



House of Commons

European Scrutiny Committee

Ninth Report of Session 2009–10

Documents considered by the Committee on 27 January 2010



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Report, together with formal minutes

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Notes

Numbering of documents

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

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

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

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

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

Abbreviations used in the headnotes and footnotes

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

Euros

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

Further information

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

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

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1 Prohibition of discrimination on grounds of religion or belief, disability, age or sexual orientation

(29819) 11531/08 COM(08) 426	Draft Council Directive on implementing the principle of equal treatment between people irrespective of religion or belief, disability, age or sexual orientation
+ ADD 1	Commission staff working document: impact assessment
+ ADD 2	Summary of impact assessment

<i>Legal base</i>	Article 13(1) EC; consultation; unanimity
<i>Department</i>	Government Equalities Office
<i>Basis of consideration</i>	Minister's letters of 14 May and 27 October 2009 and 21 January 2010
<i>Previous Committee Report</i>	HC 16–xxvii (2007–08), chapter 8 (16 July 2008) and HC 19–xiii (2008–09), chapter 3 (1 April 2009)
<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 requested

Previous scrutiny of the document

1.1 In July 2008, when we first considered this draft Directive,¹ we noted that Article 13(1) of the EC Treaty² authorised the Council to take appropriate action, within the limits of the powers conferred on the Community, to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.

1.2 We also noted that the Council had already adopted three Directives which prohibit discrimination on any of these grounds in employment, occupation or training.³ Discrimination on grounds of sex and racial or ethnic origin is also prohibited in health care, social care, social security and goods and services available to the public. The purpose of the proposed Directive is to further the implementation of Article 13 of the EC Treaty by prohibiting discrimination on grounds of religion or belief, disability, age or sexual orientation in health care, social care, social security, education and the supply of goods and services which are available to the public.

1.3 The draft Directive proposed by the Commission would prohibit direct and indirect discrimination. Harassment and the denial of reasonable accommodation to a disabled person would be treated as discrimination. Member States would have discretion to

1 See headnote.

2 Re-enacted in Article 19(1) of the Treaty on the Functioning of the European Union.

3 Directive 2000/43/EC: OJ No. L 180, 19.7.00, p.22;
Directive 2000/78/EC: OJ No. L 303, 2.12.00, p.16; and
Directive 2004/113/EC: OJ No. L 373, 21.12.04, p. 37.

provide in their national law that differences of treatment on grounds of age would not constitute discrimination if they were justified by a legitimate aim, and if the means of achieving that aim were appropriate and necessary. In particular, the Directive would not preclude the fixing of a specific age for access to social benefits, education and certain goods and services. Moreover, Member States would have discretion to permit proportionate differences of treatment in financial services (such as insurance) where age or disability is a key factor in the assessment of risk.

1.4 The Commission also proposed that providers should be obliged to make appropriate modifications or adjustments so as to enable people with disabilities to have non-discriminatory access to housing, transport and other services, goods, social security, social and health care and education; such modifications and adjustments should not, however, impose a disproportionate burden.

1.5 In July 2008, the then Parliamentary Under-Secretary of State for Women and Equality at the Government Equalities Office (Barbara Follett) told us that the draft Directive contained much that the Government could agree with and which was broadly compatible with UK policy and legislation. But the Government wished to consider further whether all the provisions of the draft Directive — for example, in their application to education and healthcare — were within the Community's competence.

1.6 We asked the Minister to send us:

- progress reports on the negotiations;
- the Government's Impact Assessment of the proposal; and
- a note on the conclusions of the Government's further consideration of the Community's competence to legislate on some of the matters covered by the draft Directive.

1.7 In her letters of 25 February and 24 March 2009, the Solicitor General (Vera Baird) told us that the negotiations were proceeding very slowly. The Government had pressed the Commission to explain why it believed that all the matters covered by the draft Directive are within the Community's competence but had not yet received a satisfactory reply. Because so much uncertainty remained about the Community's competence and, therefore, about the matters that could legitimately be included in the Directive, it was not yet possible to provide a credible assessment of the Directive's costs and benefits. The Government was about to begin public consultations on the draft Directive. Finally, the Minister promised to send us further progress reports.

1.8 In our report of 1 April 2009, we welcomed the Government's efforts to establish the Community's competence to legislate on housing, education and health services in the way proposed in the draft Directive. We asked the Minister not only for progress reports on the negotiations but also for copies of the Government's consultation paper and a summary of the responses to it. Meanwhile, we kept the draft Directive under scrutiny.⁴

4 See HC 19–xiii (2008–09), chapter 3 (1 April 2009).

The Minister's letters of 14 May and 27 October 2009

1.9 On 14 May 2009, the Minister sent us a copy of the consultation paper; a draft of the Government's Impact Assessment; and a draft of the Equality Impact Assessment.

1.10 We noted that the draft of the Impact Assessment omitted any estimates of the costs and benefits of the proposals because they could not be calculated until after the Government Equalities Office had received the responses to the consultation paper. In our view, the draft of the Equality Impact Assessment was thorough, concise and written in plain English. It expressed concern about the proposal to prohibit harassment on grounds of sexual orientation, religion or belief because of the possible effects on freedom of speech, academic freedom and the right to proselytize a faith. We asked the Minister for a further progress report on the negotiations, a summary of the responses to the consultation paper, the revised draft of the Impact Assessment and a note on the Community's competence.

1.11 The Minister replied on 27 October 2009. The main points of her letter were as follows:

- officials were analysing the responses to the consultation paper and would publish a summary of them "later this year";
- greater clarity was needed about whether all the proposals were within the Community's competence;
- the Czech Presidency had suggested some amendments to the disability provisions of the draft Directive which would, for example, allow progressive implementation of the requirements for the adaptation of existing buildings and infrastructure to meet the needs of people with disabilities; and ensure that the Directive did not impose disproportionate burdens on businesses; and
- Member States broadly favoured the Czech proposals.

1.12 We wrote to the Minister on 11 November 2009. We noted that it was in our Report of 16 July 2008 that we had made our first request for a note on the Government's further consideration of the Community's competence to legislate on some of the matters covered by the draft Directive. We had repeated the request by letter on 10 June 2009. We could not understand why the Government had not provided the explanation of its views long before. We asked to receive it without further delay.

1.13 We also said that we had asked in June 2009 for a summary of the responses to the Government's consultation paper and for a copy of the revised Impact Assessment. Even though the consultation period ended on 28 July, neither the summary of responses nor the revised Impact Assessment was available. We said that we should be grateful to receive both as soon as possible and to know the reason for the delay.

The Minister's letter of 21 January 2010

1.14 The Minister encloses with her reply a revised text of the draft Directive. It incorporates amendments suggested by the Swedish Presidency. The Government welcomes the suggestions and, in particular, the amendments to Article 3, which defines

the scope of the draft Directive. The Government's concern about the proposal going beyond the powers conferred on the Community arose from the way the Commission had drafted the Article. The original draft said that "the prohibition on discrimination shall apply to all persons ... in relation to" social protection, education and access to goods and services available to the public (including housing). The Presidency suggested narrowing the scope of Article 3(1) by adding the words "access to" after "in relation to".

1.15 In addition, the Presidency suggested a new Article 3(2). It is as follows:

"This Directive does not alter the division of competences between the European Community and the Member States. In particular, it does not apply to:

(a) matters covered by family law, including marital status and adoption, and laws on reproductive rights;

(b) the organisation of Member States' social protection systems, including decisions on the setting up, financing and management of such systems and related institutions as well as on the substance and delivery of benefits and services and the conditions of eligibility;

(c) the powers of Member States to determine the type of health service provided and the conditions of eligibility; and

(d) the content of teaching or of educational activities and the organisation of Member States' educational systems, including the provision of special needs education."

1.16 The Minister tells us that these amendments to Article 3 make it much clearer that the Directive is not intended to change the division of competences between the Community and the Member States.

1.17 The Minister also encloses with her letter the Government's summary of the responses to the consultation paper. There were over 2000 responses. The summary says "Of these, over 1900 were from individuals with religious views, expressing concern about harassment provisions and implications for freedom of speech. The remaining responses were from organisations representing equality groups, trades unions, religious organisations and businesses".⁵

1.18 The Minister says that the scope of the Directive has still not been finally decided. Until the Council has settled it, the Government cannot complete the assessment of the costs and benefits. When the scope has been agreed, it will be possible to produce a revised Impact Assessment.

1.19 In the section of her letter about the progress of the negotiations, the Minister tells us that under the Swedish Presidency, the negotiations focussed on:

- competence;
- the disability provisions;

5 Government summary of responses, page 6, final paragraph.

- what might constitute legitimate differences of treatment; and
- the timetable for the implementation of the provisions on access to buildings, facilities and infrastructure.

Significant progress has been made but extensive further work is needed. The Minister says that she will keep us informed of the negotiations.

Conclusion

1.20 We are grateful to the Minister for her clear and helpful letter. We share her view that the Swedish Presidency’s suggested amendments to Article 3 of the draft Directive provide welcome reassurance that the division of competences between the EU and the Member States is to remain unchanged by the Directive. But, as she says, further negotiations are required. We look forward to reading her progress reports. Meanwhile, we shall keep the document under scrutiny.

2 Qualification and status of refugees

(31043) 14863/09 COM(09) 551	Draft Directive on minimum standards for the qualification and status of third country nationals or stateless persons as beneficiaries of international protection and the content of the protection granted (recast)
+ ADDs 1–2	Commission staff working documents: impact assessment and summary of assessment
+ ADD 3	Detailed explanation of the proposal
+ ADD 4	Commission staff working document: annexes to ADD 1

<i>Legal base</i>	Article 63(1)(c) and (2)(a) EC; co-decision; QMV; and Article 63(3)(a) EC; consultation; unanimity
<i>Department</i>	Home Office
<i>Basis of consideration</i>	Minister’s letter of 22 January 2010
<i>Previous Committee Report</i>	HC 5–i (2009–10), chapter 4 (19 November 2010)
<i>To be discussed in Council</i>	No date set
<i>Committee’s assessment</i>	Legally and politically important
<i>Committee’s decision</i>	Not cleared; further information requested

Introduction

2.1 In 2004, the Council adopted a Directive on minimum standards for the qualification and status of third country nationals or stateless people as refugees or people who

otherwise need protection (“the original Qualifications Directive”).⁶ The Commission believes that the standards set by the Directive are unsatisfactory and has, therefore, proposed this draft Directive to remedy the defects and ensure higher standards of protection for people who need it and further harmonisation of Member States’ standards. To that end, the draft Directive re-enacts some of the provisions of the original Directive, omits others and amends the rest.

Previous scrutiny of the document

2.2 When we considered the draft Directive in November 2009, we noted the main differences between the original Directive and the Commission’s proposals for its replacement.⁷ They include, for example: the following changes:

(i) The stated purpose of the original Directive is to lay down minimum standards for the qualification of third country nationals or stateless people as “refugees or persons who are otherwise in need of international protection”. The draft Directive says that its purpose is to lay down minimum standards for the qualification of people as “beneficiaries of international protection”, who are defined as people who have been granted refugee status or subsidiary protection.⁸

(ii) Under both the original Directive and the proposed new Directive, Member States are required to ensure that family unity can be maintained and that family members are entitled to claim the same benefits as the person granted protection. Article 2 of the draft Directive enlarges the present definition of “family members” to include three new categories: the married children of the person granted protection who are under 18 and where it is in their best interests to live in the same country as the beneficiary of protection; the father, mother or other adult relative who is responsible for a minor granted protection; and the unmarried siblings of a person aged less than 18 who has been granted protection.

(iii) Articles 11 and 16 of both the original Directive and the draft Directive state the grounds on which a third country national or stateless person ceases to be a refugee or person with subsidiary protection. One of the grounds is that the circumstances which led to the person being recognised as being in need of protection have ceased to exist. Articles 11(3) and 16(3) of the draft Directive propose, however, that this ground for cessation is not to apply if the refugee or person with subsidiary protection is able to give “compelling reasons”, arising out of previous persecution, for refusing to avail himself or herself of protection in his or her country of nationality or former habitual residence.

(iv) Article 20(6) and Article 20(7) of the original Directive give Member States discretion to reduce the benefits (such as access to employment and social assistance) granted to a refugee or person with subsidiary protection if the status has been obtained

6 Council Directive 2004/83/EC: OJ No. L 304, 30.09.04, p.12.

7 See HC 5–i (2009–10), chapter 4 (19 November 2009).

8 *Subsidiary protection* is the status given to people who do not qualify as refugees but who are at risk of serious harm if returned to their country of origin.

on the basis of activities engaged in with the only or main purpose of creating the necessary conditions to obtain protection. The draft Directive omits this discretion.

2.3 In her Explanatory Memorandum of 5 November 2009, the Parliamentary Under-Secretary of State at the Home Office (Meg Hillier) told us that the Government was not persuaded of the case for some of the proposals. For example:

- the Government was concerned about the proposed extension of the definition of “family members” (see paragraph 2.2(ii) above). The more extensive the definition, the more difficult it can be to prove the family connection and the greater the risk an alleged family connection being used as a cloak for trafficking in human beings and other abuses of international protection; and
- the Government was concerned by the proposed omission from the new Directive of the present discretion for Member States to reduce the benefits of people who have deliberately manufactured the conditions necessary to obtain international protection (see paragraph 2.2(iv) above).

2.4 The Minister noted that the Commission had cited three legal bases for the draft Directive. Measures for which Article 63(1)(c) EC and Article 63(2)(a) EC provide the legal base are subject to co-decision with the European Parliament and qualified majority voting in the Council. Measures for which Article 63(3)(a) EC provides the legal base are subject to unanimity in the Council and consultation with the European Parliament. The Government had raised with the Commission this apparent incompatibility.

2.5 The Government opted into the original Qualifications Directive. The Minister said that it had not yet decided whether to opt into the draft Directive.

2.6 When we considered the document in November, we welcomed the care with which the Government had considered the legal base for the draft Directive. We asked the Minister to tell us the Commission’s response to the question whether the legal bases are compatible with each other. We also asked her to tell us the Government’s decision on whether to opt into the draft Directive and for progress reports on the negotiations. We decided to keep the document under scrutiny pending receipt of the further information for which we had asked.

The Minister’s letter of 22 January 2010

2.7 In her reply of 22 January, the Minister tells us that further consideration of the proposals confirmed that the provisions about which the Government had expressed reservations would pose a significant risk to the UK’s asylum system. For example, she says that:

“The amended definition of a family member — in particular its extension to include the parents of unaccompanied minors whose claims are granted — is the most worrying [of the Commission’s proposals]. Although Article 2(j) states that the definition only extends to persons who are in the same Member State as the minor, we believe that this, especially when combined with the obligation to maintain family unity (Article 23(1)) and to trace the relatives of unaccompanied minors (Article

31(5)) carries an unacceptable risk of requiring us to admit the parents of unaccompanied minors who are granted status.

“We fear that that would lead to a significant increase in the number of applications we receive from minors (currently about 3500 a year, or 12% of our intake) — possibly as a result of parents sending their children ahead of them in the hope of being able to join them if they are granted status. That would be deeply prejudicial to the welfare of the children concerned and is in our view, the wrong direction to go in when numbers of UASCs [unaccompanied asylum seeking children] arriving in Europe have already significantly increased. The Government already spends over £140m a year in caring for unaccompanied asylum seeking children, and an increase in the number of applications we receive from this category would risk raising these costs further.”

2.8 Because of its concerns about the likely effects of the proposals on the UK’s asylum system, the Government has decided not to opt into the draft Directive. It will, however, take part in the negotiations with a view to applying to be bound by the Directive (if adopted) if the Government’s concerns have been dealt with satisfactorily.

2.9 Because the Treaty of Lisbon has now come into effect, the Treaty on the Functioning of the European Union, not the EC Treaty, will provide the legal base for the draft Directive. The new legal base makes all the provisions of the draft Directive subject to the same procedure: that is, “the ordinary legislative procedure” (the new terminology for co-decision and QMV).

Conclusion

2.10 We are not surprised by the Government’s decision not to opt into the draft Directive. Clearly, much remains to be considered in the Council before the first reading of the proposals by the European Parliament. We should be grateful, therefore, if the Minister would send us further progress reports on the negotiations. Meanwhile, we shall keep the draft Directive under scrutiny.

3 Procedures for granting and withdrawing asylum

(31046) 14959/09 COM(09) 554	Draft Directive on minimum standards for Member States' procedures for granting and withdrawing international protection (recast)
+ ADD 1	Commission staff working paper: article by article explanation of the draft Directive
+ADDs 2–4	Commission staff working paper: impact assessment and summary of assessment

<i>Legal base</i>	Article 63(1)(d) and (2)(a) EC; co-decision; QMV
<i>Department</i>	Home Office
<i>Basis of consideration</i>	Minister's letter of 22 January 2010
<i>Previous Committee Report</i>	HC 5–i (2009–10), chapter 3 (19 November 2009)
<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 requested

Previous scrutiny

3.1 When we considered this proposal in November 2009, we noted that the Council had adopted a Directive in 2005 on Member States' procedures for granting and withdrawing refugee status.⁹ The Commission's original draft of the 2005 Directive contained common minimum standards. But, in negotiation, the Council amended the draft to allow Member States wider discretion. The Commission believes that this has led to disparate national arrangements and deficiencies in, for example, the procedural guarantees for asylum seekers. So, in October 2009, the Commission proposed the repeal of the 2005 Directive and its replacement by a new ("recast") Directive which would re-enact some of the provisions of the existing Directive, omit others and amend the rest with the aim of remedying the deficiencies and moving closer to a truly common asylum procedure and a uniform status for people seeking protection.

3.2 For example:

- The draft Directive says that its purpose is to establish minimum procedural standards for granting or withdrawing "international protection". It defines "international protection status" as recognition by a Member State of a third country national or stateless person as a refugee or person eligible for subsidiary protection.¹⁰

⁹ See HC 5–i (2009–10), chapter 3 (19 November 2009).

¹⁰ A *refugee* is a person who, because of a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside his or her country of nationality and is unable or unwilling to avail himself or herself of the protection of that country; or a person who is stateless

- Article 4(2) of the draft Directive contains a new mandatory requirement about the matters to be included in the training of officials who examine applications for international protection.
- Article 9(2) of the draft Directive contains a new mandatory requirement for every application for international protection to be examined first to determine whether the applicant qualifies as a refugee and then, if not, to determine whether the applicant is eligible for subsidiary protection.
- Article 17 of the draft Directive contains a new mandatory duty on Member States to allow applicants who ask for it an impartial medical examination in order to support claims of past persecution or serious harm.
- Article 27(6) of the draft Directive reduces the grounds on which a Member State may accelerate the examination of an application for international protection.

3.3 In her Explanatory Memorandum of 5 November 2009, the Parliamentary Under-Secretary of State at the Home Office (Meg Hillier) told us that the Government was concerned that the draft Directive would impede Member States' ability to tackle abuses of the asylum system. For example:

- The Government agreed that the officials who deal with applications for asylum should be trained properly but thought that this should be achieved through practical cooperation between Member States rather than the requirement proposed in Article 4(2);
- The Government did not question the need for medical reports in some cases, but was concerned about the proposed requirement in Article 17 for Member States to allow medical examinations on request because it would encourage applicants who have not got medical needs to ask for a medical examination so as to delay the processing of their applications;
- The Government did not believe that the use of the accelerated procedure for the examination of applications should be restricted in the way proposed in Article 27 of the draft Directive;
- Moreover, Articles 27 and 41 of the draft Directive would prevent the UK from certifying claims for asylum as clearly unfounded on a case-by-case basis and, consequently, prevent the UK from continuing to use non-suspensive appeals in those cases.

3.4 The Minister told us that the Government had opted into the 2005 Procedures Directive but had not yet decided whether to opt into the proposed successor.

3.5 When we considered the draft Directive last November, we noted the Government's reservations about some of its provisions. We shared its concern about the training

and unable or unwilling to return to the country of his or her habitual residence because of such fears of persecution.

Subsidiary protection is the status given to people who do not qualify as refugees but who are at risk of serious harm if returned to their country of origin.

requirements in Article 4(2); we questioned whether the provision is consistent with the principle of subsidiarity. We asked the Minister to raise the point with the Commission and in the Council working group and to tell us the response. We also asked her for progress reports on the negotiations.

The Minister's letter of 22 January 2010

3.6 In her reply of 22 January, the Minister reiterates the Government's concern that the draft Directive would prevent the UK from operating the Detained Fast Track procedure on its current terms. She says that the accelerated procedure provides fast and fair decisions and "delivered over 1200 removals between April 2008 and September 2009, with 97% being upheld on appeal".

3.7 The Government has not yet raised with the Commission its concern and ours about the compatibility of the provisions of Article 4(2) with the principle of subsidiarity.

3.8 The Government's discussions with other Member States indicate that many of them share the UK's opposition to parts of the draft Directive. The negotiations are likely to be long and difficult, not only in the Council but also in the European Parliament. There is a real risk that the draft Directive, when the negotiations have been completed, will contain provisions which the Government cannot accept. So the Government has not opted into the draft. But it will continue to take part in the consideration of the proposal because, if the grounds for the UK's objections were removed, the way would be open for the Government to opt in after the Directive is adopted.

Conclusion

3.9 We are grateful to the Minister for her letter. We understand why the Government has not opted into the draft Directive but will continue to take part in the negotiations on it. We should be grateful for further progress reports and, meanwhile, we shall keep the document under scrutiny.

4 The Internet of Things

(30709) 11223/09 COM(09) 278	Commission Communication: <i>Internet of Things (IoT) — An action plan for Europe</i>
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<i>Legal base</i>	—
<i>Department</i>	Business, Innovation and Skills
<i>Basis of consideration</i>	Minister’s letter of 22 January 2009
<i>Previous Committee Report</i>	HC 19–xxxii (2008–09), chapter 6 (11 November 2009); and HC 19–xxv (2008–09), chapter 2 (21 July 2009); also see (30708) 11222/09: HC 19–xxv (2008–09), chapter 1 (21 July 2009); (30001) 13737/08: HC 16–xxxiii (2007–08), chapter 6 (29 October 2008); (28475) 7544/07 : HC 41–xxi (2006–07), chapter 10 (9 May 2007); and (27466) 8841/06 HC 41–xxi (2006–07), chapter 15 (9 May 2007)
<i>To be discussed in Council</i>	To be determined
<i>Committee’s assessment</i>	Politically important
<i>Committee’s decision</i>	Cleared (decision reported on 11 November 2009); further information now provided

Background

4.1 In the executive summary to its 2005 Report “The Internet of Things” (the IoT), the International Telecommunications Union said that “embedding short-range mobile transceivers into a wide array of additional gadgets and everyday items, enabling new forms of communication between people and things, and between things themselves [meant that]a new dimension has been added to the world of information and communication technologies (ICTs): from *anytime, any place* connectivity for *anyone*, we will now have connectivity for *anything*”.

The Commission Communication

4.2 The Communication says that, since these technical advances will happen, simply leaving the development of IoT to the private sector, and possibly to other world regions is not a sensible option in view of the deep societal changes that IoT will bring about. By adopting what the Commission calls “a proactive approach”, Europe “could play a leading role in shaping how IoT works and reap the associated benefits in terms of economic growth and individual well-being, thus making the Internet of things an Internet of things for people.” Failing to do so as being to miss an important opportunity that “could place Europe into a position where it is forced to adopt technologies that have not been designed with its core values in mind, such as the protection of privacy and personal data.” So, “by launching a number of actions and reflections, the Commission intends to be a driving force behind this effort and it invites the European Parliament, the Council and all

concerned stakeholders to work jointly to achieve these ambitious yet achievable objectives.” The Commission proposes 14 “Lines of Action”, all of which are described in our previous-but-one Report.

4.3 The then Minister said that that the Government’s view was “mainly one of support for the EU Commission work in this policy area”; the Commission was “right to view this technology as a potential economic and social enabler”; but “as highlighted in the Communication there are a number of policy challenges around data/protection, governance and fully supporting research and development into Internet of Things technologies like RFID and other near-field communication technologies.”

4.4 The Committee felt that he did not explain this last comment altogether clearly, and asked him a number of questions. In the meantime the Communication was retained under scrutiny.¹¹

The Commission Recommendation

4.5 In an earlier letter of 27 May 2009, the then Minister had referred to the earlier Commission Communication, “RFID in Europe: Steps Towards a Policy Framework”, which he said included a Commission decision to establish “a legal framework that set effective safeguards for data protection and privacy was essential to encourage take-up of RFID technology”, and its intention to produce a non-binding Recommendation at a later stage, and said that the European Commission had published a Recommendation on the implementation of privacy and data protection principles in applications supported by radio-frequency identification (RFID) on 12 May 2009.¹²

4.6 The then Minister explained that, through an EU RFID Experts Group (which included a UK representative), it was possible to feed directly to the Commission the strong concerns of UK Retailers about the disproportionate costs that would be incurred in removing all tags at checkouts. The Recommendation now stipulated that a framework for safeguarding privacy and personal data needed to be developed to provide guidance to operators on their use of RFID; it did not, however, create new legal obligations but aimed to provide clarity on existing obligations under data protection legislation. Retailers would have to provide a kiosk in store for tags to be removed, but large retailers indicated that they were content to do so and small retailers were excluded from the scope of the Recommendation. The Commission was now encouraging Member States’ stakeholders to be involved in the preparation codes of conduct and best practice to manage privacy and security measures and to raise awareness of the risks and benefits of RFID technology. The UK was already doing a lot in this area — two regional RFID centres tasked with promoting the take up and use of RFID technology and chairing the Raising Awareness and Competitiveness in Europe RFID Network (RACE RFID), which aimed to provide a network of excellence in Member States in the development, adoption and usage of RFID. Member States had two years to inform the Commission on the steps they intended to take to meet the objectives of the Recommendation. Within three years the Commission would report on the Recommendation’s implementation and produce analysis on the impact to

11 See headnote: HC 19–xxv (2008–09), chapter 2 (21 July 2009).

12 This is available at http://ec.europa.eu/information_society/policy/rfid/documents/recommendationonrfid2009.pdf.

companies, public authorities and on citizens. The Minister undertook to send the Committee a copy of the UK's report back to the Commission.

Our assessment

4.7 The answers, from his successor, the Minister for Digital Britain (Stephen Timms) are set out in our previous Report. In the Committee's view, all were satisfactory and the Communication was therefore cleared.

4.8 We noted that, as Article 249EC made clear, a Commission Recommendation, is non-binding. However, in the Committee's view, its inclusion, along with Regulations, Directives and Decisions, among the provisions enabling the European Parliament, the Council and the Commission to carry out their tasks in accordance with the Treaty, nonetheless suggested that its content was likely to be important — as was the case in this instance. Moreover, this Recommendation was drafted in terms that would make it difficult for any Member State not to act accordingly. We therefore suggested that this was one of those cases in which the Minister might have usefully exercised his discretion under subsection (1)(vi) of Standing Order 143,¹³ and deposited it for scrutiny. We accordingly also suggested that he and his officials should look at any further such Recommendations from this perspective.

4.9 We also took this opportunity to note that we did not regard the present alternative — a copy of a letter to our counterparts in the House of Lords — as an adequate means of correspondence with this Committee, and asked that all future correspondence with the Committee from him and other Ministers in the Department for Business, Innovation and Skills be directly with it.

4.10 Looking further ahead, we also asked the Minister to send the Committee not only a copy of its report to the Commission on the steps that it would take to meet the objectives of the RFID recommendation, but also the Commission's subsequent report on the implementation and impact, along with his views on it, particularly with respect to UK companies, public authorities and citizens.¹⁴

13 The relevant part of the Committee's Standing Order reads:

"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.

14 See headnote: HC 19–xxxi (2008–09), chapter 6 (11 November 2009).

The Minister's letter of 22 January 2010

4.11 In his letter, the Minister says that he has noted the Committee's comments on Commission Recommendations and will ensure that they are taken into account when depositing documents in the future.

4.12 He also undertakes to ensure that the Committee receives a copy of the report to the Commission setting out the steps that the UK will be taking to meet the objectives of the RFID Recommendations and the Commission's subsequent report. He anticipates that this will be ready either at the end of 2010 or in early 2011, after the Commission has published its final opinion on how Member States should implement the Recommendations.

4.13 The Minister goes on to report that the Commission is currently taking views and contributions from European wide industry and Member States via the RACE (Raising Awareness and Competitiveness in Europe) working group set up to spearhead work on the deployment of RFID and, consequently, on the Recommendations. The Recommendations are, the Minister says, considered to be an essential policy instrument that provides guidance on how to deploy RFID in a way that respects privacy but calls for further work to be done on awareness raising, codes of practice, on measures of transparency for the privacy proposals and on a template for Privacy Impact Assessments to be carried out; Member States will be expected to follow the lead set by RACE.

4.14 In the UK, the Minister notes that his Department has convened an RFID Working Group comprising UK Government officials, UK RFID industry members, UK civil society members and RACE/European Commission representatives:

“There was an initial meeting held in December to discuss issues raised by the Recommendations on privacy and data protection that impact upon the deployment of RFID based systems. The particular objectives for the meeting were:

1. to seek general views/feedback from interested players.
2. to facilitate discussion on the issues of privacy and data protection.
3. to discuss the level and substance of awareness which dominates the RFID arena/debate.
4. to seek guidance from the Commission representatives on any specific actions required of government.

“BIS will hold quarterly meetings of this RFID Working Group until such time as the Recommendations have been implemented in the UK in keeping with the Commission's Recommendations. At the next meeting scheduled for February 2010 allocation of ownership/responsibility to members of the group for the individual Recommendations will be carried out. The possibility of a subset of working groups is envisaged. Particular attention is being paid to the Privacy Impact Assessment being drawn up by the Commission. The UK is seeking the views of civil society leaders and a range of industry players such as manufacturers of RFID, distributors and retailers on how best to proceed with a Privacy Impact Assessment that fits the requirements of UK industry and consumers.

“We are acutely aware of the need for RFID to be taken up more widely in the UK but with robust transparent privacy and data protection safeguards. All members of the RFID Working Group are committed to this objective.”

Conclusion

4.15 We are grateful to the Minister for this further information, which we are reporting to the House.

4.16 We look forward to receiving the report to the Commission setting out the steps that the UK will be taking to meet the objectives of the RFID Recommendations and the Commission’s subsequent report in due course.

4.17 We also note with appreciation his undertaking regarding the future deposit of Commission Recommendations.

5 Mutual legal assistance between the EU, Iceland and Norway in criminal investigations

(31230)
17703/09
COM(09) 704

Draft Council Decision on the conclusion of the Agreement between the European Union and the Republic of Iceland and the Kingdom of Norway on the application of certain provisions of the Convention of 29 May 2000 on Mutual Assistance in Criminal Matters between the Member States of the European Union and the 2001 Protocol thereto.

<i>Legal base</i>	Articles 82(1)(d) and 218(6)(a) TFEU; QMV; consent
<i>Document originated</i>	17 December 2009
<i>Deposited in Parliament</i>	6 January 2010
<i>Department</i>	Home Office
<i>Basis of consideration</i>	EM of 19 January 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>	Cleared

Background

5.1 The EU Convention of 29 May 2000 on Mutual Assistance in Criminal Matters (the 2000 Convention) was adopted by the Council under the former Third Pillar of the EU. Its purpose is to encourage and modernise cooperation between judicial, police and customs authorities in the EU. The 2000 Convention is supplemented by a Protocol which provides

for additional measures such as requests for information on banking transactions in order to combat crime in general and organised crime in particular.

5.2 The signing of the Agreement between the EU and Iceland and Norway on the application of certain provisions of the 2000 Convention was authorised by the Council in a Decision of 17 December 2003.

5.3 Six years later, the Agreement has not yet been concluded and has not entered into force. With the entry into force of the Lisbon Treaty on 1 December 2009, the procedures to be followed for conclusion of an international agreements are governed by Article 218 TFEU. Article 218(6)(a) TFEU states that in the case of agreements covering fields to which the ordinary legislative procedure applies, the Council shall adopt a decision concluding the agreement, after obtaining the consent of the European Parliament.

The Minister's Explanatory Memorandum

5.4 The Parliamentary Under-Secretary of State at the Home Office (Lord West) deposited a revised Explanatory Memorandum on 19 January 2009, which contains a thorough analysis of the fundamental rights and national policy implications of the Agreement.

Fundamental rights analysis

5.5 The following provisions of the 2000 Convention will apply between the EU Member States and Iceland and Norway.

5.6 Article 9 allows a party to ask that a person imprisoned in the territory of Iceland or Norway be temporarily transferred to the territory of an EU Member State (or vice versa) to assist with an investigation. Detention in these circumstances would continue to be pursuant to a sentence imposed following conviction in the transferring Member State and would not, therefore, breach Article 5 of the ECHR. In this respect Article 9(4) makes clear that any period of time spent in custody overseas should be deducted from the domestic sentence being served. In addition, under the provisions of section 47 of the Crime (International Co-operation) Act 2003 (the domestic law provision which will allow the UK to transfer prisoners to Norway and Iceland for these purposes) any temporary transfer from the UK could only take place with the consent of the prisoner in question.

5.7 Article 10 allows a witness in the UK to give evidence in proceedings in Norway or Iceland by video link (and vice versa). Article 10(5)(c) makes it clear that a person may refuse to testify where privilege against self-incrimination exists either under the law of the Member State in which the person is located or under the law of the Member State in which the criminal proceedings are taking place. The UK has also entered a reservation to this Article in the 2000 Convention which makes it clear that a defendant would not be able to give evidence in foreign proceedings by video link. Witness evidence given by video link will take place under the supervision of a judicial authority.

5.8 Article 11 allows witnesses in the UK to give evidence in proceedings in Norway or Iceland by telephone conference (but not vice versa). From Article 11(3) it is clear that a Member State need only agree to evidence being given in this way where it is compatible

with the fundamental principles of their legal system. Article 11(2) also makes it clear that a witness can only be heard in this way with their consent.

5.9 Articles 17–22 provide a framework to govern any interception of telecommunications which involves an EU Member State and either Norway or Iceland. The interception of communications engages Article 8 ECHR. However, for the reasons set out below the Minister is satisfied that the operation of these provisions would not breach fundamental rights.

- Where the UK receives a request for assistance with interception (Article 18) pursuant to an international mutual legal assistance agreement, such requests fall to be dealt with in accordance with the terms of the Regulation of Investigatory Powers Act 1998 (RIPA). Where the request for assistance concerns interception in relation to a person located in the UK a warrant under RIPA would be needed and all of the procedural safeguards in that Act would apply. Those safeguards were specifically designed so as to ensure compliance with the ECHR, so the Government is satisfied that UK would only provide assistance with the interception of a person located in the UK where this would respect Article 8 ECHR rights. Similarly, in cases where the UK wishes to make a request to another country for assistance with interception, a warrant must be issued by the Secretary of State for the Home Department in accordance with the terms of RIPA.
- Article 20 provides a regime designed to ensure that where one party carries out interception in the territory of another, notification of the fact of interception must be given to that other party. By virtue of Article 20(4)(a), once such notification has been provided the State in whose territory the interception is being carried out must, within 96 hours, either confirm that interception can proceed or give reasons as to why it must be stopped. Prior to this authorisation for interception being provided, the intercepting State may not use the material intercepted (Article 20(4)(b)) and where authorisation for interception is refused the refusing State can insist that the intercepted material not be used or be used only subject to certain conditions being observed. Importantly, when such a request is made to the UK, authorisation would only be provided where the terms of section 5 of RIPA have been met. The Minister concludes that, as the RIPA regime has been specifically designed to ensure compliance with the ECHR, interception would only be authorised in circumstances compatible with Article 8 ECHR.

5.10 Articles 1–3 of the Protocol to the 2000 Convention provide a framework pursuant to which one party to the Protocol can request banking information of another. To the extent that these powers interfere with the Article 8 ECHR right to private and family life the Government's view is that any such interference would be proportionate having regard to the legitimate interest in combating crime.

Policy implications

5.11 The Agreement aims to enhance mutual legal assistance in criminal matters between EU Member States and Norway and Iceland. It does this through making certain provisions of the 2000 Convention applicable between EU Member States and Norway and Iceland. The aim is to improve the speed by which evidence located in another country can

be obtained for use in domestic proceedings and extend the framework and tools available for use in doing so.

5.12 The United Kingdom is fully compliant with the terms of the Agreement; namely through the Crime (International Co-operation) Act 2003, the Crime (International Co-operation) Act 2003 (Designation of Participating Countries) (England, Wales and Northern Ireland) (No.2) Order 2009 and the Crime (International Co-operation) Act 2003 (Designation of Participating Countries) (Scotland) (No.2) Order 2009. Consequently, conclusion of this Agreement will have no effect on the operation of mutual legal assistance in criminal matters between the UK and Norway and Iceland.

5.13 If the UK opted in to this Decision, the Minister reports that it would not thereafter be able to conclude any bilateral mutual legal assistance agreement with Norway or Iceland which would conflict with the terms of this Agreement. But given the comprehensive nature of this Agreement the Government is satisfied that this will not have an adverse effect on future relations with Norway or Iceland in the field of mutual legal assistance.

Conclusion

5.14 The Council's proposal to conclude this Agreement is not, in our view, contentious. The Agreement extends the scope of the 2000 Convention on mutual legal assistance, which applies to EU Member States, to Iceland and Norway. And it does this in order to facilitate the cross-border investigation of crimes in these States, which, in our view, is a worthwhile aim.

5.15 But in clearing the proposed Council Decision from scrutiny we report it to the House because of interest in the principles and rules governing the interception of telecommunications evidence, as summarised in paragraph 5.9 above.

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

Department for Business, Innovation and Skills

(31241) Commission Report on the Ex-post Evaluation of the Erasmus Mundus
5026/10 Programme 2004-2008.
COM(09) 695

(31246) Commission Report on the operation of Directive 98/34/EC from 2006
5126/10 – 2008.
+ ADD 1
COM(09) 690

Department for Culture, Media and Sport

(31240) Commission Report on the Ex Post evaluation of the European
5017/10 Capital of Culture event 2007 (Luxembourg and Sibiu) and 2008
COM(09) 689 (Liverpool and Stavanger).

Department for Environment, Food and Rural Affairs

(31164) Report on the Annual Accounts of the Community Plant Variety
16267/09 Office for the financial year 2008 together with the Office's reply.
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Foreign and Commonwealth Office

(31143) Report on the Annual Accounts of the Translation Centre for the
16246/09 Bodies of the European Union for the financial year 2008 together
— with the Centre's reply.

Government Equalities Office

(31243) Commission Report on equality between women and men – 2010.
5056/10
+ADD 1
COM(09) 694

Home Office

(31249)
5265/10
COM(09) 691

Commission Communication *A European Security Research and Innovation Agenda — Commission's initial position on ESRI's key findings and recommendations.*

Department for Transport

(31248)
5172/10
+ ADD 1
COM(09) 676

Commission Report on the second report on monitoring development of the rail market.

HM Treasury

(31245)
5049/10
+ ADD 1
COM(09) 692

Commission Communication on the Ninth Report on the practical preparations for the future enlargement of the euro area.

Department for Work and Pensions

(31242)
5037/10
COM(09) 674

Commission Draft Report on the Draft Joint Employment Report (JER) 2009/2010.

Formal minutes

Wednesday 27 January 2010

Members present:

Michael Connarty, in the Chair

Mr Adrian Bailey
Mr David S Borrow
Mr William Cash
Jim Dobbin

Mr Greg Hands
Kelvin Hopkins
Richard Younger-Ross

1. Scrutiny of Documents

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

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

Paragraphs 1.1 to 6 read and agreed to.

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

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

[Adjourned till Wednesday 3 February 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*)