absence of any “niche” markets).

‘Pooling’

5.9 Although this in theory provides a welcome degree of flexibility, it is not clear how widely it would be used in practice. In particular, although manufacturers owned by the same parent group are likely to make use of “closed” pools, those who are unconnected may be reluctant to enter into an arrangement with a competitor. Also, although exchanges of information between companies would in general be prohibited, many already make arrangements for mutually-beneficial exchanges, notably in relation to technologies, and it is uncertain how effectively this could take place within the limited exchanges which would be permitted.

Utility

5.10 Utility seeks to relate a vehicle’s mass to its carbon dioxide emissions, and it is proposed that a van with average mass should be required to meet the 175g/km target, with the targets for those of above or below average mass reflecting the current observed relationship between vehicle size and emission levels. This approach differs from that adopted for cars, where more stringent targets were set for large vehicles, in order to encourage manufacturers to meet their targets by downsizing their vehicles and to combat any incentive to achieve easier emission targets by artificially making their vehicles heavier, the assumption being that such a tendency would be unlikely in the case of vans (since adding weight might limit the space available for goods, which is the main basis on which they are purchased), and that market for vans is unlikely to experience the increases in mass associated with the shift towards 4-wheel drive cars.

5.11 However, whilst reference mass is objectively measurable, vans are chosen less for mass than for their carrying capacity, and the Commission has therefore proposed that two other utility parameters should be considered for future use — footprint (the floor area encompassed between the wheels, and which is related to load volume) and payload (which relates to the mass of goods which a vehicle can carry, and so more directly to its usefulness) — though the latter relies on a manufacturer’s declaration rather than being measurable objectively, and might encourage artificially high declarations in order to generate a higher emissions target.

Multi-stage vehicles

5.12 A substantial proportion of vans sold within the Community are made under a multi-stage process, with one manufacturer producing a “chassis-cab” and the other the body, but the carbon dioxide figure is based on that of the chassis-cab, and is not re-tested on completion. For a variety of reasons, this is likely to result in the actual level of emissions being under-stated, and the Commission has proposed that, in such cases, a proxy value should be used for the completed vehicle, namely the highest carbon dioxide value of all whole vans made by the first manufacturer having the same chassis-cab as the vehicle in question.

Penalties

5.13 The assumption is that, where there is a straightforward choice between abatement and payment of a charge at a given level of over-emission, manufacturers are likely to choose the least-cost option, and the penalty regime will therefore have to be set accordingly. However, if the figure of €120 proposed for 2019 onwards represents the level needed to secure compliance, this suggests that the substantially lower figures proposed for the preceding years run the risk of the target not being met.

Conclusion

5.14 Although this proposal is based to a substantial extent on an earlier proposal relating to cars (and now enacted in Regulation (EC) No 443/2009), it represents a further stage in the Community’s attempts to limit carbon dioxide emissions from light duty vehicles, and we therefore think it right to draw it to the attention of the House. That said, we note that the Government will be producing an Impact Assessment in the context of its public consultation, and we will consider the document further when that Assessment is available. In the meantime, we are holding it under scrutiny.

6 Financial services

(31177) 15615/09 —	Opinion of the European Central Bank of 26 October 2009 on a draft Regulation on Community macro-prudential oversight of the financial system and establishing a European Systemic Risk Board and a draft Council Decision entrusting the European Central Bank with specific tasks concerning the functioning of the European Systemic Risk Board
--------------------------	--

<i>Legal base</i>	—
<i>Deposited in Parliament</i>	27 November 2009
<i>Department</i>	HM Treasury
<i>Basis of consideration</i>	EM of 10 December 2009
<i>Previous Committee Report</i>	None
<i>To be discussed in Council</i>	None planned
<i>Committee's assessment</i>	Politically important
<i>Committee's decision</i>	Not cleared, further information requested

Background

6.1 In September 2009 the Commission published proposals for a system of Community regulation and supervision of financial services, which included a draft Regulation to establish a European Systemic Risk Board and a draft Council Decision to give the European Central Bank some tasks in support of the proposed Board. The Commission proposes that:

- the Bank would provide the resources for the Board's Secretariat;
- the Secretariat would assist in the preparation of Board meetings and the collection and processing of information, including statistical information; and
- it would prepare analysis necessary to carry out the Board's tasks and support its Advisory Technical Committee.

6.2 We considered these legislative proposals on a number of occasions and they were debated on the Floor of the House on 1 December 2009.²⁶ The Council has agreed a general approach on the proposals and they are now to be considered by the European Parliament.

The document

6.3 This document is an Opinion by the European Central Bank on the Commission's proposals to establish a European Systemic Risk Board and to entrust the Bank with tasks in support of the Board. In the Opinion the Bank broadly supports the draft Regulation

²⁶ (30950)-(30957) 13645/09, 13648/09, 13652/09–13654–09, 13656/09–13658/09: see HC 19–xxviii (2008–09), chapter 6 (21 October 2009), HC 19–xxx (2008–09), chapter 2 (4 November 2009) and HC 5–i (2009–2010), chapter 2 (19 November 2009) and *HC Deb*, 1 December 2009, cols. 989–1026.

and the draft Council Decision, saying that “the ECB has decided that it stands ready to ensure the Secretariat of the ESRB and to support the ESRB”.

6.4 The Bank proposes a total of 13 amendments to the Commission’s draft texts. It suggests:

- an additional provision to ensure independence, with an amendment that the Bank stands ready to support the Board, but that this support is “without prejudice to the principle of the independence of the ECB in the performance of its tasks pursuant to the Treaty”;
- removing reference to ensuring “a sustainable contribution of the financial sector to economic growth” from the Board’s objectives, as this is not considered to be the motivation behind enhanced macro-prudential oversight;
- adding the Advisory Technical Committee to the list of key institutional aspects of the Board;
- minor amendments to reflect past declarations and decisions, including the Conclusions on the proposals at the ECOFIN Council of 9 June 2009 and European Council of 18–19 June 2009;²⁷
- an amendment to reflect the fact that the Advisory Technical Committee will assist the Board on a permanent basis, not just “where requested”;
- adding extra provisions to ensure the Board’s independence from “Community institutions or any other public or private body”, rather than just Member States;
- a minor amendment to the terminology used, to refer to stakeholder “views”, rather than “advice”;
- a new recital to clarify that macro-prudential supervision covers the financial system “as a whole”; and
- an amendment relating to the statistical support the Bank would be called upon to provide to the Board, enabling the Secretariat to obtain confidential data collected by the Bank or Board on behalf of and for the benefit of the latter.

The Government’s view

6.5 The Financial Services Secretary to the Treasury (Lord Myners), reminding us that the Government “has long supported” establishment of the European Systemic Risk Board and entrusting the Bank with specific tasks relating to the functioning of the Board, including providing its Secretariat, says that the Bank’s Opinion does not have any policy implications for the UK.

²⁷ See http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ecofin/108392.pdf and http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/108622.pdf.

Conclusion

6.6 We note the Minister's comment that this Opinion from the European Central Bank has no policy implications for the UK. Nevertheless, although we realise that the matter has to a degree moved out of the hands of the Council, before considering this document further we should like to hear from the Government whether it supports or opposes the amendments suggested by the Bank. Meanwhile the document remains under scrutiny.

7 EU Committee on Internal Security

(a) (30877) — —	Draft Council Decision on setting up the Standing Committee on operational cooperation on internal security
(b) (31206) 16075/1/09 —	Draft Council Decision on setting up the Standing Committee on operational cooperation on internal security

<i>Legal base</i>	(a) Article 71 TFEU; — ; simple majority (b) Article 240(3) TFEU; — ; simple majority
<i>Deposited in Parliament</i>	(a) 2 September 2009 (b) 9 December 2009
<i>Department</i>	Home Office
<i>Basis of consideration</i>	(a) EM of 2 September 2009 and Minister's letter of 26 October 2009 (b) Minister's letter of 24 November and EM of 10 December 2009
<i>Previous Committee Report</i>	None
<i>To be discussed in Council</i>	No date set
<i>Committee's assessment</i>	Legally important
<i>Committee's decision</i>	(a) Cleared (b) Not cleared; further information requested

Legal background

7.1 Article 71 of the Treaty on the Functioning of the European Union (TFEU) requires a standing committee to be set up within the Council to improve and strengthen operational cooperation on internal security in the EU.

7.2 Protocol 21 to the TFEU provides that the UK is not to take part in the adoption of, or be bound by, measures adopted under Title V of the TFEU (Articles 67 to 89) unless the UK Government has opted into the measure.

7.3 Article 240(3) TFEU requires the Council to act by a simple majority on procedural matters and for the adoption of its rules of procedure.

7.4 Article 242 TFEU provides that:

“The Council, acting by a simple majority shall, after consulting the Commission, determine the rules governing the committees provided for in the Treaties.”

Document (a)

7.5 On 2 September, the Minister of State at the Home Office (Mr Phil Woolas) sent us document (a), the unofficial draft of a Decision to set up the EU Standing Committee on Operational Cooperation on Internal Security (COSI). In his covering Explanatory Memorandum, he explained that the purpose of the draft Decision would be to give effect to Article 71 TFEU (see paragraph 7.1 above) of the Lisbon Treaty came into force.

7.6 The main provisions of document (a) are as follows:

- COSI’s function would be to promote and strengthen coordination of the operational actions of Member States’ internal security authorities;
- COSI should facilitate and ensure effective operational cooperation and coordination on police and customs cooperation, asylum, immigration, visas, the control of the external borders of the EU and judicial cooperation in criminal matters;
- COSI would evaluate the “general direction” and efficiency of operational cooperation, spot weaknesses and recommend remedies;
- COSI would be expressly prohibited from conducting operations itself;
- COSI would also be prohibited from involvement in the preparation of legislation;
- COSI would be able to invite representatives of Europol, Eurojust, FRONTEX and other relevant bodies to attend meetings as observers;
- COSI would be required to make regular reports to the Council about its activities; and
- the Council should keep the European Parliament and national parliaments informed of COSI’s proceedings.

7.7 The Minister told us that the Government supported the creation of COSI:

“to assist Member States in tackling common threats and challenges from terrorism, organised crime and illegal immigration. The UK has argued that EU cooperation needs a greater practical focus to assist Member States in responding on the ground

to operational needs; we believe that this Committee should offer the opportunity for such cooperation.”²⁸

The Government also supported the provisions of the draft Decision, which would not, however, apply to the UK unless the Government opted into it. The Government had not yet decided whether to opt in.

7.8 The Minister also told us that:

“In the scenario where the Lisbon Treaty comes into force, it seems highly possible that the Presidency would table texts, such as this Council Decision, for adoption as early as within a few weeks of the Lisbon Treaty entering into force”.²⁹

7.9 We had no reservations about the substance of document (a). But we wrote to the Minister on 14 October:

- to ask if he agreed with us that it would be contrary to the spirit of the Lisbon Treaty’s Protocol on the role of national parliaments in the EU if we were not given proper time in which to consider the official text of the draft Decision when it was published;³⁰ and
- to ask for his views on whether Article 71 was an adequate legal base for the proposed Decision.

7.10 In his reply of 26 October, the Minister noted that the COSI Decision would not fall within the Lisbon Treaty’s definition of a legislative act and so Article 4 of the Protocol on the role of national parliaments would not apply but suggested a different way to give the Committee eight weeks for scrutiny of JHA legislation. He explained that the Lisbon Treaty gives the UK three months to decide whether to opt into a proposal for JHA legislation. The Government would allow eight of those weeks for Parliamentary scrutiny. By implication, the Government would not breach a scrutiny reserve during those eight weeks; and the Council would not adopt the legislation before the UK had reached its decision whether to opt in.

7.11 We welcomed the Minister’s reply.

Document (b)

7.12 On 24 November, the Parliamentary Under-Secretary at the Home Office (Meg Hillier) wrote to tell us that the Presidency now considered that Article 71 TFEU established COSI and so no more was required than a procedural decision under Article 240(3) TFEU (see paragraph 7.3 above). She enclosed document (b), a revised text of the draft Decision, which differs from document (a) only in citing Article 240(3) as the legal base and setting out two Recitals.

28 Minister’s Explanatory Memorandum of 2 September, page 3, fourth paragraph.

29 *Ibid.* final page, last sentence.

30 The second Recital to the Protocol says that the Member States have agreed to the provisions of the Protocol “Desiring to encourage greater involvement of national parliaments in the activities of the European Union and to enhance their ability to express their views on draft legislative acts of the European Union”.

7.13 The Minister also told us that the Government had been planning to opt into the draft Decision but, on reflection, concluded that Article 71 is not a measure that could be “binding upon or applicable in” the UK (the words used in Article 2 of Protocol 21 — see paragraph 7.2 above) but would enable the UK to take part in COSI without the need to opt in.

7.14 The Minister said that, in its discussions with the Presidency, the Government had emphasised that “we must be given sufficient time to consult parliament”. Finally, she said that the Government would send us an Explanatory Memorandum on document (b) after the Lisbon Treaty had come into force.

7.15 The official text of the draft Decision was deposited in Parliament on 9 December. The Minister’s Explanatory Memorandum of 10 December confirms that the Government is content with the proposal and says that the draft Decision has received wide support from other Member States.

Conclusion

7.16 We recognise the potential benefits for practical cooperation between Member States through the creation of the Committee on Internal Security. The drafting of document (b) is clear and we have no questions about the substance of the document.

7.17 We have doubts, however, about the use of Article 240(3) as the legal base for the measure. This is because Article 242 TFEU is expressly and specifically about “the rules governing the committees provided for in the Treaties” (see paragraph 7.4 above). We ask the Minister to obtain an explanation from the Council Legal Service about why Article 242 should not be cited as the legal base and whether Article 240(3) is appropriate. Pending the Minister’s reply, we shall keep document (b) under scrutiny. Document (a) has been superseded by document (b) and so we clear document (a) from scrutiny.

8 Combating late payments

(30554) 8969/09 + ADDs 1–2 COM(09) 126	Draft Directive on combating late payment in commercial transactions (recast) — Implementing the Small Business Act
---	---

<i>Legal base</i>	Article 95 EC; co-decision; QMV
<i>Department</i>	Business, Innovation and Skills
<i>Basis of consideration</i>	Minister's letters of 13 October and 30 November 2009
<i>Previous Committee Report</i>	HC 19–xviii (2008–09), chapter 4 (3 June 2009)
<i>To be discussed in Council</i>	No date set
<i>Committee's assessment</i>	Politically important
<i>Committee's decision</i>	Cleared

Background

8.1 Because late payments in commercial transactions affect the competitiveness and viability of companies, particularly small and medium sized enterprises (SMEs), the Community adopted Directive 2000/35/EC,³¹ which obliges Member States to lay down that interest³² must be charged when payment is not made within an agreed deadline (or 30 days in the absence of an agreed date). It also specifies that agreements not in line with the provisions in the Directive may be deemed grossly unfair to the creditor, and thus either give rise to a claim for damages or not be enforceable: and it contains provisions governing the retention of title and recovery procedures.

8.2 Despite this, the Commission says that late payments are still a problem, due to a range of factors, including the absence of effective and efficient remedies, and it has highlighted the unjustifiably long contractual payment periods in transactions involving public administrations. It also points out that, since the risk of late payments increases strongly in periods of economic downturn, the European Economic Recovery Plan³³ stressed the need for the Community and Member States to ensure that public authorities pay invoices within a month.

8.3 Against this background, the Commission put forward in April 2009 this proposal to recast Directive 2000/35/EC,³⁴ in order to improve the effectiveness and efficiency of the remedies it provides for late payment. As we noted in our Report of 3 June 2009, this would largely retain the existing provisions in the Directive, but would:

- extend the measure to include claims for interest of less than €5;

31 OJ No. L 200, 08.08.00, p.35.

32 At a rate up to seven percentage points higher than that set from time to time by the European Central Bank (or the relevant central bank, in the case of Member States not participating in economic and monetary union).

33 (30213) 16097/08: see HC 19–i (2008–09), chapter 4 (10 December 2008).

34 OJ No. L 200, 08.08.00, p.35.

- entitle creditors, as compensation for recovery costs when interest becomes payable, to a payment of €40 for a debt of less than €1,000, a payment of €70 where the debt is between €1,000 and €10,000, and a payment equivalent to 1% of the amount concerned, where the debt is €10,000 or more;
- enable creditors to obtain as well reasonable compensation for all remaining recovery costs;
- require public authorities to pay within 30 days, failing which creditors would, in addition to interest for late payment and compensation for recovery costs, be entitled to compensation of 5% of the amount involved;
- strengthen the provisions on grossly unfair contractual clauses by applying these automatically to contracts which exclude interest for late payments.

8.4 In our Report, we also noted that the Government supports the measures in the proposal (which it expected to be considered by the Competitiveness Council towards the end of 2009), and had highlighted the two key differences for the UK as being the 5% compensation payable where the debtor is a public authority, and the setting of compensation for debts of €10,000 or more at 1% (in contrast to current UK legislation, which imposes a flat rate figure of £100 for debts in excess of £10,000).

8.5 As it intended to provide an Impact Assessment in due course, we decided to report the document to the House, but to hold it under scrutiny until we received that Assessment. However, we also commented that one of the reasons put forward by the Commission for its proposal was the alleged reluctance of many businesses to charge interest, even when entitled to do so, and the view taken by some creditors that the cost of taking action against late payment is not justified by the financial benefits. In view of this, we suggested that the additional penalties now proposed would be unlikely to materially alter that situation, particularly where small businesses are supplying a much larger enterprise, and we asked whether that was also the Government's view.

Minister's letter of 13 October 2009

8.6 We subsequently received from the Minister for Trade, Investment and Small Business (Lord Davies of Abersoch) a letter of 13 October 2009, enclosing the promised Impact Assessment. This reiterated that late payments are a key barrier to business success within the UK, and that there is a close relationship between these and the rate of insolvency. It also suggested that many businesses facing late payments are unaware of their right to interest, what rate they can charge, and how to claim; that many debtors abuse their market power vis-à-vis their suppliers; and that creditors incur further costs in chasing late payments, often regarding the pace of legal proceedings as a further deterrent. The Assessment suggested that, although there are clear costs and benefits arising from the proposal, overall these would be neutral, since the costs of the additional compensation due from businesses paying late would be offset by the benefits to those receiving such compensation — though it suggested that this could involve an annual transfer between the two groups of around £180 million, with by far the greatest proportion of those benefits being felt by those who supply the public sector.

8.7 As to the question we raised in our previous Report, the Minister said that, whilst members of the Institute of Directors had indicated that they would be more likely to claim compensation under the new proposals, others believed that suppliers will still be unwilling to invoke the provision for fear of losing customers. However, he suggested that poor payment is not simply an issue between small and large companies, with 27% of all money beyond agreed terms being owed by companies with fewer than ten staff.

8.8 When we considered this information on 4 November, we found some of the figure-work in the Impact Assessment difficult to follow, and we also formed the impression that the scale of the transfer between creditors and debtors would be unaffected by the measure proposed. In addition, we noted that 23 Member States had expressed concerns that the proposal would introduce more punitive measures — concerns similar to those which had been raised in separate correspondence by the House of Lords European Union Committee over the potentially disproportionate impact of a 1% compensation payment in the case of large debts where the delay in payment was only marginal. Our Chairman therefore wrote to the Minister saying that, before we could consider clearing the proposal, we would like to have more information, particularly on these points.

Minister's letter of 30 November 2009

8.9 We have now received from the Minister a further letter of 30 November, enclosing an updated Impact Assessment. This confirms that, in the case of transactions between commercial concerns, the new provisions would make only a very small difference as between debtors and creditors, and that the main effect (equivalent to just under £180 million a year) would arise where the debtor is a public authority, due to the introduction of a 5% flat rate compensation payment. The Minister has also sent us a copy of the latest text of the proposal following discussions in Brussels, which indicates that, where a debt is €10,000 or more, the earlier proposal for a 1% compensation payment for recovery costs in the case of transactions between commercial undertakings would be replaced by a fixed payment of €200 for debts up to €100,000, and one of €1,000 where the debt is more than €100,000.

Conclusion

8.10 **We are grateful to the Minister for this information, which confirms that, except perhaps in the case of transactions involving public authorities, the impact of these proposals is likely to be slight, and that most suppliers in any case regard recourse to late payment legislation as an action of last resort. We also note that the version of the proposal now on the table removes an earlier concern over the potentially disproportionate level of compensation envisaged for debts of over €10,000 in the case of commercial transactions. It would therefore seem likely that the practical impact of the proposal, not least as regards the current position within the UK will be small, and that its main effect will be to reinforce the message that late payment is unacceptable. We are therefore now clearing the document.**

9 Reaping the benefits of the digital dividend in Europe

(31082) 15289/09 + ADDs 1–2 COM(09) 586	Commission Communication: <i>Transforming the digital dividend into social benefits and economic growth</i>
SEC(09) 1436 SEC(09) 1437	Commission Staff Working Documents

<i>Legal base</i>	—
<i>Document originated</i>	28 October 2009
<i>Deposited in Parliament</i>	5 November 2009
<i>Department</i>	Business, Innovation and Skills
<i>Basis of consideration</i>	Minister’s letter of 9 December 2009
<i>Previous Committee Report</i>	HC 5–ii (2009–10), chapter 3 (25 November 2009); also see (29169) 15365/07 HC 16–vii (2007–08), chapter 11 (9 January 2008)
<i>To be discussed in Council</i>	18 December 2009 Telecommunications Council
<i>Committee’s assessment</i>	Politically important
<i>Committee’s decision</i>	Cleared

Background

9.1 The switchover from analogue to digital terrestrial TV by the end of 2012 will free up large amounts of valuable Ultra High Frequency (UHF) radio spectrum across Europe. In the UK alone, estimates of the worth of this “digital dividend” are between £5.4bn and £14.4bn over 20 years, because of the opportunity thereby provided to meet the fast growing demand for new and existing broadcasting and communication services.

The Commission Communication

9.2 This Communication follows an earlier Commission Communication 15365/07 on this topic — *Reaping the full benefits of the digital dividend in Europe: A common approach to the use of spectrum released by the digital switchover* — which the Committee considered nearly two years ago. As our previous Report recalls, the then Minister for Competitiveness, now the Minister for Digital Britain at the Department for Business, Innovation and Skills (Stephen Timms), explained his and other Member States’ opposition to the Commission’s approach. Though recognising that there might be advantages to a coordinated approach to the digital dividend across Europe, he considered that there was a danger that mandated harmonisation, through attempting to pick winners and the potential for delay it would introduce to the decision making process, would distort the development of the market: such “mandated coordination could thus prove costly and very disruptive.” He noted that spectrum allocation is a matter for Member

States and that, in the UK, Ofcom would award the spectrum freed up nationally by the switchover through a market-led auction on a technology and service neutral basis.

9.3 In our previous report, we also recalled our earlier consideration of a number of related Commission proposals, which demonstrated that this was not an isolated instance of the Commission seeking to mandate a particular approach within a framework that was, instead, supposedly centred on working with Member States and the relevant industries on a market-led basis. The Minister had also then put it very clearly: “There is no clear gain, and much potentially at risk, from setting aside certain spectrum bands for specific services. There are also tensions in these proposals with the Commission’s stated aim of greater market mechanisms in spectrum management which we support.” The Committee endorsed his approach and considered it relevant to the then upcoming debate on the Commission’s proposals for reforming the overall regulatory framework³⁵ (which debate took place in March 2008).³⁶

Our assessment

9.4 Now, the Commission was again flirting with the notion of mandatory harmonisation of relevant part of the UHF band. The Minister was commendably clear; the Government’s policy on spectrum clearly is:

“... to be service and technology neutral and to allow the markets to decide the best use of spectrum, wherever possible not mandating the use of specific technologies as often such decisions can be later shown to be sub-optimal.”

9.5 The Minister was likewise clear on the notion of mandatory harmonisation:

“Mandatory harmonization of the cleared 800 MHz band, which the Commission says it could propose, is considered unnecessary. There is a clear movement across Europe, driven by industry, to making that band available for mobile broadband technologies. As such it is not clear what value would be gained from any Commission mandate”.

9.6 The Minister seemed uncertain about the immediate timetable. But it also seemed that the Council would be invited to adopt formal Conclusions on the Communication in the not too distant future, which would then form the basis upon which the Commission would take this work forward. Given the general background outlined above and the Commission’s continued hankering after a more mandatory approach than would appear to be justified, the Committee decided to retain the Communication under scrutiny, and asked the Minister to write to us before the relevant Council meeting, outlining the Conclusions that he expected to be adopted and explaining how they addressed his justifiable concern.

35 See headnote (29169) 15365/07 HC 16–vii (2007–08), chapter 11 (9 January 2008).

36 See <http://www.publications.parliament.uk/pa/cm200708/cmgeneral/euro/080318/80318s01.htm> for the record of the debate.

The Minister's letter of 9 December 2009

9.7 The Minister says that Council Conclusions on the Communication are due to be agreed at the 18 December Telecommunications Council, which he is attending, and continues as follows:

“I expect that these will include agreement to a ‘during 2012’ recommended timetable for ending analogue television transmissions that is fully compatible with the UK’s Digital Switchover programme. I do not expect the Conclusions to make reference to any mandatory harmonisation of the 800 MHz band, to agree to any proposals for interference-resistance standards or to mandate that digital receivers have to be H264/MPEG4-AVC compliant.

“The Conclusions should though reflect that harmonisation of the 800 MHz band is taking place in many Member States without any Commission involvement. This is in line with the UK’s position whereby primarily the market, rather than policy makers, decides what standards are appropriate.

“The Conclusions should also state that further measures regarding the exploitation of the Digital Dividend or exclusive use of the 800 MHz band for non-broadcasting services should be raised in planned multiannual radio spectrum policy programmes, allowing the timely involvement of Council and European Parliament.

“I therefore believe the UK’s position will be well reflected in the Council Conclusions and will report back to the Committee after the Council.”

Conclusion

9.8 **We are grateful to the Minister for his prompt and helpful response.**

9.9 **We now clear the Communication.**

10 Marketing standards for poultrymeat

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

<i>Legal base</i>	Article 37EC; consultation; QMV
<i>Department</i>	Environment, Food and Rural Affairs
<i>Basis of consideration</i>	Minister's letter of 16 October 2009 and 8 December 2009
<i>Previous Committee Report</i>	HC 19–xxv (2008–09), chapter 3 (21 July 2009)
<i>Discussed in Council</i>	October 2009
<i>Committee's assessment</i>	Politically important
<i>Committee's decision</i>	Cleared

Background

10.1 Council Regulation (EC) No 1234/2007³⁷ establishes a common organisation of agricultural markets, and the various provisions relating to specific commodity areas include marketing standards which define the conditions which must be met by fresh, frozen and quick-frozen poultrymeat respectively.

10.2 In May 2008, the Commission put forward a proposal to amend this Regulation in the following two respects:

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

10.3 We were initially told by the Government that the UK supported the proposal's aims of improving product quality and avoiding consumers being misled, but that further consideration was required of the implications, and that an Impact Assessment would be submitted by October 2008. In view of this, we decided to await that information before considering the proposal further, and we eventually received a letter of 21 May 2009 from the then Minister of State at the Department for Environment, Food and Rural Affairs (Jane Kennedy), indicating that the first element in the proposal had been deleted, but that the UK had now raised concerns on the aspect extending to poultrymeat preparations and products the requirement that those sold as fresh or chilled should not previously have

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

been frozen, arguing that that there should instead be a strengthening of the labelling provisions. She also said that the UK had registered deep concerns about the absence of an Impact Assessment from the Commission.

10.4 The Minister added that the UK had received limited support from other Member States, and that an amended text — which remained unacceptable — was likely to go to the Council later that month. However, she gave no indication of the precise basis for the UK's concerns, or of the implications of the changes which had apparently been made to the original proposal; and nor did she provide the Government's promised Assessment. Our Chairman therefore replied on 3 June, asking for further information, including some indication of the likely costs and benefits for the UK.

10.5 This was followed by a letter of 16 July from the current Minister of State at the Department (Jim Fitzpatrick) indicating that the UK had again stressed that the proposal made poor policy sense by a prohibiting a safe, profitable business practice, and poor sense politically since it had antagonised major trading partners. He added that the UK remained opposed to the proposal, and had argued that the transition period should be extended from 1 April 2010 to 1 April 2011. However, the Presidency had concluded that there continued to be a qualified majority in favour of the dossier, which was therefore to go to the Agriculture and Fisheries Council in the autumn. The Minister also said that, although the effect of the proposal would be mitigated by consumers shifting to other meat categories, preventing previously frozen poultrymeat preparations being sold as chilled could cost the industry in excess of £160 million in sales, and he added that his officials were continuing to assess the effect of the proposal, and would provide an Impact Assessment in the autumn.

10.6 In our Report of 21 July 2009, we commented that the document raised a number of concerns, including the willingness of other Member States to agree to a proposal on which the UK has such strong criticisms, and that these were compounded by the failure of the Government to provide an Impact Assessment last autumn, as promised (and by it having supplied us with information only slowly and when pressed to do so). In drawing this unsatisfactory situation to the attention of the House, we said that we would return to the subject once we have received the Impact Assessment which the Minister had now said would be provided in the autumn.

Subsequent developments

10.7 We next received from the Minister a letter of 16 October 2009 saying that the measure was to be adopted by the Council on 19 October, the only change being an additional one month transitional period, and that officials were now finalising the UK Impact Assessment. Our Chairman replied on 21 October, indicating that we had decided to defer any further Report to the House until we had seen that Assessment.

10.8 We have now received a further letter of 8 December from the Minister, in which he notes that, when the UK voted against the proposal on 19 October, it made a statement for the Council minutes noting the proposal's disproportionate impact on the UK (which accounts for some 66% of the Community market), and again criticising the failure of the Commission to carry out an Impact Assessment. This letter also encloses the UK's own long-awaited Impact Assessment, which points out that many products sold fresh or

chilled at present are made from poultry meat which has been frozen earlier, and that the ability to do this is particularly important in meeting periods of very high seasonal demand, for example at Christmas or in relation to summer barbecues: if this practice is no longer permitted, chicken processors would incur an additional annual cost of £27 million in making the necessary adjustment, turkey processors would incur an additional annual cost of £4.8 million, together with a one capital cost of £13.5 million in order to expand capacity to cope with peak Christmas demand, and food processors one-off costs of £10 million to convert production methods. In addition, imports would be affected in a way which might lead to a challenge within the World Trade Organisation, and, although consumers would benefit from greater certainty about the product purchased, this was likely to entail an increase in price and a reduction in choice.

Conclusion

10.9 The history of this proposal is not a happy one, in that the Commission's proposal — which clearly has a major impact on the UK — was not accompanied by an Impact Assessment, and then appears to have been steamrolled through the Council, without sufficient consideration being given to less damaging alternatives, such as improved labelling. In addition, our own consideration of it has been hindered by the tardy, and initially incomplete, way in which the Government has provided us with the necessary information.

10.10 We recognise that the proposal has now been adopted by the Council, with the UK having voted against and recorded its objections, and that there is therefore little which can now be done to remedy the situation. Nevertheless, we think it right to draw to the attention of the House our disquiet at the whole handling of this document. In particular, we expect the Government to provide us in future with all the information we need in a timely manner, and we would also expect it to be more successful in holding the Commission to account over the shortcomings it displayed in this instance as regards both the content of the proposal, and its justification for it.

11 Functioning of the food supply chain

(31095) 15330/09 + ADDs 1–6 COM(09) 591	Commission Communication: <i>A better functioning food supply chain in Europe</i>
--	---

<i>Legal base</i>	—
<i>Document originated</i>	28 October 2009
<i>Deposited in Parliament</i>	6 November 2009
<i>Department</i>	Environment, Food and Rural Affairs
<i>Basis of consideration</i>	EM of 24 November 2009
<i>Previous Committee Report</i>	None, but see footnotes 38 and 39
<i>To be discussed in Council</i>	No date set
<i>Committee's assessment</i>	Politically important
<i>Committee's decision</i>	Cleared

Background

11.1 In June 2008, we drew to the attention of the House a Communication³⁸ which the Commission had produced in response to the major increase which had recently taken place in food prices, in which it sought to analyse the causes, assess the impact, and outline a Community response. The latter included investigating the functioning of the food chain, and the European Council in June 2008 asked the Commission to report further on this (and other issues) before the end of the year.

11.2 The Commission duly produced in December 2008 a further Communication³⁹ in response to that request. This noted that, although global supply and demand had been one of the main factors determining food prices, problems in the functioning of the food chain had also played an important part. It pointed out that three economically important sectors were involved — agriculture, food processing and distribution — and that, given the various interactions between them, any problems can have significant repercussions. It also noted that the increases in agricultural commodity prices had been absorbed differently between Member States, indicating that the Community market for food products was still fragmented, and that other relevant factors included differences in the regulatory framework and the competitive environment, notably the bargaining power of the different sectors.

11.3 In particular, the Commission pointed out that the weak bargaining power of the agricultural sector had put pressure on producer margins, leading to the formation of producer groups and cooperatives and the development of high value added products, and it also commented on the consolidation taking place throughout the food supply chain,

38 (29708) 9923/08: see HC 16–xxv (2007–08), chapter 2 (25 June 2008).

39 (30279) 17380/08: see HC 19–ix (2008–09), chapter 7 (4 March 2009).

observing that, although this can lead to efficiency gains, competition authorities must ensure that the process does not create problems elsewhere, and that a closer look needed to be taken at such operations as cartels, “buying alliances”, resale price maintenance, single branding obligations, and exclusive supply agreements. The Communication concluded by setting out a roadmap to improve the functioning of the food supply chain, comprising five main components — promoting competitiveness, enforcement of competition and consumer protection rules, a review of problematic regulations, permanent European monitoring of food prices and the supply chain, and discouraging detrimental speculation.

The current document

11.4 The Commission has now sought in this latest Communication to present concrete policy initiatives along the lines set out in the roadmap, and has done so under two main headings — the link between commodity and food prices, and the main challenges faced by the food chain, together with the steps needed to address these.

Recent price developments

11.5 The Commission recalls that agricultural commodity prices rose sharply during the second half of 2007 and early 2008, and that, although food prices then started to rise as well, they did so more slowly because processors and distributors absorbed part of the increase. It then points out that, whilst commodity prices have been plummeting since the second quarter of 2008, food producer prices continued to rise until the fourth quarter of the year, whilst those for consumers did not come down until recently: and it adds that the rates of decline have been low compared with the drop in commodity prices. As a result, it says consumers have not benefited, and the resultant reduction in demand has in turn curtailed the recovery of commodity prices.

11.6 The Commission goes on to suggest that these discrepancies arise in part from structural weaknesses, such as the number of intermediaries along the chain and the competitive structure at certain steps. It also says that the “pervasive inequalities” in the bargaining power of the contracting parties has contributed to reducing both the speed and magnitude of price transmission. It considers that this has prolonged market inefficiencies and exacerbated price volatility, and that there is thus an urgent need to implement policy initiatives along the direction identified in the December 2008 roadmap.

Overcoming major challenges facing the food supply chain

11.7 The Commission comments that, in some respects, the food supply chain performs well — for example, by delivering high quality produce at affordable prices, ensuring safety and traceability, and providing an ample supply of highly competitive, innovative and traditional products. However, it also suggests that its competitiveness has underperformed that of the overall Community economy since 1995, and that certain sectors are facing increased international competition. It says that, although the food chain is very heterogeneous, it has identified the following three cross-cutting priorities.

Sustainable and market-based relationships between stakeholders

11.8 The Commission points out the widely diverse nature of the food chain, and the need to draw a distinction between concerns about potentially unfair trading practices and those about anti-competitive practices. In the former case, it notes the significant imbalances in bargaining power between small farms and buyers or between processors and retailers, and the temptation for larger operators to impose contractual arrangements advantageous to themselves, for example relating to late or upfront payments. It says that this has a negative impact on the competitiveness of the supply chain, in that it can limit the profitability of those who are efficient but lack bargaining power, and that this could be addressed by better awareness of contractual rights and stronger action against unfair practices (although it recognises that many may hesitate to contest contract clauses for fear of losing business).

11.9 In the case of anti-competitive practices, the Commission says that the ability to exercise market power depends upon the type of supply chain and local market conditions, and that, since food markets are often national in scope, it has worked closely with national competition authorities within the framework of the European Competition Network. As a result, it suggests that national competition authorities have granted due priority to case by case investigations, which have considerably improved the understanding of the functioning of the sector, as well as identifying a number of serious infringements, such as cartels and resale price maintenance, which have been tackled through orders and (where necessary) fines. However, it says that a careful balance needs to be struck between enhancing efficiency and potentially anti-competitive effects, and that no generalisations can be made.

11.10 The Commission says that, in order to address unfair contractual practices, it will work with Member States to put contractual relations on a more secure footing, and that this will entail an exchange of information on such practices, an exchange of best practices on their notification, and the launch of awareness campaigns, whilst at Community level it will work together with stakeholders in the chain to prepare sets of standard contracts, and propose any measures needed to address unfair contractual practices in the internal market. In addition, it will work with the European Competition Network to develop a common approach to relevant competition issues, creating joint working teams to analyse specific practices and markets critical to the functioning of the chain.

Increasing transparency

11.11 The Commission comments that markets along the chain suffer from a lack of price transparency and predictability, and that derivatives are an important tool to cope with the volatility of commodity prices. However, it also says that it is essential that derivatives should keep serving their initial purpose of price discovery and hedging, and that, in order to tackle “excessive speculation”, it is necessary to improve overall transparency in the Community for derivatives on agricultural commodities, including over the counter markets, with a better overview of the activity of different types of market participant being particularly needed.

11.12 It goes on to recall that its earlier roadmap proposed the creation of a European food prices monitoring tool to improve transparency in downstream markets of the chain, and it

proposes the first version of such a tool, which would (i) track consumer price levels of comparable products across Member States to assess price dispersion and integration of the retail internal market for food, and (ii) track price developments in Member States at each step of the chain for a selection of specific products. It suggests that this will contribute to increasing the pressure on stakeholders to speed up price transmission, and that it can be further developed to improve the link between food consumer, producer and commodity prices and to increase the coverage of products monitored.

11.13 The Commission says that it will make proposals to improve the oversight and overall transparency of agricultural commodity derivatives markets, and it recommends that all Member States should have web-based and easily accessible food retail price comparison services.

Integration and competitiveness of the supply chain across Member States

11.14 As regards integration, the Commission recalls that, the food supply chain is highly fragmented between Member States, and that there are important differences both in terms of price levels and developments between different commodities. It says that some of these differences can be explained by national factors, such as household incomes, taste preferences, tax differences, but that other factors related to market dynamics, business practices, and the regulatory framework play a role as well. As regards competitiveness, it notes on the one hand the highly fragmented nature of the agricultural sector, and on the other the significant contribution made by the agro-food industry to value added growth, but it also comments on the extent to which the Community industry is now losing its share of the world market. It adds that the High Level Group on the Competitiveness of the Agro-Food Industry has identified the main issues, and has proposed 30 concrete recommendations, and that it has acknowledged the lack of transparency in price formation and imbalances between the various parts of the food chain as being major concerns. Finally, the Commission points out that, despite its dramatic transformation over the last decade or so, the retail sector also faces competitive challenges.

11.15 In light of this analysis, the Commission says that it will assess measures to address territorial supply chain constraints which create economic inefficiencies and contradict internal market principles; urge the Council and European Parliament to rapidly adopt its proposal for the revision of legislation on labelling rules; review selected environmental standards and origin labelling schemes which may impede cross-border trade, and work with Member States the industry towards better harmonising the implementation of Community food safety standards; promote and facilitate the restructuring and consolidation of the agricultural sector; and bring forward those proposals of the High Level Group aimed at improving the competitiveness of the agro-food sector, and at fostering innovation and exports.

The Government's view

11.16 In his Explanatory Memorandum of 24 November 2009, the Minister of State at the Department for Environment, Food and Rural Affairs (Jim Fitzpatrick) notes that, although the Communication does not contain any legislative proposals, it does set out

policy initiatives likely to impact the UK's food supply chain. As regards the specific measures proposed by the Commission, he says that:

- On the promotion of sustainable and market-based relationships between those in the food supply chain, the UK welcomes initiatives to improve the balance of bargaining power (for example, through co-operatives or greater collaboration within the supply chain), and would also encourage better and more transparent contracts in line with the UK Competition Commission's views on the supplier-supermarket relationship. However, it believes that contractual arrangements are a matter for commercial entities to agree, provided competition law (with regards to such areas as market concentration and cartel behaviour) is complied with.
- The UK generally welcomes proposals to improve transparency in the food supply chain, but would caution against hasty intervention intended to curb or limit market activity, such as enabling regulators to set limits on speculative positions. He comments that, for a number of reasons, it is impossible to be absolutely definitive on the extent to which speculation contributed to the recent food price spikes, and that the Commission's analysis was inconclusive, suggesting that their proposals are more pre-emptive than evidence-based. He also points out that speculation provides liquidity to international agricultural futures and options markets, and plays an important role in facilitating price discovery and management of price risk by agricultural producers and processors.
- The UK supports greater market transparency, but does not support the Commission's call on Member States to develop food retail price comparison services, particularly in view of the similar systems already available. It also has concerns about the associated cost and administrative burdens which price monitoring might entail, and would therefore like to see further justification for this, including a thorough cost benefit analysis.

11.17 The Minister adds that the UK broadly supports moves to free the EU (and global) food supply chain from any trade distorting effects, including subsidies and import tariffs, thus freeing producers to produce what consumers want. Also, it is receptive to Commission proposals to promote and facilitate restructuring and consolidation of the agricultural sector, and welcomes the proposal to broaden the scope and mandate of the High Level Group (HLG) on Competitiveness in the Agro-food industry and to bring forward the Group's proposals.

Conclusion

11.18 As we have noted, this Communication provides a more detailed analysis of the concerns expressed earlier about the functioning of the food supply chain, and the ways in which these might be addressed. As such, it seeks to take forward discussion, but does not itself make any specific legislative proposals, and nor, in our view, does it contain any particularly novel or contentious thoughts requiring further consideration by the House. Consequently, although we think it right to draw both the document, and the Government's comments on it, to the attention of the House, we see no reason to withhold clearance.

12 EU- Republic of Korea relations

(31167) 15710/09 COM(09) 631	Draft Council Decision on the signing and provisional application of the Framework Agreement between the European Community and its Member States and the Republic of Korea
------------------------------------	---

<i>Legal base</i>	Articles 133, 181(a) and 300(2) EC Treaty; unanimity
<i>Document originated</i>	18 November 2009
<i>Deposited in Parliament</i>	23 November 2009
<i>Department</i>	Foreign and Commonwealth Office
<i>Basis of consideration</i>	EM of 7 December 2009
<i>Previous Committee Report</i>	None
<i>To be discussed in Council</i>	To be determined
<i>Committee's assessment</i>	Politically important
<i>Committee's decision</i>	Cleared

Background

12.1 In its introductory Explanatory Memorandum, the Commission recalls that, acting on the Commission's recommendation of December 2007, the Council authorised the Commission to negotiate a new Framework Agreement with the Republic of Korea (RoK) in May 2008. RoK is "increasingly active on the international scene as a like-minded country committed to human rights, free markets and multilateralism." Next to "a thriving trade and investment relationship," the Commission says cooperation is also expanding in areas such as science and technology, education, climate change and development assistance." Political dialogue has also deepened in recent years, "particularly (but not exclusively) focused on North Korea."

12.2 This new Framework Agreement, negotiated in parallel with a comprehensive Free Trade Agreement (FTA), will establish "a fully coherent modernised framework for bilateral relations." It was initialled on 14 October 2009 and, the Commission says, will form "the contractual basis for our relationship with Korea and is underpinned by a broad set of common principles and shared values." Its objective is "to offer Korea a broad basis for cooperation with the EU", including on major political and global issues.

12.3 It accordingly includes:

- "modern and comprehensive provisions on economic cooperation";
- cooperation in the fields of justice, freedom and security (e.g. combating organised crime and corruption, drugs and money laundering, migration, protection of personal data, etc.) as well as on good governance in the field of taxation;
- a basis for "working together on global issues such as: climate change; security of energy supply; approaches to labour issues, education and other issues relating to structural change in the world economy; proliferation of weapons of mass destruction; terrorism";

— a “shared understanding on the need to prosecute the most serious crimes of concern to the international community”.

12.4 The EU-Korea Free Trade Agreement (FTA) was initialled on 15 October 2009 between representatives of the RoK and then Trade Commissioner Ashton. It needs to be approved by the South Korean Parliament, the European Parliament and Member States. When passed, the agreement would be second only to the North American Free Trade Agreement. It would be the third such trade-related agreement between the EU and RoK, the first (the Agreement on Co-operation and Mutual Administrative Assistance in Customs Matters) dating from 1997 and the second agreement (the Framework Agreement on Trade and Co-operation) from 2001. Trade between the two entities in 2007 was €64 billion: the EU is the second largest importer of South Korean goods; South Korea is the eight largest importer of EU goods.

12.5 The Framework Agreement also clarifies the relationship between itself, on the one hand, and, on the other hand, specific sectoral agreements (both existing and future), including the FTA. Such agreements are considered to form “an integral part of overall bilateral relations as governed by [the Framework-Agreement]” and to “form part of a common institutional framework”.

12.6 The Framework Agreement will be the first contractual instrument of its kind concluded by the EU with a developed country. When in force, it will form the basis for a Strategic Partnership with Korea, in line with the outcome of the 4th EU-Korea Summit held in Seoul on 23 May 2009.

The Government’s view

12.7 In his Explanatory Memorandum of 7 December 2007, the Minister for Europe at the Foreign and Commonwealth Office (Chris Bryant) does little more than reiterate the rationale for and nature of the agreement as set out in the Commission’s own Explanatory Memorandum.

12.8 He does, though, note UK support for the position that all FTAs must be linked to Partnership and Cooperation Agreements (PCA) or updated Framework Agreements, and that he expects both agreements to be signed in early 2010.

Conclusion

12.9 No questions arise. We are nonetheless drawing this to the attention of the House because of the ground-breaking nature of the Agreement and the importance of the EU’s partner in this process.

12.10 We now clear the document.

13 Draft Budget 2010

(a)	
(30860)	Draft General Budget of the European Communities for the financial year 2010
—	
—	
(b)	
(31190)	Amending letter No. 3 to the preliminary draft budget for 2010
16763/09	
SEC(09) 1635	

<i>Legal base</i>	Article 272 EC; QMV; the special role of the European Parliament in relation to the adoption of the Budget is set out in Article 272
<i>Documents originated</i>	(b) 26 November 2009
<i>Deposited in Parliament</i>	(b) 1 December 2009
<i>Department</i>	HM Treasury
<i>Basis of consideration</i>	Minister's letter of 7 December 2009
<i>Previous Committee Report</i>	(a) HC 19–xxvii (2008–09), chapter 34 (14 October 2009), HC 19–xxxii (2008–09), chapter 14 (11 November 2009) and HC 5–i (2009–10), chapter 18 (19 November 2009) (b) None
<i>Discussed in Council</i>	18 November 2009
<i>Committee's assessment</i>	Politically important
<i>Committee's decision</i>	(a) Cleared (decision reported 14 October 2009) (b) Cleared

Background

13.1 The Commission's Preliminary Draft Budget (PDB) is the first stage in the Community's annual budgetary procedure. We reported on the 2010 PDB in June 2009⁴⁰ and it was debated in European Committee on 6 July 2009.⁴¹ The second stage is the adoption by the Council of the Draft Budget (DB). The 2010 DB was adopted on 10 July 2009 and we reported on it in October 2009.⁴² The 2010 PDB and the 2010 DB form the basis of the 2010 Adopted Budget which is expected to be agreed in mid-December 2009, after consideration by the European Parliament in October 2009, further consideration by the Council in November 2009 and negotiations between the Council and the European Parliament.

40 (30692): see HC 19–xx (2008–09) chapter 2 (17 June 2009).

41 *Gen Co Deb*, European Committee, 6 July 2009, cols. 3–38.

42 See headnote.

13.2 During the negotiations of its budget proposals in the PDB the Commission presents a number of Amending Letters, normally to update assumptions in the PDB numbers or to take account of new developments.

The Minister's letter

13.3 The Economic Secretary to the Treasury (Ian Pearson) writes now to tell us about the outcome of the Council's second consideration of its DB, following the European Parliament's first reading of it, and the accompanying conciliation process. The Minister encloses with his letter annexes, which we reproduce, helpfully setting out the euro and sterling figures for the five budget categories and the changes in these adopted by the Council from those adopted in the European Parliament's first reading.

The Council's second reading and conciliation

13.4 The Minister says that on 18 November 2009 the Council formally agreed its second reading of the 2010 DB, following conciliation with the European Parliament and that the amended DB was agreed under the qualified majority voting procedure, with unanimous support from Member States. The Minister then continues with the detail of all this, first telling us that:

- the Council's agreed position ahead of conciliation was based on a package put together by the Swedish Presidency, and supported by the Government, following discussions in Council's Budget Committee;
- the Presidency package proposed total commitment appropriations of €140,555 million (£128,130 million);
- this represented an increase of €2.60 billion (£2.40 billion) from the Council's first reading position, although was still €518 million (£472 million) lower than the level proposed by the Commission's PDB and the Amending Letters to it;
- the increase is largely explained by the Presidency package incorporating €2.00 billion (£1.80 billion) of the €2.40 billion (£2.20 billion) required to finance the outstanding tranche of the European Economic Recovery Plan, which had not been included in the Council's first reading position;
- the Presidency package proposed total payment appropriations of €121,488 million (£110,748 million), an increase of €967 million (£882 million) from the Council's first reading position and representing 1.04% of EU GNI;
- the Presidency package incorporated the changes to the overall Financial Framework and individual heading ceilings in 2009 and 2010, as proposed by Commission, with an increase to the 2010 overall commitment appropriations ceiling of €1.30 billion (£1.20 billion), with a corresponding decrease to the 2009 ceiling;⁴³

43 (31063) 15208/09 (31068) 15173/09: see HC 19–xxxi (2008–09), chapter 15 (11 November 2009).

- at heading level, this meant an increase to the 2010 ceiling for Sub-Heading 1a (Competitiveness for growth and employment) of €1.60 billion (£1.50 billion), entirely offset by decreases to Sub-Heading 1b (Cohesion for growth and employment) in 2010 and to Headings 2 (Preservation and management of natural resources) and 5 (Administration) in 2009 and 2010; and
- once this revision of the Financial Framework ceilings had been taken into account, the Presidency package left a margin of €1.00 billion (£0.90 billion).

13.5 The Minister summarises by saying that the Presidency package substantially reverted back to the Council's first reading position, with the following amendments and additions:

- the package partially accepted Amending Letter No 1,⁴⁴ incorporating €95 million (£87 million) in commitment appropriations and €60 million (£55 million) in payment appropriations for support to Palestine;
- the package accepted in full Amending Letter No 2,⁴⁵ providing €75 million (£68 million) in commitment appropriations for decommissioning of the Kozloduy nuclear plant in Bulgaria, €1,587 million (£1,447 million) and €377 million (£344 million) in commitment and payment appropriations respectively for energy projects under the European Economic Recovery Plan, and emergency support to the dairy sector, small adjustments to some budget lines under Heading 2 (Preservation and management of natural resources) and €420 million (£383 million) in commitment appropriations for the rural development/CAP "health check" component of the European Economic Recovery Plan, resulting in a net increase under that heading of €739 million (£674 million) and €414 million (£377 million) in commitment and payment appropriations respectively;
- it reverted to PDB levels on several budget lines under Heading 2, leading to an increase compared to the Council's first reading of €71 million (£65 million) in both commitment and payment appropriations, while maintaining the substantial reduction in the Council's first reading to the European Agriculture Guarantee Fund clearance of accounts budget line of €230 million (£210 million); and
- it accepted some comparatively small amendments made by the European Parliament in its first reading, including increases for the European Parliament's administration budget, as well as in Sub-Heading 1a and Heading 4 (EU as a global player).

13.6 Turning to the agreement reached between the Council and the European Parliament the Minister reports that before proceeding with the second reading of the DB, the Council held its customary conciliation meeting with a delegation from the European Parliament. During this it was clear that no agreement would be found on the budget without first agreeing on the financing of the full €2.4 billion (£2.2 billion) remaining tranche for the European Economic Recovery Plan. This, and key elements of the budget were agreed as follows:

44 (30888) 12793/09 + ADD 1: see HC 19–xxxii (2008–09), chapter 14 (11 November 2009).

45 (31100) 15172/09: see HC 19–xxxii (2008–09), chapter 14 (11 November 2009).

- total payment appropriations were set at €122,937 million (£112,069 million), corresponding to approximately 1.04% of EU GNI, below the level proposed by the Commission in its PDB and Amending Letters, and €4.6 billion (£4.20 billion) below that proposed by the European Parliament in its first reading;
- political agreement was reached on a revision of the Financial Framework in 2009 and 2010 in order to finance in full the outstanding €2.4 billion (£2.2 billion) tranche of the European Economic Recovery Plan — this was achieved without any overall increase to the Financial Framework for 2009 and 2010;
- the Sub-Heading 1a ceiling in 2010 was increased by €1.8 billion (£1.6 billion), with corresponding decreases in Heading 2 of €1.3 billion (£1.2 billion) in 2009 and €158 million (£144 million) in 2010, in Heading 5 of €174 million (£159 million) in 2009 and €126 million (£115 million) in 2010, in Sub-Heading 1b of €1.00 million (£0.90 million) in 2009 and €6 million (£5 million) in 2010 and in Sub-Heading 3a (Freedom, security and justice) of €5 million (£5 million) in 2009;
- mobilisation of €195 million (£178 million) from the Flexibility Instrument in 2010, meaning €315 million (£287 million) would be available under the Instrument for the 2011 budget negotiation;⁴⁶
- €120 million (£109 million) of the amount mobilised was allocated towards financing energy projects under the European Economic Recovery Plan, €75 million (£68 million) was allocated towards financing the decommissioning of the Kozloduy nuclear plant (an expenditure demand contained in Amending Letter No 2 that the European Parliament did not wish to see financed from the Sub-Heading 1a margin before the European Economic Recovery Plan energy component was fully financed);
- acceptance of Amending Letter No 2, amended to include €1.98 billion (£1.80 billion) in commitment appropriations for the energy component of the European Economic Recovery Plan, resulting from the revision of the Financial Framework, the mobilisation of the Flexibility Instrument and redeployment of €81 million (£74 million) of commitment appropriations from within Sub-Heading 1a in 2010; and
- the amount of the Common Foreign and Security Policy budget for 2010 was set at €282 million (£275 million) in commitment appropriations, subject to the European Parliament's final vote on discharge in relation to the Council's accounts in 2007, which subsequently took place, on 25 November 2009.

13.7 The Minister tells us that four joint statements, with the European Parliament and the Commission, were agreed by the Council. These concern continuity of the 2010 budgetary procedure in view of the entry into force of the Lisbon Treaty on 1 December 2009, the building policy of EU institutions and bodies, simplification and a more targeted use of structural and cohesion funds in the context of the economic crisis and the use of the

⁴⁶ The Flexibility Instrument permits up to €200 million (£182 million) to be budgeted each year above the ceilings of the Financial Framework, which funds can be carried over for up to two years.

margin in Heading 5 in 2010.⁴⁷ In addition the Council, the European Parliament and the Commission also agreed that, before 1 December 2009, they would agree a joint declaration on transitional measures applicable to the budgetary procedure after the entry into force of the Lisbon Treaty — the Minister adds that this declaration has now been agreed by written procedure and is expected to be formally approved by both institutions shortly.

13.8 The Minister tells us also that the Council agreed to adopt Preliminary Draft Amending Budget No 10 to the 2009 budget,⁴⁸ as updated by the Commission on 11 November 2009 in the light of the latest information on revenue and expenditure, providing:

- an overall decrease to revenue from VAT- and GNI-based contributions of €1,386 million (£1,321 million);
- an overall increase to Traditional Own Resources revenue of €600 million (£572 million);
- an overall reduction in payment appropriations of €3,204 million (£3,052 million), which now includes a reduction of €135 million (£129 million) in both commitment and payment appropriations for the European Agriculture Guarantee Fund in Heading 2; and
- a reduction of payment appropriations under the European Agricultural Fund for Rural Development of €1.70 billion (£1.60 billion).

In addition, the Preliminary Draft Amending Budget was further modified by the Council to include a decrease in both commitment and payment appropriations under Heading 5 of €42.50 million (£40.5 million), a €40.00 million (£38.10 million) underspend from the Council's budget and €2.50 million (£2.40 million) from the budgets of the European Economic and Social Committee and the Committee of the Regions. The effect of these changes result in a total reduction in Member States' GNI-based contributions of €3,488 million (£3,322 million), of which the UK share is €442 million (£421 million).

The Amending Letter

13.9 Amending Letter No. 3, document (b), is to cover additional resources for changes to the functioning of the European Council and the Council in 2010, following entry into force of the Lisbon Treaty. On this the Minister, reminding us that he had already alerted us to the proposal,⁴⁹ says that:

- largely as a result of the Government's lobbying, this proposal was not adopted but merely "noted" at the Council of 18 November 2009 and it was instead to be adopted under a written procedure by 30 November 2009;

47 See http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ecofin/111307.pdf pages 13–17.

48 See footnote 43.

49 (30860): see HC 5-i (2009–10), chapter 18 (19 November 2009).

- at the Council the Government stressed the importance of Member States and national parliaments being given adequate time to consider all budgetary proposals related to the implementation of the Lisbon Treaty;
- for the purpose of the written procedure the Amending Letter was formally issued by the Commission on 26 November 2009;
- the text and substance of the proposal was unchanged from the elements to which we had been alerted, with the exception of a reduction of €1.50 million (£1.40 million) in the contingency reserve, for which the Government and other Member States had argued strongly; and
- due to the underspend in the Council's administration budget in 2009 (outlined in the previous paragraph) it will be possible to finance the full amount of €23.50 million (£21.00 million) requested in the Amending Letter while still reducing the overall level of administration expenditure in 2009 and 2010.

The Government's view and the next stage

13.10 The Minister says that, in line with the approach and objectives that the Government had told us of as the 2010 Budget was negotiated, it believes the it achieved the best possible outcome from this stage of the negotiations. He comments that:

- through tough negotiation and close engagement with other Member States, the Government secured a 2010 Budget with payment appropriations below the level of the Commission's proposals in the PDB and Amending Letters;
- at the same time, the budget contains the full financing for the remaining tranche of the European Economic Recovery Plan, which was achieved without any overall increase to the Financial Framework for 2007–2013;
- this was done through redirecting resources towards competitiveness and growth and away from areas that represent poorer value for money, such as administration and agricultural spending;
- the consensus reached at the Council meeting of 18 November 2009 set overall payment appropriations for the 2010 Budget;
- the Council has now concluded its second reading of the budget and compulsory expenditure, mainly on agriculture,⁵⁰ has been settled; and
- the European Parliament will formally agree the non-compulsory expenditure part of the 2010 Budget in its second reading, culminating in the plenary session on 14–17 December 2009 — this will mark the formal adoption of the 2010 Budget.

⁵⁰ EU expenditure is regarded as either "compulsory" or "non-compulsory". Compulsory expenditure is expenditure necessarily resulting from the Treaty or from acts adopted in accordance with the Treaty. The Council has the final say in fixing its total. The European Parliament has the final say in determining the amount and pattern of non-compulsory expenditure.

Conclusion

13.11 We are grateful to the Minister for his report on the outcome of the negotiations on the 2010 Budget, including the resolution of the issue of Amending Letter No 3, document (b), which we clear.

Annex 1: Table 1: Summary of 2010 PDB, Draft EU Budget, EP first reading and Council second reading package – EUR million

Heading	FF Ceiling (1)	2010 PDB		Council first reading		EP First reading		Council second reading package ¹	
		CA(2)	PA(3)	CA	PA	CA	PA	CA	PA
1. Sustainable Growth²	61,782	62,152	47,365	62,052	46,663	64,255	51,418	63,734	47,061
1a. Competitiveness for Growth and Employment ³ <i>Margin⁴</i>	12,388	12,269	10,982	12,170	10,574	14,367	12,568	13,852	10,972
1b. Cohesion for Growth and Employment <i>Margin</i>	49,394	49,382	36,382	49,382	36,089	49,388	38,850	49,382	36,089
		12		12		6.4		1	
2. Preservation and Management of Natural Resources <i>Margin</i>	60,113	59,004	58,075	58,640	57,583	59,808	58,959	59,450	58,068
		1,109		1,473		305		539	
3. Citizenship, Freedom, Security and Justice	1,693	1,629	1,360	1,608	1,306	1,674	1,462	1,608	1,306
3a. Freedom, Security and Justice <i>Margin</i>	1,025	980	720	974	692	1,006	794	974	692
3b. Citizenship <i>Margin</i>	668	45		51		19		51	
		649	640	634	614	668	668	634	614
		19		34		0		34	
4. European Union as a Global Player⁵ <i>Margin⁶</i>	7,893	7,921	7,665	7,832	7,156	8,141	7,823	7,934	7,223
		221		310		04		208	
5. Administration <i>Margin⁷</i>	8,008	7,851	7,851	7,812	7,812	7,866	7,865	7,829	7,829
		230		276		222		109	
TOTAL (4)	139,489	138,557	122,316	137,944	120,521	141,745	127,526	140,555	121,488
<i>Margin</i>		1,761		2,374		-1,427		1,065	
Appropriations payments as % of EU GNI			1.03%		1.02%		1.08%		1.04%

¹ Calculations of the margins for Council's second reading package take into account the proposed revision of the Financial Framework.

² CA totals for Sustainable Growth include €500m appropriations for the European Globalisation Adjustment Fund.

³ CA totals for Heading 1a exclude €500m appropriations for the European Globalisation Adjustment Fund

⁴ €500m appropriations for the European Globalisation Adjustment Fund are excluded from calculation of the margin.

⁵ €248.9m appropriations for the Emergency Aid Reserve are included throughout in both commitments and payments totals for Heading 4, with the exception of the Council's first and second readings, where €248.9m for the Reserve is excluded from the payments total.

⁶ €248.9m appropriations for the Emergency Aid Reserve are excluded from calculation of the margin.

⁷ For calculating the margin for Heading 5, account is taken of the footnote (1) of the Financial Framework 2007–2013 for an amount of €78m for the staff contributions to the pension scheme.

(1) FF = Financial Framework (2) CA = commitment appropriations (3) PA = payment appropriations (4) Due to rounding, the sum of the lines may not equal the total.

* The margin for Heading 1a left by Parliament, excluding its amendment to raise the Financial Framework ceiling to finance €1.98bn for the European Economic Recovery Plan, amounts to €706,340.

Table 2: Summary of 2010 PDB, Draft EU Budget, EP First Reading and Council second reading package – GBP million

Heading	FF Ceiling (1)	2010 PDB		Council first reading		EP First reading		Council second reading package ¹	
		CA(2)	PA(3)	CA	PA	CA	PA	CA	PA
1. Sustainable Growth²	56,320	56,658	43,178	56,567	42,538	58,575	46,873	58,100	42,901
1a. Competitiveness for Growth and Employment ³ <i>Margin</i> ⁴	11,293	11,184	10,011	11,094	9,639	13,097	11,457	12,627	10,002
1b. Cohesion for Growth and Employment <i>Margin</i>	45,028	45,017	33,166	45,017	32,899	-1,804*	35,416	45,017	32,899
2. Preservation and Management of Natural Resources <i>Margin</i>	54,799	53,788	52,941	53,456	52,493	54,521	53,747	54,195	52,935
		1,011		1,343		278		491	
3. Citizenship, Freedom, Security and Justice	1,543	1,485	1,240	1,466	1,191	1,526	1,333	1,466	1,191
3a. Freedom, Security and Justice <i>Margin</i>	934	893	656	888	631	917	724	888	631
3b. Citizenship <i>Margin</i>	609	592	583	578	560	609	609	578	560
		17		31		0		31	
4. European Union as a Global Player⁵ <i>Margin</i>⁶	7,195	7,221	6,987	7,140	6,523	7,421	7,131	7,233	6,584
		201		283		0.4		190	
5. Administration <i>Margin</i>⁷	7,300	7,157	7,157	7,121	7,121	7,171	7,170	7,137	7,137
		210		252		202		99	
TOTAL (4) <i>Margin</i>	127,158	126,309	111,503	125,750	109,867	129,215	116,253	128,130	110,748
		1,605		2,164		-1,301		971	
Appropriations payments as % of EU GNI			1.03%		1.02%		1.08%		1.04%

¹ Calculations of the margins for Council's second reading package take into account the proposed revision of the Financial Framework.

² CA totals for Sustainable Growth include £456m appropriations for the European Globalisation Adjustment Fund.

³ CA totals for Heading 1a exclude £456m appropriations for the European Globalisation Adjustment Fund.

⁴ £456m appropriations for the European Globalisation Adjustment Fund are excluded from calculation of the margin.

⁵ £227m appropriations for the Emergency Aid Reserve are included throughout in both commitments and payments totals for Heading 4, with the exception of the 2010 draft budget, where £227m for the Reserve is excluded from the payments total.

⁶ £227m appropriations for the Emergency Aid Reserve are excluded from calculation of the margin.

⁷ For calculating the margin for Heading 5, account is taken of the footnote (1) of the Financial Framework 2007–2013 for an amount of £71m for the staff contributions to the pension scheme.

(1) FF = Financial Framework (2) CA = commitment appropriations (3) PA = payment appropriations(4) Due to rounding, the sum of the lines may not equal the total.

* The margin for Heading 1a left by Parliament, excluding its amendment to raise the Financial Framework ceiling to finance £1.8bn for the European Economic Recovery Plan, amounts to £643,900.

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

Department for Business, Innovation and Skills

- (31135)
16238/09
— Report on the Annual Accounts of the European Foundation for the Improvement of Living and Working Conditions for the financial year 2008 together with the Foundation's replies.
- (31178)
16459/09
COM(09) 635 Commission Report on the implementation of Directive 2000/53/EC on end-of-life vehicles for the period 2005-2008.
- (31209)
16186/09
COM(09) 625 Draft Council Regulation imposing a definitive anti-dumping duty on imports of furfuryl alcohol originating in the People's Republic of China following an expiry review pursuant to Article 11(2) of Regulation (EC) No 384/96.

Cabinet Office

- (31208)
— Council Decision on the security rules for protecting EU classified information.
—

Department for Environment, Food and Rural Affairs

- (31054)
15020/09
COM(09) 547 2nd Commission Financial Report on the financial implementation of the European Agricultural Fund for Rural Development (EAFRD) — Year 2008.
- (31058)
15054/09
+ ADDs 1, 2
& 4
COM(09) 548 2nd Commission Financial Report on the European Agricultural Guarantee Fund — 2008 Financial Year.
- (31087)
15307/09
+ ADDs 1—2
COM(09) 584 Commission Report on options for animal welfare labelling and the establishment of a European Network of Reference Centres for the protection and welfare of animals.

Foreign and Commonwealth Office

- (31199) Draft Council Decision on support for EU activities in order to
 — promote the control of arms exports and the principles and criteria of
 — Council Common Position 2008/944/CFSP among third countries.

Department for Transport

- (31119) Commission Report on the practical implementation of Health and
 15854/09 Safety at Work Directives 93/103/EC (fishing vessels) and 92/29/EEC
 COM(09) 599 (medical treatment on board vessels).
- (31144) Report on the Annual Accounts of the European Maritime Safety
 16247/09 Agency for the financial year 2008 together with the Agency's replies.
 —
- (31183) Draft Regulation on common rules for the allocation of slots at
 16669/09 Community airports (codified version).
 COM(09) 634

HM Treasury

- (31083) Draft Council Decision authorising the Republic of Austria to continue
 15292/09 to apply a measure derogating from Article 168 of Directive
 COM(09) 583 2006/112/EC on the common system of value added tax.
- (31197) Opinion of the European Central Bank of 12 November 2009 on a
 16921/09 Draft Directive amending Directives 2006/48/EC and 2006/49/EC as
 — regards capital requirements for the trading book and for
 resecurisations, and the supervisory review of remuneration policies
 (CON/2009/94).

Formal minutes

Tuesday 15 December 2009

Members present:

Michael Connarty, in the Chair

Jim Dobbin
Keith Hill

Kelvin Hopkins
Bob Laxton

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 14 read and agreed to.

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

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

[Adjourned till Wednesday 6 January 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*)