House of Commons

European Scrutiny Committee

Eighth Report of Session 2005-06

Documents considered by the Committee on 2 November 2005, including:

Reducing the climate change impact of aviation

HC 34-viii

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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 Reducing the climate change impact of aviation

(26885) 12790/05 COM(05) 459	Commission Communication: Reducing the climate change impact of aviation
+ADD 1 SEC(2005)1184	Commission Staff Working document: Annex to the Commission Communication "Reducing the climate change impact of aviation" Impact Assessment

Legal base	—
Document originated	27 September 2005
Deposited in Parliament	5 October 2005
Departments	Transport and Environment, Food and Rural Affairs
Basis of consideration	EM of 17 October 2005
Previous Committee Report	None, but see footnotes 1 and 3
To be discussed in Council	See para 1.15 below
Committee's assessment	Politically important
Committee's decision	For debate in European Standing Committee A

Background

1.1 According to the Commission, although the fuel efficiency of aircraft has increased by more than 70% over the past 40 years, this has been more than offset by the even higher growth in traffic, leading to an increase in the impact of aviation on the climate. Thus, whilst the Community's total emissions of those greenhouse gases controlled under the Kyoto Protocol fell by 5.5% between 1990 and 2003, those from international aviation increased by 73%, corresponding to an annual growth of 4.3%. The Commission also points out that, whilst the contribution of aviation to greenhouse gas emission is still "modest", a continuation in this rate of growth would result in emissions from international flights from Community airports having increased by 150% by 2012, and would offset more than a quarter of the reductions required under the Community's agreed Kyoto target. It accordingly suggests that, in the longer run, aviation emissions will on current trends become a major contributor, and it has therefore put forward this Communication as basis for discussing how the environmental costs of these emissions might be internalised, notably into the Community's Emission Trading Scheme,[1] which is due to be reviewed in June 2006.

The current document

1.2 The Communication points out that commercial aircraft cruising at altitude emit carbon dioxide (the most important greenhouse gas), nitrogen oxides (which, in producing

1 (22992) 14394/01; see HC 152-xviii (2001-02), para 1 (6 February 2002), HC 152-xxxvii (2001-02), para 1 (17 July 2002), and HC 152-xli (2001-02), para 1 (6 November 2002). *Stg Co Deb*, European Standing Committee A (21 November 2002).

ozone but reducing atmospheric concentrations of methane, have a net warming effect) and water vapour (which triggers condensation trails).[2] It also notes that greenhouse gas emissions from international air transport are accounted for under the United Nations Framework Convention on Climate Change (UNFCCC) in a different way from other emissions, due to a lack of consensus as to how responsibility for them should be allocated. As a consequence, only domestic emissions of carbon dioxide are included in national emission totals, and, since the Commission believes that this removes a key part of the political pressure to implement measures in other sectors, it argued in the Communication it produced in February 2005,[3] that international aviation should be included in any climate change regime after 2012.

1.3 The Commission also notes that, although the developed countries which are parties to the Kyoto Protocol agreed to include an explicit obligation to pursue the limitation or reduction of aviation emissions through the International Civil Aviation Organisation (ICAO), this has so far contributed mainly to a better understanding of the global climate impacts of aviation. However, although the ICAO has not been able to agree on regulatory standards for carbon dioxide emissions, it has endorsed the concept of international open emissions trading, to be implemented through voluntary emissions trading or the incorporation of international aviation into states' existing schemes.

1.4 The Commission points out that the Community is a major player in global aviation, accounting for about half of the carbon dioxide emissions from international aviation reported by developed countries, and that it consistently supports UNFCCC and ICAO activities. In view of this, and what it describes as the Community's special obligations under the Kyoto Protocol, the Sixth Environmental Action Programme has sought to identify and undertake specific actions to reduce greenhouse gas emissions from aviation if no such action was agreed within the ICAO by 2002. Against that backdrop, the Commission has reviewed the available options, and says that, whilst there is no quick and easy technical solution, there is a need for a comprehensive approach, strengthening existing action and exploring new measures.

Existing policies

1.5 The Commission identifies three main areas, apart from raising public awareness and increasing the performance and competitiveness of alternative methods of transport. These are *more research* into activities which would reduce the environmental impact of aircraft emissions, particularly carbon dioxide and nitrogen oxides, with the "greening" of air transport (including research into alternative fuels) being a priority under the new recently proposed Seventh Framework Programme; more efficient *air traffic management*, as under the Single European Sky and SESAME initiatives, aimed at minimising queuing before take-off and at optimising flight paths; and the more consistent application of *energy taxation*.

2 They also emit sulphate and soot particles, though these have a much smaller direct effect.

3 "Winning the Battle Against Global Climate Change" (26379) 6417/05; see HC 38-xii (2004-05), para 5 (23 March 2005).

1.6 In particular, it suggests that, as a matter of principle, aviation fuel should be subject to the same energy taxes as other fuels, but points out that, although a Council Directive[4] enables Member States to introduce fuel taxation for domestic flights (as in the United States, Japan and India), only the Netherlands has so far decided to pursue this course of action. Similarly, whilst Community legislation also allows fuel taxation for flights between two Member States, it could be difficult to avoid discrimination against Community carriers in cases where exemptions for fuel for international flights are set out in bilateral Air Service Agreements (ASA) which convey rights on other carriers. In particular, it notes that, following the judgement of the European Court of Justice in the "Open Skies" cases, more than 200 ASAs with non-Community countries have been amended to open up the possibility of taxing fuel supplied to all carriers on an equal basis, but it says that, since this process will inevitably take some time to complete, it cannot be relied upon as a key means of combating climate change in the short and medium term.

New instruments

1.7 The Commission says that it has therefore considered a number of new market-based instruments, such as airline ticket or departure taxes. However, the only effect of these would be to dampen demand, and they would not provide an incentive to improved environmental performance. It therefore sees the most promising ways of addressing climate impact as being emissions trading (which sets a limit on total emissions from a group of entities, and lets the market determine the costs for each tonne emitted) and emissions charges (which set the cost per tonne of emissions, but then let the entities concerned determine the extent to which emissions are reduced in response).

1.8 It says that, if these two approaches were applied to the aviation sector in isolation, their effect in terms of environmental effectiveness and economic efficiency would in principle be the same, but it notes that emissions trading has been used by the Community[5] since 1 January 2005 for tackling climate change, and that many are considering extending this beyond national level, and delegating it to company level. Since the wider the scheme's coverage, the lower the costs of achieving a given reduction in emission levels, the Commission says that the economic costs of achieving the same environmental goal for aviation would be lower using this approach than under emissions charging. It also believes that the potential for the wider application of emissions trading would be greater, since it is a key feature of the Kyoto Protocol and has been explicitly endorsed by the ICAO, whereas emissions charging has proved to be contentious at international level.

1.9 On the basis that including aviation within the Community's emissions trading scheme seems the most promising way forward, the Commission says that it is nevertheless crucial to address a number of technical aspects if this approach is to deliver its full potential, and it proposes that these should be examined further in a new Aviation Working Group under the European Climate Change Programme. In the meantime, it identifies four issues which it regards as central to the further debate. These are the *type of entity to be made responsible* (where it suggests that this should be the aircraft operators); the *extent to which the full impact is addressed* (where it says that, notwithstanding the uncertainties, both the carbon

4 2003/96/EC.

5 Under Directive 2003/87/EC.

dioxide and non-carbon dioxide impacts should be addressed as far as possible); the *types of flight covered* (where its preference is to include all flights departing from Community airports); and the way in which the *sector's overall emissions limit should be calculated and apportioned* (where it suggests that the rules already in place under the emissions trading scheme are not necessarily suitable for aviation, and that special arrangements would be needed to ensure that the accounting system linking that scheme to the Kyoto Protocol is not adversely affected).

1.10 The Commission also says that, in parallel with this approach, a number of existing policies and actions should continue and be strengthened, including aeronautics research, the development of the Single European Sky, the removal of all legal obstacles to the application of energy taxation to aviation fuel, and the development within the ICAO of new standards aimed at limiting aircraft emissions at source.

The Government's view

1.11 In their joint Explanatory Memorandum of 17 October 2005, the Parliamentary Under-Secretary at the Department of Transport (Ms Karen Buck) and the Minister of State (Environment and Agri-Environment) at the Department for Environment, Food and Rural Affairs (Mr Elliot Morley) say that the Government is committed to taking a lead in tackling the problem of climate change, and to putting the UK on a path to a reduction in carbon dioxide emissions of some 60% from current levels by 2050, with real progress by 2020. They confirm that these domestic targets do not include international aviation emissions, but note that demand is rising in the sector internationally at about 4% a year, and that forecasts have suggested that by 2030, over 90% of carbon dioxide emissions from UK aviation would be from international flights (which could amount to about a quarter of the UK's total contribution to global warming by that date).

1.12 The Ministers say that the Government is committed to ensuring the long term development of aviation is sustainable, balancing its economic benefit with its external environmental costs, and that the sector needs to take its share of responsibility for tackling the problem of climate change. They point out that the White Paper "The Future of Air Transport"[6] set outs the Government's view that the best way to ensure this is through a well-designed emissions trading scheme, and that the intention is to press for aviation's inclusion in the Community's Emissions Trading Scheme from 2008 or as soon as possible thereafter — a step which they say would deliver a guaranteed environmental objective in the most cost-effective manner for the Community as a whole. Taking forward the work on reducing the climate change impacts of aviation is thus a priority for the current UK Presidency. The Government also agrees with the Commission that there is further potential to tap existing policies such as the adoption by airports, airlines and air traffic controllers of working practices which minimise the impact of their activities on climate change; research by aerospace manufacturers into new technologies to reduce the climate change impact of future fleets; and voluntary action to control greenhouse gas emissions and develop sustainability strategies. However, the Government also recognises that these may not provide a total solution, and it will continue to explore the use of other economic

6 Cm 6046 of 16 December 2003.

instruments, reserving the right to act alone or bilaterally with like-minded partners if progress towards agreement at an international level proves too slow.

1.13 In the meantime, the Ministers say that it is too early to discuss detailed factors such as the geographical scope of emissions trading, and whether non-carbon dioxide impacts should be reflected in any such scheme, as all of these will be subject to negotiation. However, they believe that the group proposed in the Communication will provide the right forum in which to discuss these issues, and that looking carefully, and in detail, at the impact of the different options for trading will be a key task before coming to any conclusions.

1.14 The Ministers have also provided an initial Regulatory Impact Assessment with their Explanatory Memorandum, but recognise that neither this, nor the Impact Assessment produced by the Commission, is able to go into any depth of detail. However, they expect further analysis of both, once more details of the trading scheme are known.

1.15 Finally, the Ministers say that, during the UK Presidency, the Government hopes to debate the political issues, and to agree a way forward at the Environment Council in December. They also note that the conclusions of Aviation Working Group will be fed into the ongoing review of the existing framework of the Community's emission trading scheme, which is due to report by 30 June 2006. However, the timetable for any legislative action will depend upon the Commission, which has suggested in this Communication will be due by the end of 2006.

Conclusion

1.16 **Given the importance attached within the Community, and not least by the UK, to meeting the commitments which have been entered into under the Kyoto Protocol, it is clearly anomalous that aviation should be largely outside the measures which have been taken to reduce greenhouse gas emissions, particularly in view of the extent to which it seems likely to contribute in future to those emissions.**

1.17 **The Commission has set out in this unusually cogent Communication the reasons why this is so, and has explored in depth the various steps which could be taken to address the problem. Consequently, although it has indicated that it intends to bring forward by the end of 2006 legislative proposals to give effect to the inclusion of aviation with the Community's emissions trading scheme, we believe that this is an opportune moment for the House to consider the issues raised by this Communication, including the relative merits of this approach as compared with some of the other instruments examined. We are therefore recommending it for debate in European Standing Committee A.**

2 Enforcing payment of uncontested debts

(25500) 7615/04 COM(04) 173	Draft Regulation creating a European order for payment procedure

Legal base	Articles 61(c) and 65 EC; co-decision; QMV
Department	Constitutional Affairs
Basis of consideration	Minister's letter of 5 October 2005
Previous Committee Report	HC 42-xx (2003-04), para 3 (18 May 2004), HC 42-xxvii (2003-04), para 3 (14 July 2004), HC 42-xxxiv (2003-04), para 3 (27 October 2004), HC 38-v (2004-05), para 1 (26 January 2005) and HC 38-xii (2004-05), para 3 (23 March 2005)
To be discussed in Council	No date fixed
Committee's assessment	Legally and politically important
Committee's decision	Not cleared; further information required

Background

2.1 Articles 61(c) and 65 EC empower the Community to adopt measures in the field of judicial co-operation in civil matters with cross-border implications and in so far as this is necessary for the proper functioning of the internal market. The European Council in Tampere in October 1999 endorsed a programme of work on mutual recognition of decisions in civil and commercial matters and on new procedural legislation in cross-border cases, in particular those elements which are instrumental to smooth judicial co-operation and to enhanced access to law, such as provisional measures, taking of evidence, orders for money payment and time limits.

2.2 In 2000 the Council agreed a programme of work including the abolition of exequatur for uncontested money claims. (Exequatur is the special court procedure for the conversion of a foreign judgment into an order enforceable in the domestic jurisdiction.) The Commission has decided to pursue this in two ways: first, by the creation of a European Enforcement Order (EEO), the common position on which was agreed by the European Parliament on 30 March; and secondly through the creation of a European order for payment. The Commission believes there is a clear demarcation between the instruments — the EEO dealing with the recognition and enforcement of existing national judgments in another Member State and the uniform European order for payment procedure with obtaining a judgment.

2.3 The Commission's proposal follows the general principle of the orders for payment procedures which currently exist in eleven Member States (not including the United Kingdom). It would allow creditors to pursue a simplified procedure for enforcing uncontested debts in civil and commercial matters. The proposed European order for payment procedure would not extend to revenue, customs or administrative matters, nor would it be applicable to property and matrimonial law, claims arising out of bankruptcy

proceedings or matters related to social security. The measure is intended to work as an alternative to the existing internal procedures in each Member State and creditors would remain free to use either procedure.

2.4 In January of this year the Presidency published a revised text of the proposal which made a number of important amendments. First, the new text inserted a reference to cross-border cases and a definition of such cases in the body of the text of the proposals. Secondly, the Presidency text introduced a new provision on rules of jurisdiction in addition to various minor amendments concerning the examination of documentary evidence and the service of documents. When we considered the Presidency proposal, we decided to hold it under scrutiny and ask the Minister a number of questions regarding the amendments it contained. The nature of our questions becomes clear from the response we have received from the Government below.

The Minister's letter

2.5 The Parliamentary Under-Secretary of State in the Department of Constitutional Affairs (Baroness Ashton of Upholland) has now replied to the questions contained in our last Report on the proposal. She observes as follows:

> "In your Committee's twelfth report HC38-xii published on 12 April before the General Election I was asked to explain why the Government was satisfied with the proposed definition of cross-border cases, why the Government believed there was no need to include jurisdictional rules in this proposal and I was asked to explain more fully the Government's reasons for agreeing to the removal of one of the defendant's rights to object to the claim. I am replying to these points now that both scrutiny committees have been re-established.
>
> "The Dutch and Luxembourg Presidencies based Article X on the definition of cross-border cases in Article 2 of Council Directive 2002/8/EC on legal aid. Following this precedent the majority of Member States in the Civil Law Committee expressed satisfaction that the definition as drafted did comply with the requirements of Article 65TEC.
>
> "Following the Informal meeting of ministers in Newcastle in early September there has been agreement between the Council and Commission that this procedure should be limited to cross-border cases, subject to the definition of cross-border which is the subject of current negotiations between the Council and the Commission. That might mean that Article X as drafted could be changed. I shall keep you informed.
>
> "As an order for payment should be a simplified procedure without the need for judicial intervention there has been discussion in the Civil Law Committee as to how to allow for automatic processing of claims. The need to check that a court has jurisdiction makes automatic processing more difficult and so the Government explored the possibility of not including jurisdiction rules in this proposal. As a defendant will only have to tick a box on a standard form to bring an end to the procedure and will not be required to provide a defence or attend a court it questioned whether there was a need for rules on jurisdiction limiting the initiation

of proceedings in certain circumstances to the courts where the defendant is domiciled. However it is clear from the discussions in the Committee that the majority of Member States think that there should be jurisdiction rules in this proposal aligned with those in the European Enforcement Order Regulation. As the current Presidency we are taking forward negotiations on that basis.

"On whether it is necessary to give the defendant two opportunities to object to the claim, the Committee will note from the summary of our consultation on this procedure which I sent last October that some of those we consulted said specifically that two such opportunities were unnecessary. In our current national procedures the defendant is asked only once if he or she objects to a claim. If an objection is made the defendant has to provide details of his or her defence. If the defendant does not respond the creditor can apply for a judgment by default. As I said above, a defendant will not be required to provide a defence when objecting to the proposed European procedure. Under both our national and the proposed European procedure a defendant who claims not to have received notification of the claim will have the added safeguard of being able to apply to the court to have the court's decision set aside."

Conclusion

2.6 **We are grateful to the Minster for her answers. We note that the definition of cross-border may be changed as a result of current negotiations. We shall hold the document under scrutiny and ask the Minster to keep us informed about developments on this and any other relevant matter.**

3 Health requirements for aquaculture

(26808) 11880/05 COM(05) 362	Draft Council Directive on animal health requirements for aquaculture animals and products thereof, and on the prevention and control of certain diseases in aquatic animals. Draft Council Decision amending Decision 90/424/EC on expenditure in the veterinary field.
+ ADD 1 SEC (05) 1047	Commission Staff working document: Annex to Council Directive on animal health requirements for aquaculture animals and products thereof, and on the prevention and control of certain diseases in aquatic animals, and to the draft Council Decision amending Decision 90/424/EC on expenditure in the veterinary field.

Legal base	Article 37EC; consultation; QMV
Document originated	23 August 2005
Deposited in Parliament	6 September 2005
Department	Environment, Food and Rural Affairs
Basis of consideration	EM of 10 October 2005
Previous Committee Report	None
To be discussed in Council	No date set
Committee's assessment	Politically important
Committee's decision	Not cleared; further information awaited

Background

3.1 According to the Commission, whilst aquaculture production[7] was worth more than €2.5 billion in 2004, losses due to disease were about 20% of that figure. The Commission also says that the existing Community legislation dealing with aquaculture[8] was developed two decades ago when there were only 12 Member States, and its primary aim was to protect the main elements at that time, namely salmon, trout and oyster farming. It now believes that these measures need to be updated to reflect the broader range of aquaculture practices and species found in the enlarged Community, and to take into account of the developments which have taken place within the industry, of scientific advances in this field, and of relevant international agreements and standards. In addition, a Communication from the Commission to the Council and the European Parliament in

7 Fish, molluscs and shellfish.

8 Council Directive 91/67/EEC on the animal health conditions governing the placing on the market of aquaculture animals and products; Council Directive 93/53/EEC introducing minimum Community measures for the control of certain fish diseases; and Council Directive 75/70/EC introducing minimum Community measures for the control of certain diseases affecting bivalve molluscs.

September 2002[9] on a strategy for the sustainable development of European aquaculture also concluded that the existing legislation on fish and shellfish health should be updated.

The current proposal

3.2 The current proposal would replace the rules set out in the three existing Directives, and is described as primarily a deregulatory framework measure with the capability, through more flexible provisions and increased reliance on Community secondary legislation, to enable Member States and the Commission to be more responsive to future developments in aquaculture and aquatic animal health. In particular, although the proposal maintains many of the principles laid down in the current legislation, its principal aim will be the prevention rather than the control of disease.

3.3 As a consequence, it introduces the following new elements:

— *Authorisation of aquaculture production businesses and processing establishments*

This would represent an extension of the existing registration requirement, and, in order to be granted and retain such authorisation, businesses will have to demonstrate compliance with a range of conditions relating to record keeping, hygiene practices and disease surveillance. Authorisation requirements would extend to "put-and-take" fisheries insofar as they take in or sell live fish;

— *Application of a risk based animal health surveillance scheme based on minimum requirements to be elaborated by secondary EC legislation*

This would represent a more flexible application of the existing surveillance requirements, in that it would allow Member States to tailor these to the type of production and the degree of risk posed. For example, it would not — as is currently the case — require targeted surveillance of areas already declared free of important diseases listed in the Directive, and would thus potentially free resources for use on other disease prevention activities;

— *Provision to require the centralised electronic recording of aquaculture animal movements*

This would apply to movements within a Member State's territory as well as to cross border trade, but not to those between different sites belonging to the same aquaculture production business contained within a Member State and within a zone or compartment of a given health status;

— *A requirement that aquaculture animals placed on the market are not sourced directly from stock subject to increased mortality or a clinical outbreak of disease in the preceding 31 days*

This would apply to any disease, and is not confined to those listed in Annex III of the proposal;

9 (23818) 12137/02; see HC 152-xl (2001-02), para 12 (30 October 2002).

— *Freedom to trade in species not defined as susceptible to one or more of the listed diseases*

Currently, the movement of such species into a disease free area must come from a zone or farm of equivalent status, or be proven not to be capable of passively transmitting the disease. The proposed change would allow movements irrespective of the disease status of the place of origin and destination, and would thus align Community rules more closely with the standards of the Office International des Epizooties (OIE);[10]

— *Provision for individual Member States to declare disease freedom for zones or compartments within their territories*

Currently, disease freedom for areas or farms within a Member State may be approved only through application to the Commission, and subsequent endorsement by a majority of Member States. In future, only declaration of disease freedom of an entire Member State will remain subject to this procedure: in the case of other such areas comprising no more than 75% of the area of the Member State, it would have to inform the Commission and other Member States of its intentions, and provide evidence of justification where requested. Also, the concept of zones and compartments replaces the "approved zone/approved farm" arrangements under the current legislation, and will align Community rules more closely with those of the OIE; and

— *Provision for a Member State to adopt measures to control diseases of national importance*

This would apply to diseases other than those listed in Annex III of the proposal, and which pose a significant risk for aquatic animal health or the environment in that Member State. The introduction of any such measures which may affect trade would have to be approved through comitology procedures, and they must also be proportionate to the goal to be achieved.

3.4 The Commission points out that the proposal does not cover public health or the welfare of farmed fish (both of which are dealt with in other legislation), and that its provisions would not prevent more stringent rules being applied to the protection of species from an environmental or conservation point of view.

3.5 The proposed Council Decision amending Decision 90/424/EEC on expenditure in the veterinary field would provide Member States with access to Community funds to help with expenditure (including compensation where appropriate) associated either with the compulsory eradication of exotic diseases or with controlling the non-exotic diseases in Annex III of the proposal. Community funding would be made available to Member States through the European Fisheries Fund, provided that the Member State had made provision for disease control measures within its national operational programme for the Fund.

10 The World Organisation of Animal Health standards which is referred to in the World Trade Organisation (WTO) Agreement on Sanitary and Phytosanitary Measures (SPS-Agreement).

The Government's view

3.6 In his Explanatory Memorandum of 10 October 2005, the Minister for Local Environment, Marine and Animal Welfare at the Department for Environment, Food and Rural Affairs (Mr Ben Bradshaw) says that the UK currently enjoys high fish health status, compared with much of continental Europe, and that it is important that any changes to the current regime do not jeopardise that status by increasing the risk of introducing disease. He adds that negotiations on the proposal will be conducted with this objective firmly in view, and that its eventual acceptance or otherwise by the UK will depend on whether, in the light of scientific, epidemiological and other opinion, it is likely to present no greater risk of introducing disease to the wild and farmed environment than current controls.

3.7 However, he suggests that devolving to a Member State the facility to declare zones or compartments within its territory to be disease-free raises a number of potential concerns, in that this would make it easier to have a large number of zones or compartments approved free of disease, within an area where a disease is endemic. There would be no barriers to trade between these zones or compartments and any other disease free area. Consequently, in order for the new system to operate satisfactorily without increasing the risk of introducing disease, the Government believes that it would have to be transparent, and that requirements for the maintenance of disease-free status within those zones or compartments would have to be applied rigorously by Member States.

3.8 The Minister also points out that gyrodactylus salaris (Gs)[11] has not been included in the list of non-exotic diseases in Annex III of the proposal, although (as indicated above) provision has been made to enable it and other non-listed diseases to be controlled by national measures. He says that the UK is currently recognised by the Community as having freedom from the parasite, and has been granted additional health safeguards under the existing fish health regime to help prevent its introduction from areas of the Community where it is endemic. The UK therefore intends to press for its listing in Annex III of the proposal, and for the retention of the safeguard measures which currently operate to prevent its introduction.

3.9 As regards the cost of the proposal, the Minister says that the implementation of the measures could potentially lead to markedly increased costs to Government for conducting surveillance operations, and that the UK will be concerned to ensure that these requirements are proportionate to the risk faced. He also stresses that funding for disease control measures brought about by the proposed amendment to Decision 90/424/EEC will not give rise to any additional Community funding, since any expenditure required for this purpose will have to come from the allocation made to individual Member States under the European Fisheries Fund, and will be at the discretion of that Member State. Consequently, in order to take advantage of such funding, a Member State would have to reduce expenditure in another area of the Fund's operational programme.

3.10 Although the Minister has provided an initial Regulatory Impact Assessment, this suggests that the cost of the measure cannot be assessed fully at this stage, because many of

11 A parasite which affects wild salmon populations.

the details of the new regime will be elaborated through secondary legislation to be adopted by the Commission, though he identifies the administrative burden due to the authorisation of businesses and the inspections required under a risk-based surveillance scheme as two potential areas of financial impact. He also says that consultation meetings are being held with industry, environmental and conservation interests.

Conclusion

3.11 **Although the Government appears to be broadly content with the main thrust of this proposal, it has nevertheless made it clear that it has a number of specific concerns on which it will wish to be satisfied. In view of this, we intend to hold the document under scrutiny, pending an indication of whether, and how far, it proves possible to allay those concerns during negotiations in Brussels. We would also be interested to hear the outcome of the Government's consultations with the industry and other interested parties.**

4 Civil aviation security

(a) (26859) 11263/05 COM(05) 428	Commission Report: First Report on the implementation of Regulation (EC) 2320/2002 on civil aviation security
(b) (26861) 12588/05 COM(05) 429	Draft Regulation on common rules in the field of civil aviation security

Legal base	(a) — (b) Article 80(2) EC; co-decision; QMV
Document originated	(a) 22 September 2005 (b) 22 September 2005
Deposited in Parliament	(a) 27 September 2005 (b) 27 September 2005
Department	Transport
Basis of consideration	(a) EM of 13 October 2005 (b) EM of 13 October 2005
Previous Committee Report	None
To be discussed in Council	(a) 6 October 2005 (b) Not known
Committee's assessment	Politically important
Committee's decision	(a) Cleared (b) Not cleared, further information awaited

Background

4.1 In the immediate aftermath of the 9/11 terrorist attack the framework Civil Aviation Security Regulation, (EC) 2320/2002, was adopted in order to set common standards in the matter of civil aviation security and to create a system of inspections.

The documents

4.2 Document (a) is the first annual report, based on inspections which began in February 2004, which the Commission is required to make under the Civil Aviation Security Regulation about its implementation. The report, which covers the period until the end of June 2005, concludes that, while there have been considerable improvements across the 25 Member States, there remains a clear need for improvement in both the legislative framework and standards of application.

4.3 The report shows:

- that by the end of the period all Member States had complied with the obligation to produce a National Aviation Security Programme and all but two had completed a quality control (compliance monitoring) programme. Most of these were considered as fully meeting requirements;

- the Commission has produced seven supplementary Regulations, mainly adding more detail to the framework Regulation, but also addressing specific issues such as national compliance monitoring programmes and the procedures for Commission inspections;

- the Commission published a study it had funded on the financing of aviation security during the period. This issue will now be considered as part of a wider study of security funding for all transport modes;

- details of the 43 inspections carried out by the Commission in the period. 14 of these were audits of Member States' Appropriate Authorities (the national body responsible for the implementation of the legislation) and 29 were at airports. The airports chosen were a random but representative sample covering all fifteen pre-enlargement Member States as well as some new Member States;

- that standards were generally regarded as satisfactory, although a number of serious deficiencies which could be considered as comprising a risk to other Member States were identified. Areas of weakness identified related to insufficient numbers of national inspectors, delays in rectification of deficiencies, staff screening, aircraft protection and freight handling. Some of these difficulties are being addressed through legislative amendments; and

- that the Commission thinks the Civil Aviation Security Regulation itself needs considerable simplification and clarification.

4.4 The draft Regulation in document (b) is intended to be a simplified and updated replacement for the Civil Aviation Security Regulation. The Commission says the existing Regulation was adopted as an urgent response to the 9/11 terrorist attacks. It proved subsequently to lack clarity and to be open to divergent interpretations, leading to marked differences in implementation amongst Member States. The level of detail in the Regulation, significantly more than is usual in framework legislation, also raised two particular concerns:

- the Regulation, having no security classification, was published in full on the internet, so putting potentially sensitive security information in the public domain; and

- amendment to the Regulation is subject to the co-decision procedure, making it a very inflexible instrument for responding to sudden changes in terrorist threat or technological advances.

4.5 The Commission says the draft Regulation reflects consultation with Member States and the industry. It is clearer and shorter than the present Regulation and is in step with the Commission's Better Regulation initiative, especially in providing a basis for cross reference to legislation in other areas, such as customs matters. Detail contained in the

current Regulation will be transferred to an amended implementing Commission Regulation, currently No 622/03, which both carries a security classification and is subject to comitology.[12] Thus the finer points of implementation could be properly protected and more easily and quickly amended to strengthen the regime as necessary and to meet new threats.

4.6 The scope of the framework legislation would be almost unchanged. The draft Regulation requires security measures in respect of key matters such as:

- access control;
- screening passengers and baggage;
- searching and checking aircraft;
- testing equipment;
- recruiting and training staff; and
- air cargo.

Additionally there is a short chapter on in-flight security, which includes some elements already covered in the current legislation (unruly and disruptive passengers and control of firearms) and some which are new in Community legislation (protection of the flight deck and aircraft protection officers). Finally applicability to off-airport facilities, such as airline caterers and air cargo agents and other, is made more explicit.

4.7 A few provisions have been modified significantly:

- under the current provision concerning the imposition by a Member State of measures more stringent than those laid down in the Regulation Member States are free to introduce such requirements where they judge this necessary in the interests of national security. The draft Regulation provides that such requirements should in the future be imposed only on the basis of a risk assessment and should be subject to the agreement of the Commission, with the possibility of appeal to the Council. This approval mechanism would not apply to measures adopted to cover individual flights;
- similarly a new provision would mean that Member States, operators and other entities would not be able to accede to demands for more stringent measures made by third countries without the Commission's agreement. But again the provision would not apply in respect of individual flights; and
- another new provision would allow the Commission to seek a mandate from the Council to conduct negotiations with a third country in order to establish whether its security regime could be considered as equivalent to that in force in the

12 Comitology is the system of committees which oversee the exercise by the Commission of legislative powers delegated to it by the Council and the European Parliament. Comitology committees are made up of representatives of the Member States and chaired by the Commission. There are three types of procedure (advisory, management and regulatory), an important difference between which is the degree of involvement and power of Member States' representatives.

Community and whether it might, on that basis, be possible to exempt transfer traffic coming from that country from certain screening requirements within the Community.

The Government's view

4.8 The Parliamentary Under Secretary of State, Department of Transport (Ms Karen Buck) says in relation to document (a) that it has no policy implications. This is clearly not wholly right since it foreshadows document (b).

4.9 On document (b) the Minister tells us that most of the draft Regulation, which echoes the current Regulation does not have any new policy implications. But this is not the case for all the new provisions. In relation to the provision which would constrain Member States in their ability to require the implementation of provisions more stringent than those set out in the Regulation. The Minister says that the imposition of such provisions would typically be a consequence of the Member State's assessment of sensitive security information. As this cannot, by its nature be shared with other parties, the Commission would not be in a position to make a properly informed decision. Moreover, the Minister says, national security is a national competence. Member States at higher threat levels, including the UK, have already said they oppose the draft Regulation in so far as it relates to a Commission and Council review process, arguing that only their own agencies are in a position to evaluate the threat and to determine the best response to it within their national borders.

4.10 The Minister says similar issues arise in respect of the proposal providing for Commission endorsement of acceptance of a third country's requirement for more stringent measures, where the intelligence available to it (but which it would not share with other parties) indicate that this were necessary. She adds that it is also unclear how this provision would sit with licensing agreements into which airlines may have entered with a third country, undertaking to comply with any extra measures that it might set.

4.11 As for Commission negotiations with third countries the Minister says there would need to be assurance that:

- there would be no adverse implications for Member States' ability to enter into bilateral agreements with such countries, for example in respect of more stringent measures; and
- determinations of equivalence would properly protect the integrity of aviation security in the Community.

4.12 The Minister mentions three further points of concern:

- how the new text on in-flight measures sits with Member States' obligations under existing regulation by the International Civil Aviation Organisation and Member States will need to be confident that subsequent implementing legislation will not disrupt established programmes in these areas;

- the draft Regulation's use in describing the scope of the concept of "other entities" needs clarification, in order to avoid uncertainty as to which kinds of organisation are embraced by it; and
- clarification is needed as to why transfer cargo is treated differently to transfer passengers and transfer bags, so far as re-screening is concerned.

4.13 On the financial implications the Minister says that may be some costs both for the industry and for Government. But this will not become evident until the detail of the new implementing legislation is agreed. She continues that if it seems likely that there would be a significant impact on costs a Regulatory Impact assessment would be produced.

4.14 Finally, the Minister tells us that the draft Regulation would apply to Gibraltar. But she adds that in the present Civil Aviation Security Regulation Gibraltar has specifically been excluded until the arrangements set out in the 1987 Joint Declaration made by the UK and Spain have come into operation. The proposed revised text has no equivalent provision but she says it is quite likely that the omission of a clause excluding Gibraltar is simply an oversight and that Spain will insist on its reinstatement. She comments that if Gibraltar were to be included the only practical effect would be that it would be likely to become subject to Commission inspections. The airport is already required to meet UK security standards, which are higher than those in the Community legislation.

Conclusion

4.15 **We clear document (a).**

4.16 **As for document (b) it seems implicit in the Minister's comments that the Government is open to the idea of a simplified and clearer framework Regulation, with the detail, much of which is better not publicised, included in subordinate legislation. We endorse the need for a better Regulation in this instance and should like confirmation that the Government does indeed generally support the measure. However we note that there are six issues, some significant, on which the Government wishes amendment or clarification. Before we consider the document further we should like to hear of progress on these issues. Meanwhile we do not clear the document.**

4.17 **We should also like to see the Regulatory Impact Assessment, should one become necessary, even if this after the new framework Regulation is adopted.**

4.18 **Finally we note the Minister's remarks about Gibraltar. Although the practical effect on security at Gibraltar Airport would seem minimal, whether or not the new measure is to apply to Gibraltar raises an issue that increasingly concerns us. That is the continued attempts at legislative interference by Spain in the running of Gibraltar Airport, so as to prejudice the security, comfort or convenience of those working at or using the facility. We should like the Government to comment on how serious the practical effects of the continued Spanish attitude are in relation to negotiation and implementation of Community legislation on aviation matters as it affects Gibraltar.**

5 Equal treatment of men and women in employment

(a) (25579) 8839/04 COM(04) 279 + ADD 1	(a) Draft directive on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast version)
(b) (26806) 11865/05 COM(05) 380	(b) Amended draft of the Directive

Legal base	Article 141(3) EC; co-decision; QMV
Document originated	(b) 25 August 2005
Deposited in Parliament	(b) 6 September 2005
Department	Trade and Industry
Basis of consideration	(b) EM of 29 September 2005
Previous Committee Report	(a)HC 42-xxii (2003-04), para 9 (9 June 2004) and HC 38-ix (2004-05), para 4 (23 February 2005)
To be discussed in Council	No date set
Committee's assessment	Politically important
Committee's decision	(a) Not cleared; further information awaited (b) Cleared

Background

5.1 There are four main Directives on the equal treatment of men and women in employment. They concern:

- equal pay;
- equal treatment in access to employment, vocational training and promotion and working conditions;
- occupational social security systems; and
- the burden of proof in cases of alleged sexual discrimination.

Each of the Directives has been amended and so the legislation is dotted around in a way that is not helpful to employers, employees, Member States and others.

Previous scrutiny of document (a)

5.2 In June 2004 the previous Committee considered document (a), which proposes the consolidation of the four main Directives with some amendments (the Recast Directive).[13] Our predecessors saw merit in the proposal but shared the Government's caution about some aspects of the draft Directive. They asked the then Minister for progress reports on the negotiations and a Regulatory Impact Assessment (RIA).

5.3 In February, the then Minister sent the previous Committee the text of the draft Directive annotated by her Department to show the amendments which had been agreed by the Council in December 2004. The Government was content with the amendments. It also did not disagree with the Commission's view that the Recast Directive would result in minimal additional costs for business. But the Department could not reach a final view on this and complete the RIA until it was known what amendments the European Parliament might propose and if they would be accepted.

5.4 The previous Committee saw no reason to question the Minister's view that the amendments were acceptable and was content to await the RIA and a further Explanatory Memorandum when the outcome of the European Parliament's consideration of the proposal was known.

Document (b)

5.5 In July the European Parliament gave a first reading to the Recast Directive and adopted a large number of amendments. Document (b) sets out the Commission's views on the amendments.

5.6 Most of the amendments are minor and are intended to clarify the text or add emphasis in some places. The Commission can accept nearly all the amendments in whole or part, subject to some drafting points. However, it rejects the remaining amendments. Document (b) sets out the reasons.

The Government's view on document (b)

5.7 The Deputy Minister for Women and Equality at the Department of Trade and Industry (Ms Meg Munn) tells us several of the European Parliament's amendments would result in the Recast Directive placing additional burdens on Member States and employers and are unacceptable to the Commission. Others would insert references to Directives which were never intended to be part of the Recast Directive (for example, references to the Parental Leave Directive and the Pregnant Workers Directive). The Council and the Commission intend to resist those amendments in negotiation with the European Parliament.

5.8 The Minister says that the next step will be for the UK Presidency to open negotiations with the European Parliament with the aim of reaching a common position She will send us a further Explanatory Memorandum after those discussions.

13 See headnote.

5.9 The Government prepared an interim RIA in May 2004. The Minister says that it will not be possible to reach a final view on the impact of the Recast Directive until agreement is reached on the text but the Government continues to believe that the financial implications are likely to be small.

Conclusion

5.10 **We are grateful to the Minister for her Explanatory Memorandum. Throughout the negotiations on the Recast Directive, the Government has been punctilious in keeping us informed of progress.**

5.11 **We see no reason to differ from the Commission's and the Government's views on the amendments proposed by the European Parliament.**

5.12 **We take the Minister's point that a final view on the impact of the Recast Directive cannot be reached until after the negotiations between the Presidency and the European Parliament. But we need to see the Government's Regulatory Impact Assessment and we ask the Minister to provide it as soon as possible.**

5.13 **Document (b) reports the Commission's views on the European Parliament's first reading amendments and we see no need to keep it under scrutiny. We shall, however, retain document (a) under scrutiny until after we have received the Regulatory Impact Assessment and considered the further Explanatory Memorandum the Minister has promised on the negotiations with the European Parliament.**

6 Education and training programme 2007-13

(25846) 11587/04 COM(04) 474 + ADD 1	Draft Decision establishing an integrated action programme in the field of lifelong learning

Legal base	Articles 149(4) and 150(4) EC; co-decision; QMV
Department	Education and Skills
Basis of consideration	Minister's letter 27 October 2005
Previous Committee Report	HC 34-vi (2005-06), para 6 (19 October 2005)
To be discussed in Council	15 November 2005
Committee's assessment	Politically important
Committee's decision	Budgetary provisions not cleared; further information requested

Background

6.1 The European Community currently has four main education and training programmes. They expire at the end of 2006. On 19 October, we considered a draft Decision to establish, for 2007-13, a single Integrated Programme for lifelong learning.[14] Its total budget would be €13.6 billion, about three and a half times as much as the combined budgets of the present programmes between 2000-06.

6.2 The objectives of the new Programme would include contributing to the development of lifelong learning; the promotion of innovation; and a European dimension in education and vocational training; helping to improve the attractiveness and accessibility of lifelong learning; reinforcing the contribution of lifelong learning to active citizenship and gender equality; promoting competitiveness, employability and language learning; and encouraging tolerance for other peoples and cultures.

6.3 The Integrated Programme would be implemented through the six programmes :

- ***Comenius*** to develop understanding of the diversity of European cultures among the children and staff of primary and secondary schools;
- ***Erasmus*** to support higher education and advanced vocational training;
- ***Leonardo da Vinci*** to support all other aspects of vocational education and training;
- ***Grundtvig*** to support adult education;

14 See headnote.

- ***Jean Monnet*** to stimulate teaching and research related to European integration and support institutions and associations concerned with European integration and with education and training with a European dimension; and
- ***Transversal*** to support activities that cut across the other programmes (for example, the development of language learning materials, innovative approaches to teaching and dissemination of good practice).

6.4 The Government told the previous Committee that it broadly supported the proposed Programme.[15] Our predecessors asked the Government for further information and kept the draft Decision under scrutiny.

6.5 In his letters of 12 July and 12 October, the Minister of State for Lifelong Learning, Further and Higher Education at the Department of Education and Skills (Mr Bill Rammell) replied to the previous Committee's questions and told us:

- about the minor amendments which have been made to the draft Decision during the negotiations and which are likely to be agreed by the Council in November;
- about the amendments proposed by the European Parliament's Culture and Education Committee; and
- that the UK Presidency hopes to gain "partial political agreement" to the draft Decision at the Council in November: that is, agreement on the non-budgetary elements of the proposal, while leaving aside those articles which concern the budgetary amounts, or which are directly related to the budgetary amount.

6.6 On 12 September the European Parliament's Culture and Education Committee agreed proposals for 71 amendments to the draft Decision. The Minister told us that some of the Committee's proposals were virtually the same as those already agreed in the Council negotiations. Others were minor and the Council was likely to accept them in full or subject to drafting points. But some of the Committee's proposals would affect the budget for the Programme. For example, the Committee proposed that the total budget be increased from €13.6 billion to €14.6 billion. The Minister said that the Council would not take a view on the Committee's budgetary proposals until after the total EU budget for 2007-13 had been settled.

6.7 The Minister also said that European Parliament was "set" to adopt the Culture and Education Committee's opinion on 25 October. He would then write to us again.

6.8 On 19 October, we noted the Minister's comments on our predecessors questions and concluded that we need not pursue those points further. But there was another matter on which we should be grateful for the Minister's comments. We asked him if he is satisfied that the provisions on language learning in Articles 18, 28 and 37 of the draft Decision are consistent with the principle of subsidiarity.

6.9 There were no questions that we needed to put to the Minister about the amendments agreed so far in the Council negotiations. We noted the Minister's remarks on the

15 See HC 42-xxxi (03-04), para 2 (15 September 2004).

proposals of the European Parliament's Culture and Education Committee. We reserved comment until we knew what opinion the European Parliament itself would adopt at its plenary meeting on 25 October.

6.10 We concluded that we could understand why the Government and other Member States see benefit in reaching a partial political agreement on the non-budgetary provisions of the draft Decision on 15 November. We saw no need to object to such a partial and provisional approach on the express understanding that consideration of any provision of the document can, if necessary, be re-opened in the light of the settlement of the EU's overall budget for 2007-13; that the Government provides us with timely progress reports; and that the budgetary provisions of the document remain under scrutiny.

The Minister's letter of 27 October 2005

6.11 In his letter of 27 October, the Minister replies to our question about whether the provisions on language learning in Articles 18, 28 and 37 of the draft Decision were consistent with the principle of subsidiarity. He also tells us about the amendments adopted by the European Parliament on 25 October.

6.12 He notes that Article 149(2) of the EC Treaty provides that Community action should be aimed at "developing the European dimension in education, particularly through the teaching and dissemination of the languages of the Member States". He also notes that one of the proposed objectives of the Comenius and Leonardo da Vinci programmes is "to encourage the learning of modern languages" (Article 18 and 28) and one of the proposed objectives of the Transversal programme is "to promote language learning and to support linguistic diversity in the Member States" (Article 37). He adds that this emphasis on language learning is precedented by the existing Socrates and Commenius programmes. In his view, language learning should form an important part of the new Lifelong Leaning Programme.

6.13 The Minister gives three reasons why he believes that the proposed language provisions in Articles 18, 28 and 37 are consistent with the principle of subsidiarity:

- "The first concept of subsidiarity states that the Community can take action only if the objectives of the action cannot be sufficiently achieved by Member States. The complexity of managing language learning activities, some of which might be multilateral in nature, between such a large number of Member States would be difficult for any individual Member State to manage on its own. It is my view therefore that [the] language learning activities in the Lifelong Learning Programme falls [*sic*] within this first concept.

- There are also clear benefits to the end user of Community involvement particularly in terms of spreading good practice and innovation between different activities as well as ensuring uniformity of general approach. This leads me to believe that the Community can better achieve these activities than … Member States and falls [*sic*] within the second concept of subsidiarity.

- Lastly it is my view that the language learning activities proposed in the Lifelong Learning Programme does [*sic*] not go beyond what is necessary to achieve the Treaty objective and so is proportionate."

6.14 Finally, the Minister tells us that on 25 October the European Parliament made no changes to the opinion of its Culture and Education Committee which would affect the proposed partial political agreement. While the European Parliament made some changes to the Committee's proposals on issues with budgetary implications, those changes are outside the scope of the Partial Political Agreement and will not be put to the Council on 15 November.

Conclusion

6.15 **One of our main functions is to scrutinise the lawfulness of proposals for legislation. That entails questioning any provision which might not be consistent with the requirements of subsidiarity specified in Article 5 of the EC Treaty and the Protocol on the application of the principles of subsidiarity and proportionality. It is evident from his letter of 27 October that the Minister recognises the importance of this aspect of scrutiny. We are grateful to him for setting out his opinion on Articles 18, 28 and 37 so fully and for providing a clear statement of his reasons for believing that the proposed provisions on language learning satisfy the requirements of subsidiarity. We see no need to pursue that issue further.**

6.16 **In our view, the amendments proposed by the European Parliament's Culture and Education Committee, with the exception of those with budgetary implications, were minor and we can understand why they are acceptable to the Government. We note that the European Council made no changes to those amendments and that the other amendments, which would affect the budget, will not be considered by the Council at its next meting. On that basis, we confirm that we see no reason to object to the proposed partial political agreement on the conditions set out in our previous Report.**

7 Funds for the management of migration

(26547) 8690/05 COM(05) 123	Commission Communication: Establishing a framework programme on Solidarity and the Management of Migration Flows for the period 2007-13: (a) Draft Decision establishing the European Refugee Fund for 2008-13 (b) Draft Decision establishing the European External Borders Fund for 2007-13 (c) Draft Decision establishing the European Fund for Integration of third-country nationals for 2007-13 (d) Draft Decision establishing the European Return Fund for 2008-13
+ ADD 1	Commission staff working document: extended impact assessment of the proposals

Legal base	(a) Article 63(2)(b) EC; co-decision; QMV (b) Article 62(2) EC; co-decision; QMV (c) Article 63(3)(a) EC; consultation; unanimity (d) Article 63(3)(b) EC; co-decision; QMV
Department	Home Office
Basis of consideration	Minister's letters of 19 July and 27 October 2005
Previous Committee Report	HC 34-i (2005-06), para 28 (4 July 2005)
To be discussed in Council	No date set
Committee's assessment	Politically important
Committee's decision	Not cleared; further information requested

Legal background

7.1 Article 62(2) of the Treaty establishing the European Community (the EC Treaty) authorises the Council to adopt measures on the crossing of the external borders of the Member States, including the standards and procedures to be used in carrying out checks on people at the borders and rules on visas for stays of not more than three months. Article 63(2)(b) of the EC Treaty authorises the Council to adopt measures to promote a balance of effort between Member States in receiving refugees and displaced persons. Article 63(3)(a) authorises the adoption of measures on the conditions of entry and residence and standards for procedures for the issue by Member States of long-term visas and residence permits; and Article 63(3)(b) authorises the adoption of measures on illegal immigration, illegal residence and the repatriation of illegal residents.

Previous scrutiny

7.2 On 4 July, we considered a Communication from the Commission covering draft Decisions for:

- the modification and extension to 2013 of the existing European Refugee Fund; and

  the creation of three new Funds for 2007-13;

- the External Borders Fund;
- the European Fund for the Integration of third country nationals; and
- the European Return Fund.[16]

7.3 Each draft Decision begins by setting out the particular purpose and objectives of the Fund concerned, the actions which would be eligible for financial support from the Fund, and the total budget of the Fund. The four draft Decisions contain common provisions on the responsibilities of the Commission and the Member States, grant procedures, management and control systems, and monitoring and evaluation arrangements.

7.4 The current *European Refugee Fund* for 2005-10 provides financial support for Member States' work with people who already are, or have applied for, refugee status or protected person status. The draft Decision would extend the Fund to the end of 2013.

7.5 Once people have entered the EU by crossing the external borders, they can move freely throughout the Schengen area. The burden of protecting the external borders from illegal immigration falls disproportionately on the minority of Member States which have the longest external land and sea borders. Accordingly, the Commission proposes that the burden should be shared through *the External Borders Fund*. Member States would be eligible for grants from the Fund for up to half the cost (more in specified circumstances) of border control-related expenditure on, for example, border stations and document examination equipment.

7.6 The United Kingdom is precluded from opting into the Decision because it does not take part in the provisions of the Schengen *acquis* about the management of the external borders.[17] So, if the Decision were adopted, it would not apply to the United Kingdom and the UK would neither contribute to nor receive grants from the External Borders Fund.

7.7 The Commission considers that the integration into their host communities of legally resident third country nationals is essential so as to give them fair treatment and to sustain the stability and cohesion of the host communities. In November 2004, the Council agreed common principles for policies on the integration of immigrants. The Commission says

16 See headnote.

17 The main aim of the Schengen Convention of 1990 was to abolish checks at the borders between the original signatories (France, Germany and the Benelux countries) while strengthening control of the external borders of the Schengen area. Subsequently, a large number of "flanking" measures were adopted on, for example, police cooperation in cross-border surveillance, and a common format for visas. The collective name for the Convention and subsequent agreements is "the Schengen *acquis*". The UK and Ireland are not part of the Schengen area but participate in some of the provisions of the *acquis*, such as those on police and judicial cooperation and on narcotic drugs.

that those principles make clear that the failure of one Member State to pursue integration policies can have adverse effects on other Member States and the EU.

7.8 Accordingly, the Commission proposes the creation of a new *Integration Fund*. The purpose of the Fund would be to support the efforts of Member States to enable third country nationals (other than refugees) who are legally resident in their areas to settle and take an active part in all aspects of life. The objectives of the Fund would include contributing to: the organisation and provision of activities to introduce newly arrived people to their host societies, including learning about their languages, histories, cultures and values; increasing the participation of third-country nationals in civic and political activities; strengthening the capacity of Member States and organisations which represent migrants to work with third-country nationals in a way that meets their needs; and helping host societies to accept and adjust to inward migration. The Fund would provide financial support to activities in Member States which would help achieve these objectives.

7.9 The Commission says that the return of third-country nationals who have entered the EU illegally or overstayed their visas or whose asylum application has been rejected is essential to ensure that admission policy is not undermined and that the rule of law is enforced. But actually returning such people can be expensive, difficult and complex. In the Commission's view, Member States are more likely to overcome the difficulties if they act collectively, adopting practices which have been shown to be effective elsewhere in the EU. To this end, the Commission proposes the establishment of *the European Return Fund*.

7.10 The objectives of the Fund would be to improve the management of returns by Member States, strengthen cooperation between Member States and promote common standards for both the voluntary and enforced return of illegally resident third-country nationals. The activities of Member States which would be eligible for grant include, for example, the costs of temporary accommodation, travel and subsistence for returned people and their escorts and measures to assist the integration of returned people in their countries of origin.

7.11 The four draft Decisions contain common provisions on the management and control of the Funds. They cover such matters as the setting of strategic guidelines by the Commission; the submission for the Commission's approval of Member States' three-year programmes of policies, priorities and plans; the submission for the Commission's approval of Member States' annual programmes; management and control systems; grant procedures; and the arrangements for monitoring and evaluating the Funds. For example, all four Draft Decisions require each Member State to designate for each three-year programme a "responsible authority", a "certifying authority", an "audit authority" and, where appropriate, a "delegated authority", each with specified functions.

7.12 While the UK is excluded from the Decision on the External Borders Fund because it does not participate in the relevant part of the Schengen *acquis*, the Government considers that it would be consistent with existing policies for the UK to opt into the draft Decisions on the proposed Refugee, Integration and Return Funds.

7.13 When we considered these proposals on 4 July, we concluded that we could understand the case for sharing between Member States the financial burden of dealing with the control of the external borders, refugees and the return of illegal immigrants and

we could see that the aims of the proposed Funds for these three matters are consistent with the principle of subsidiarity. It was less clear to us, however, that the draft Decision on the establishment of the Integration Fund was consistent with that principle. Moreover, while there may be a case for grants to some of the new Member States to help them meet the cost of integrating legal third country nationals, it was not apparent to us why the richer Member States should receive financial assistance for integration. We asked for the Minister's comments on these points.

7.14 It also appeared to us that some of the common provisions of the draft Decisions about the financial management and organisation of the Funds might be over-prescriptive and intervene in matters best left to Member States to decide for themselves.

The Minister's letters of 19 July and 27 October 2005

7.15 In his replies to our questions, the Minister tells us that the draft Decisions provide for the new Member States to get more financial support than the richer ones. Efforts to integrate third-country nationals into the Member States where they first enter the EU will have knock-on-benefits if the immigrants subsequently move to other Member States. The Minister doubts if it would be feasible to exclude the more established States from receiving money from the Integration Fund. There is virtually no support in the Council for the idea. It is not only the new Member States which need to develop their policies: there are wide variations in the effectiveness of integration policies across the EU, even among those States with considerable experience of managing large-scale migration.

7.16 In his letter of 27 October, the Minister tells us that the Government believes that :

> "Member States have primary responsibility for the development and implementation of integration policy and measures. But there is also a role for the EU. … We believe the fund meets the subsidiarity test in a number of ways:
>
> - Exchange of best practice is clearly best co-ordinated at a Community level.
> - If some Member States fail to undertake effective integration activities, this could act as a 'pull factor' towards those countries which do. A consistent and co-ordinated approach should help reduce this risk.
> - Failure to integrate immigration [*sic*] populations properly in an era of greater mobility into, and between EU Member States, could contribute to radicalisation and disenfranchisement of individuals and groups, which in turn could pose a threat to other Member States. …."

The Minister also tells us, however, that in December Member States will have a detailed discussion of the legal base for the Integration Fund.

7.17 In response to our question about the common provisions of the draft Decisions, the Minister tells us that it is essential that the Funds have proper management and control systems to provide clear accountability and ensure rigorous management of EU taxpayers' money. The systems need to be consistent across the EU. The Government has concluded that the management and control provisions should not impose a significant additional burden on Member States. As to the Articles requiring "responsible", "certifying" and

"audit authorities", the Commission has told the Government that it does nor envisage a need to create new bodies; existing government departments could serve as the authorities so long as their work for those purposes was kept separate from the departments' other functions.

Conclusion

7.18 **We are grateful to the Minister for his explanation of the reasons why it is considered that the older Member States, as well as the new ones, should be eligible for financial support from the Integration Fund. It seems to us that this is a matter on which views may legitimately differ and that the distribution of support between Member States may be a question requiring further discussion when the overall budget for the EU has been settled and it is clear how much will be available for expenditure on Justice and Home Affairs programmes.**

7.19 **We note that Member States will be discussing the legal bases for the Integration Fund in December. We ask the Minister to tells us the outcome of those discussions and the essence of the Council's Legal Services' advice on the subject. Meanwhile, we shall reserve further comment on subsidiarity.**

7.20 **We shall continue to hold the document under scrutiny pending the Minister's reply and progress reports on the negotiations.**

8 Criminal measures to enforce intellectual property rights

(26729) 11245/05 COM(05) 276	Draft Directive on criminal measures aimed at ensuring the enforcement of intellectual property rights Draft Council Framework Decision to strengthen the criminal law framework to combat intellectual property offences

Legal base	Directive - Article 95 EC; codecision; QMV Framework Decision – Articles 31 and 34(2)(b)EU; consultation; unanimity
Document originated	12 July 2005
Deposited in Parliament	21 July 2005
Department	Home Office
Basis of consideration	EM of 30 August 2005
Previous Committee Report	None; but see (24313) HC 63-xxii (2002-03), para 6 (21 May 2003) and (25394) HC 42-xii (2003-04), para 15 (10 March 2004)
To be discussed in Council	No date set
Committee's assessment	Legally and politically important
Committee's decision	Not cleared; further information requested

Background

8.1 A number of instruments have been proposed or adopted at Community level relating to the substantive law on intellectual property, including measures on patents,[18] trade marks[19] and copyright.[20] The European Parliament and the Council adopted a Directive (Directive 2004/48/EC) on the enforcement of intellectual property rights in 2004.[21] This Directive was concerned to harmonise the measures, procedures and remedies under the law of Member States in relation to intellectual property rights. It dealt with such matters as the parties entitled to bring proceedings, evidence and its preservation, interim and final remedies, including injunctions and damages. The measure complemented the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) concluded under the auspices of the World Trade Organisation and to which all Member States and the Community (within the scope of its competence) were party.

18 A Community Patent Regulation has been proposed, but has not been adopted.

19 Council Regulation (EC) 40/94 on the Community trade mark, OJ No L11 of 14.1.94, p. 1.

20 See Council Directive 91/250/EEC of 14 May 1991 on the legal protection of computer programs, OJ No L122 of 17.5.1991, p42 and Directive 2001/29/EC of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society OJ No L 167 of 22.6.2001, p.10.

21 OJ No L195 of 2.6.2004, p.16.

8.2 Directive 2004/48/EC did not prescribe any criminal measures to be taken by Member States. Instead, a recital[22] to the Directive recalled that in addition to the civil and administrative measures under the Directive "criminal sanctions also constitute, in appropriate cases, a means of ensuring the enforcement of intellectual property rights".

8.3 When the previous Committee considered the proposal, which became Directive 2004/48/EC, it noted on 21 May 2003 that it originally contained provisions which would have obliged the Member States to provide for criminal sanctions and agreed with the Government that such provisions lay outside the competence of the Community under the EC Treaty. It noted on 10 March 2004 that the Government had secured amendments to the proposal to remove the reference to criminal sanctions and that the Government had indicated that many Member States had been opposed to this reference in an instrument to be adopted under Article 95 EC.

8.4 On 13 September 2005 the Court of Justice of the European Communities (ECJ) gave judgment in Case C -176/03 *Commission and European Parliament v. Council.* The case was concerned with the power of the Community to adopt criminal measures in relation to environmental policy under Articles 174 to 176 EC. The ECJ confirmed that "as a general rule, neither criminal law nor the rules of criminal procedure fall within the Community's competence" but also ruled that this finding:

> "does not prevent the Community legislature, when the application of effective, proportionate and dissuasive criminal penalties by the competent national authorities is an essential measure for combating serious environmental offences, from taking measures which relate to the criminal law of the Member States which it considers necessary in order to ensure that the rules which it lays down on environmental protection are fully effective".

8.5 Even though the Council was supported by Denmark, Germany, Greece, Spain, France, Ireland, the Netherlands, Portugal, Finland, Sweden and the United Kingdom in asserting the validity of the Framework Decision, the ECJ nevertheless went on to annul Council Framework Decision 2003/80/JHA on the protection of the environment through criminal law on the grounds that it infringed Article 47 EU[23] as it encroached on the powers which Article 175 EC conferred on the Community.

The proposed draft Directive

8.6 The draft Directive is proposed under Article 95 EC and would therefore be adopted by co-decision with the European Parliament and with the Council voting by a qualified majority. The recitals refer to the TRIPS Agreement and note that it contains provisions on criminal matters "which are common standards applicable at international level". The first recital goes on to state that "the disparities between Member States are still too great, and they do not permit effective combating of intellectual property offences, particularly the most serious ones". It is also stated that "this causes a loss of confidence in the Internal

22 Recital No 28.

23 This provides that nothing in the EU Treaty "shall affect the Treaties establishing the European Communities or the subsequent Treaties and Acts modifying or supplementing them".

Market in business circles, with a consequent reduction in investment, in innovation and creation".

8.7 The second recital refers to the adoption of Directive 2004/48/EC on the enforcement of intellectual property rights but states that "a sufficiently dissuasive set of penalties applicable throughout the Community is needed to make the provisions laid down in this Directive complete".

8.8 By virtue of Article 1 the Directive is to apply to intellectual property rights provided for in Community legislation and under national law. Article 3 requires Member States to ensure that "all intentional infringements of an intellectual property right on a commercial scale, and attempting, aiding or abetting and inciting such infringements" are treated as criminal offences.

8.9 Article 4 obliges Member States to provide for sentences of imprisonment, with fines and confiscation of the infringing goods also applying to natural and legal persons. In addition, Member States are also to provide for the destruction of infringing copies, for closure of the establishment used to commit the offence, a "permanent or temporary ban on engaging in commercial activities", "placing under judicial supervision", winding up, a "ban on access to public assistance or subsidies" and publication of judicial decisions.

The draft Framework Decision

8.10 The draft Framework Decision is proposed as a supplement to the draft Directive. The fifth recital to the Framework Decision asserts that for this purpose the "level of sentencing … must be harmonised", whilst the sixth recital asserts that Member States must ensure that holders of intellectual property rights, or their representatives, are allowed to assist the investigations carried out by joint investigation teams.

8.11 Article 2(1) requires Member States to provide for a sentence of at least four years' imprisonment where an intellectual property offence is committed "under the aegis of a criminal organisation" or where such offences "carry a health of safety risk". Although Article 4 of the Directive already requires provision for sentences of imprisonment, Article 2(2) of the Framework Decision requires Member States to provide for "effective, proportionate and dissuasive penalties" for the offences referred to under Article 3 of the Directive. It also requires that these penalties are to include "criminal and non-criminal fines" to a maximum of €100,000 for cases other than the most serious cases, and €300,000 for the offences referred to in Article 2(1).

8.12 Article 3 requires Member States to provide for complete or partial confiscation in accordance with Article 3 of Framework Decision 2005/212/JHA on Confiscation of Crime-Related Proceeds, Instrumentalities and Property[24] at least where the offences are committed "under the aegis of" a criminal organisation or where "they carry a health or safety risk".

24 OJ No L 68 of 15.3.2005, p.49.

8.13 Article 4 provides that Member States must ensure that holders of intellectual property rights, or their representatives, and experts, are allowed to assist the investigations carried out by joint investigation teams.

8.14 Article 5 requires Member States to establish rules of jurisdiction to cover cases in which an offence referred to in Article 3 of the Directive is committed wholly or partially within the national territory. Where such an offence falls within the jurisdiction of more than one Member State, the Member States concerned are required to cooperate in order to decide which will undertake the prosecution "with the aim, if possible, of centralising proceedings in a single Member State". For this purpose, "sequential account" is to be taken of the following connecting factors, namely, the place of commission of the offence, the nationality or residence of the offender, place of registration of a legal person, residence of the victim and place in which the offender is found.

The Government's view

8.15 In her Explanatory Memorandum of 30 August 2005 the Parliamentary Under-Secretary of State at the Home Office (Ms Fiona Mactaggart) explains that the approach taken by the Commission in proposing the measures reflects the opinion of the Advocate General in Case C 176/03 *Commission v. Council*, a case in which the UK intervened in support of the Council's case that there was no competence under the EC Treaty to require Member States to impose criminal sanctions. The Minister adds that the approach taken will need to be considered carefully once the ECJ has given its judgment.

8.16 The Minister points out that the law of the United Kingdom already provides for criminal penalties for wilful trademark counterfeiting or copyright piracy on a commercial scale, rather than for all intellectual property offences, so that the measures go beyond what the Government sees as necessary to deal with intellectual property crime.

8.17 In relation to the proposed Directive, the Minister considers that its scope will need careful consideration, and that the reference to the term "commercial scale" needs further clarification. The Minister adds that prosecuting authorities are concerned that "there could be confusion from an operational perspective if there is not sufficient clarity". In relation to the penalties under Article 4, the Minister explains that, apart from its concerns over Community competence, the UK as Presidency will be seeking to ensure that the provisions on penalties, particularly under Article 4(2) are not so detailed as to impinge on the subsidiarity principle and that some textual amendment may be needed.

8.18 In relation to the draft Framework Decision, the Minister explains that the Government will raise during the negotiations the question of whether there is power under Article 34 EU to include the provisions of Article 4 and 6 in the Framework Decision, as they do not appear to be concerned with co-operation between the competent authorities of the Member States. The Government will also resist the provisions of Article 4 on joint investigation teams, because of its concerns that provisions of this kind should be in over-arching instruments dealing with crimes in general, such as the 2000 EU Convention on Mutual Legal Assistance in Criminal Matters rather than in crime-specific instruments. The Minister adds that there are practical concerns over the utility of having holders of intellectual property rights participating in joint investigation teams.

8.19 The Minister also expresses concern over the mandatory nature of the rules on conflicts of jurisdiction under Article 5, and considers that it would be preferable for this provision to be re-drafted in permissive terms. The Minister adds that modification may also be needed in relation to Article 6 (which provides that investigations and prosecutions may not be made dependent on a report or accusation of a person subjected to the offence). The Minister explains that there are some concerns that language of this nature may impede a successful prosecution of intellectual property related criminal activity where a report or accusation is necessary for a successful prosecution.

Conclusion

8.20 **We thank the Minister for her detailed and helpful Explanatory Memorandum. We share the concerns expressed over the use of the EC Treaty to propose an instrument requiring the imposition of criminal penalties, and we ask the Minister for her assessment of the position following the judgment of the ECJ in *Commission v. Council*.**

8.21 **It appears to us that the Commission has not demonstrated that the measures are either essential in themselves or necessary for the purpose of effectively enforcing intellectual property rights and we view with grave concern the proposition that Member States can be forced, under the codecision procedure provided for in the EC Treaty, to introduce new criminal offences into their national laws.**

8.22 **We also share the Minister's concerns over the use of Article 34 EU to adopt measures which go beyond promoting cooperation between the authorities of the Member States. We view with particular concern the provisions of Article 4 of the Framework Decision, and we ask the Minister if she considers it contrary to the principles of Article 33 EU to make such detailed rules as to how police investigations are conducted in the Member States. We also ask the Minister if she agrees that a rule obliging Member States to allow private persons to become involved in the conduct of police investigations raises issues of principle and accountability, as well as practical concerns.**

8.23 **We shall hold the document under scrutiny pending the Minister's reply.**

9 Service of legal documents within the EU

(26723) 11131/05 COM(05) 305	Draft Regulation on the service in the Member States of judicial and extra judicial documents in civil and commercial matters

Legal base	Article 61(c) and Article 65 (TEC)
Document originated	11 July 2005
Deposited in Parliament	20 July 2005
Department	Constitutional Affairs
Basis of consideration	EM of 25 August 2005
Previous Committee Report	None
To be discussed in Council	Probably before the end of 2005 although unlikely to be agreed before Austrian Presidency
Committee's assessment	Legally and politically important
Committee's decision	Cleared

Background

9.1 Regulation 1348/2000 on the service in the Member States of judicial and extra judicial documents in civil or commercial matters (and "the service regulation") has been enforced since May 2001. In October 2004 the Commission issued a Report on the application of the Regulation (document 13664/04) which looked at the service of documents under the Regulation using data from 2002 and took account of previous widespread discussion of the regulation. Following the issue of their Report, the Commission held a public hearing in February 2005 during which suggestions for amendments to the Regulation were discussed.

The document

9.2 This proposal is based on a Commission's work to date and aims to further improve and expedite the transmission of service of judicial and extra judicial documents in civil or commercial matters between Member States. It proposes a number of changes to the service regulation. Under the service regulation there is merely an expectation that service should be effected within one month of receipt of a document. The proposal would amend Article 7 of the service regulation to create an obligation to this effect.

9.3 The proposal would amend Article 8 to introduce a procedure to ensure the addressee is informed about his right to refuse service if the documents are in a language he does not understand and to impose a time limit of one week within which such a refusal can be made. The proposal also clarifies that service can be rectified by providing such a translation later.

9.4 Under the present service regulation the 'double date' system effectively allows for two dates to constitute the date of service. To protect the person served, the date of service is

the date on which the document is served in accordance with the law of the Member States in which service is effected. However, to protect the claimant in cases where his rights would be prejudiced by a failure to act within a given period, the date to be taken into consideration is that fixed by the law of the Member State in which proceedings have been brought. A number of Member States currently take advantage of a derogation from this procedure on the basis that such a system is not recognised in their national law. The proposed amendment to Article 9 would remove the possibility of derogation, and so provide that the 'double date' system would apply only in Member States where the system is already recognised.

9.5 The Commission also proposes the introduction of a requirement on Member States that they set a certain fixed fee in those cases where they charge for the service (Article 11); to stipulate that cross-border postal service must be by means of registered post (Article 14); that Member States can no longer oppose direct service to the competent authorities in other Member States (Article 15); and to clarify that the provisions under Article 8 and 9 also apply to postal and direct services (Article 15a).

The Government's view

9.6 In her Explanatory Memorandum of 25 August 2005, the Parliamentary Under-Secretary at the Department for Constitutional Affairs (Baroness Ashton of Upholland) notes the Government's broad agreement with the proposed revisions to the service regulation. The Minister comments as follows:

> "From the public hearing in February we are aware that there is general acceptance of the introduction of a deadline for service. As the Presidency we shall look to ensure that the deadline chosen takes account of any differences of opinion on the length of that deadline, balancing the need to ensure it is realistic while also delivering benefits to citizens and businesses in terms of an improved standard and certainty of service.
>
> "Initial reactions again suggest that there will be broad acceptance of the Commission's amendments to Article 8 subject to the detail. As Presidency we note that the proposed amendments give clarity to the existing provisions and ensure that the safeguards for addressees are respected.
>
> "The Presidency is aware that the double date provision is the most contentious for those Member States that do not have it. While the Commission proposes to end the right of Member States to derogate from this provision we note that the purpose of this amendment is to allow it to apply only in those Member States that have such a system. As Presidency we shall take due account of the concerns of those Member States who want to ensure that the agreed provision does not force them to introduce a double date system if they do not want to.
>
> "We know that concerns have been raised about the level of fees charged for service in some Member States and the fact that the amount is often not known until after service has been effected. From the recent public hearing we are aware that the opinion on fees ranges from having no fees at all to introducing a single EU wide fee. As Presidency we believe the Commission's proposal represents a compromise

> between these views. We will want to ensure that the final provision allows sufficient flexibility to take account of the differences in the systems of Member States while also ensuring any costs are proportionate and transparent.
>
> "Most Member States that accept service by post under this Regulation (including the UK) already require registered post. Therefore as Presidency we assume that this provision will receive majority support. From the public hearing we believe there will also be majority support for the Commission's provisions on Article 15, 15a, 17 and 23. However we will take due account of any other views raised in the Civil Law Committee."

9.7 The Minister adds that in the Government's view, the proposed amended Regulation was unlikely to be agreed before the Austrian Presidency.

Conclusion

9.8 **We thank the Minister for her helpful summary of the proposal as well as her outline of the Government's position. We are content with the stance taken by the Government and happy to clear the document on the understanding that there will be no change in the Government's negotiating position.**

10 Rural development: verification of agri-environment expenditure

(26902) 12921/05 —	Special Report No. 3/2005 by the Court of Auditors concerning rural development — The verification of agri-environment expenditure

Legal base	—
Document originated	6 October 2005
Deposited in Parliament	12 October 2005
Department	Environment, Food and Rural Affairs
Basis of consideration	EM of 25 October 2005
Previous Committee Report	None
To be discussed in Council	Not applicable
Committee's assessment	Politically important
Committee's decision	Cleared

Background

10.1 Since 1993, the Community has sought to ensure that agricultural support is given to production methods which are compatible with the protection of the environment, and the Regulation[25] which is currently applicable, and which covers the period 2000-2006, brought together a range of previous rural development measures. It requires Member States to produce Rural Development Programmes, approved by the Commission, which must contain a so-called agri-environment element, and under which farmers receive payments in exchange for undertaking to operate in ways which are environmentally friendly, and which must go beyond usual good farming practice. Such expenditure is currently co-financed by the Community at a rate of up to 60% (85% in Objective 1 areas), and there is a budgetary provision of €13.48 billion for the seven years in question.

The current document

10.2 In this Report, the Court of Auditors has sought to assess whether the Commission has had adequate assurance that the farming practices and techniques for which this money is paid are verifiable, and have in fact been properly verified, thus ensuring that the recipients comply with their obligation to farm in an environmentally-friendly way. It did not attempt to assess the environmental benefits of the individual measures.

10.3 Audit visits were paid to the Commission and to five Member States.[26] The Court found that the Commission had only partially ensured verifiability before approving rural development programmes; had not sufficiently verified the correct functioning of agri-

25 Regulation (EC) No. 1257/1999.

26 Austria, France, Germany, Italy and Luxembourg.

environment control systems in the Member States, and, in the case of organic farming — which the Court describes as one of the most significant areas — it had not fully assumed its responsibilities. In particular, it draws attention to the fact that annual implementation reports, which should give assurance about the objectiveness and effectiveness of the organic inspection system, are incomplete, and that, in any event, the information requested would not give the necessary assurance. Also, although Commission's checks in seven Member States, including the UK, in the period 1998-2001 detected important weaknesses in the supervision of inspection systems, these findings were not properly followed up, and no further checks have taken place in any Member State. In particular, the Court notes that the Commission had made critical references to the need for the UK to strengthen supervision of its inspection bodies, and for the latter to provide annual reports.

10.4 In the case of the five Member States audited, the Court concentrated on the timing of the spot checks and the verifiability of certain key measures. It found that the latter were checked outside the period laid down, or at inopportune moments, such as harvest time; that checks for common measures (such as those reducing or limiting inputs) are largely dependent on the self-declaration of beneficiaries, which are difficult to corroborate; that reliance is placed on inconclusive visual checks; that detailed instructions are not always set out for inspectors, who often rely on their own knowledge or experience; and that there is no clear baseline with which to compare performance.

10.5 The Court makes a number of detailed recommendations for improving the arrangements for verifying this expenditure, but concludes that this poses particular problems, and is far more resource-intensive than the verification of mainstream measures under the Common Agricultural Policy (and indeed other rural development measures). It says that the Commission, Council and European Parliament should consider, for the new programming period commencing in 2007, how to take into account the principle that, if a measure cannot be checked adequately, it should not be the subject of public payment.

10.6 The Court's Report also has appended to it the Commission's reactions, in which it takes note of the weaknesses identified and undertakes to remedy, as far as possible, individual cases in partnership with the Member States. It also agrees that, due to the complexity of some of the agri-environment measures, control is resource intensive in both technical and financial terms, and says that this problem has to be judged in relation to the objectives being pursued, given that agri-environment measures form a central and essential part of the strategy to integrate environmental concerns into agricultural policy. In particular, the Commission points out that a complete exhaustive check in this area might bring about only limited added value in terms of minimising the risk to the budget and/or the environment, and that the risk of non-compliance has to be weighed against the potential benefits. It therefore suggests that there is a need for a system which provides a sufficient level of control whilst remaining proportionate.

The Government's view

10.7 In his Explanatory Memorandum of 25 October 2005, the Parliamentary Under-Secretary (Rural Affairs, Landscape and Biodiversity) at the Department for Environment, Food and Rural Affairs (Mr Jim Knight) says that agri-environment schemes in the UK are the key delivery tools for a number of Government strategies (including the Strategy for

Sustainable Farming and Food and the Sustainable Development Strategy), and are vital for improving the environmental impact of agriculture. He suggests that a strict interpretation of the principle that measures not capable of being adequately verified should not be the subject of public payment might reduce the number of agri-environment options available in Member States, and that this could impact on the delivery of environmental objectives. This could also have implications for the UK's aim of developing farming systems which are rewarded by the market for their output of safe, quality food and by the taxpayer for delivering public benefits, such as environmental protection.

10.8 In commenting on the Court's observation that the risk of non-compliance and the potential environmental benefits should be taken into account when considering verifiability, he points out that such decisions in the UK are based upon evidence of their efficacy in reducing environmental impact or improving environmental quality and on whether they can be verified in a cost-effective manner. He also says that the UK's procedures have been approved by the Commission, and that all agri-environment measures in 1997-99 have been audited.

10.9 Insofar as Member States will be submitting new Programmes for the next period (2007-13) the Minister says that the UK will continue to use robust verification methods, but that its verification system is based on proportionality and follows the prescribed risk-based approach, with the majority of beneficiaries checked being selected according to the size of their agreement and whether there have been previous problems with compliance. In addition, all organic agreement holders are also inspected annually by the relevant body. He adds that the selection of inspections is made as early as possible so that visits can be carried out at the appropriate time, and that full guidance and training is given to inspectors. Also, agreement holders have full written guidance and support from technical officers.

10.10 Finally, he comments on the Court's references to the need to strengthen the supervision of organic inspection bodies in the UK. He says that action has been taken to deal with the recommendations for improving organic control measures, and in particular that legal issues relating to the function of the competent authority have been resolved. The organic inspection bodies provide each year to the competent authority information on their functions, which is then used to compile the annual reports which have to be sent to the Commission. The Commission and the Member States have however been considering how to improve content and timeliness of these annual reports, and further measures are planned.

Conclusion

10.11 **We note the differences of view which exist over the extent to which it is possible to make full verification a condition for Community financial support being given to agri-environment measures, with both the Commission and the UK apparently taking a more pragmatic (or, some might say, more relaxed) view on this than the Court of Auditors, their preference being for an approach which is proportionate. We also note that this is the subject on an on-going discussion, and, although we think it right to draw this Report to the attention of the House, we doubt whether any further consideration is required at this stage. We are therefore clearing the document.**

11 Quality assurance in higher education

(26046) 13495/04 COM(04) 642	Draft Recommendation on further European cooperation in quality assurance in higher education

Legal base	Articles 149(4) and 150(4) EC; co-decision; QMV
Department	Education and Skills
Basis of consideration	Minister's letters of 3 and 20 October 2005
Previous Committee Report	HC 42-xxxvi (2003-04), para 4 (10 November 2004)
To be discussed in Council	15 November 2005
Committee's assessment	Legally and politically important
Committee's decision	Cleared

Background

11.1 In 1998, the Council adopted a Recommendation on European cooperation in quality assurance in higher education.[27] It recommended Member States to establish and support quality assurance systems with the "features" described in the Annex to the Recommendation (for example, quality assurance should usually involve an internal, self-examination component and an external component based on appraisal by external experts).

11.2 Article 149(4) of the EC Treaty provides that the Council may adopt incentive measures or recommendations in order to contribute to the achievement of Community's objectives for education. Article 150(4) authorises the Council to adopt measures to contribute to the achievement of the Community's objectives for vocational training. Recommendations are not binding on Member States.

11.3 In November 2003, the previous Committee considered the draft of a Recommendation which proposed that Member States should:

a) require all higher education institutions to develop their own internal quality assurance mechanisms;

b) require all quality assurance agencies in their countries to be independent in their assessments, apply the features of quality assurance contained in the Annex to the Council Recommendation of 1998 (see above), and apply a common set of standards, procedures and guidelines for quality assurance;

c) encourage the setting up of a European Register of Quality Assurance and Accreditation Agencies;

27 Council Recommendation 98/561/EC, OJ No. L 270, 7.10.98, p. 56.

d) enable their higher education institutions to choose which of the agencies on the Register will carry out quality assurance for them; and

e) accept the assessments made by agencies on the Register "as a basis for decisions on licensing or funding of higher education institutions, including as regards such matters as eligibility for student grants and loans."

11.4 The Government told the previous Committee that the first three limbs of the draft Recommendation might provide an acceptable way forward. But the Government was much more doubtful about the fourth and fifth limbs. It had reservations about, for example, allowing higher education institutions to choose a registered agency with standards lower than the UK's existing standards. The Government also questioned whether the Community has competence under Articles 149 and 150 of the EC Treaty to adopt Recommendations which propose mandatory requirements on Member States.

11.5 The previous Committee shared the Government's doubts and decided to keep the draft Recommendation under scrutiny.[28]

The Minister's letters of 3 and 20 October 2005

11.6 In his letter of 3 October, the Minister for Lifelong Learning, Further and Higher Education at the Department for Education and Skills (Mr Bill Rammell) told us that on 30 August the European Parliament's Education Committee had adopted amendments to the draft Recommendation which would satisfy the Government's negotiating objectives. For example:

- Member States would be encouraged, not required, to ensure that all higher education institutions have quality assurance mechanisms;
- higher education institutions would be able to choose any agency on a European Register only if allowed to do so by the rules of the institution's Member State; and
- the provision about Member States accepting assessments by all agencies as a basis for funding or licensing would be deleted.

The Minister said that the amendments are acceptable to the Government. He expected that they would be endorsed by the European Parliament itself on 12 October.

11.7 The Minister's letter of 20 October tells us that the European Parliament did, indeed, approve the amendments. He believes that the changes would meet the Government's and the previous Committee's reservations about the first draft of the Recommendation. He asks us to clear the amended document from scrutiny, paving the way for adoption of the Recommendation by the Council on 15 November and a first reading agreement between the Council and the European Parliament.

28 See headnote.

Conclusion

11.8 **We share the Minister's view that the amendments proposed by the European Parliament meet the previous Committee's concerns about the draft Recommendation. There are no further issues we need raise and we are now content to clear the document.**

12 European Qualifications Framework

(26843) 11189/05 SEC(05) 957	Commission staff working document: *Towards a European Qualifications Framework for lifelong learning*

Legal base	—
Document originated	8 July 2005
Deposited in Parliament	20 September 2005
Department	Education and Skills
Basis of consideration	EM of 4 October 2005
Previous Committee Report	None
To be discussed in Council	No date set
Committee's assessment	Politically important
Committee's decision	Cleared but further information requested

The document

12.1 In June 2005, the Council adopted a Directive on the mutual recognition of qualifications in regulated professions.[29] It provides for the recognition across national borders of the vocational and academic qualifications which qualify the holders to provide a service or practice a trade or profession.

12.2 But the Directive does not cover the skills and knowledge people learn from the moment they start school; nor does it cover many of the non-professional qualifications which people earn at work, in leisure activities or at educational institutions after they leave school. So it is difficult for individuals, employers and others in one country to know how such qualifications equate to qualifications earned in other countries. This can impede the free movement of people within the EU to the detriment of individuals and the economy.

12.3 The Commission staff working document suggests that the difficulty might be overcome if there were a European Qualifications Framework (EQF) with eight levels. These levels would not refer to specific qualifications but to "learning outcomes": that is the

29 See (25602) 8726/04: HC 42-xix (2003-04), para 6 (5 May 2004).

knowledge, skills and personal competences acquired throughout a life-time. For example, the document suggests the following definition for level 1:

"• Knowledge — Recall basic general knowledge

- Skills — Use basic skills to carry out simple tasks
- Personal and professional competence —

(i) *Autonomy and responsibility*

Complete work or study tasks under direct supervision and demonstrate personal effectiveness in simple and stable contexts

(ii) *Learning competence*

Accept guidance on learning

(iii) *Communication and social competence*

Respond to simple written and oral communication

Demonstrate social role for self

(iv) *Professional and vocational competence*

Demonstrate awareness of procedure for solving problems."

The document gives similar descriptions for the other seven levels. Taken together, the eight levels are intended to cover learning outcomes ranging from those achieved at primary school to those at post-doctoral level.

12.4 The document suggests that it would be possible to fit each qualification into one (or perhaps two) of the levels and that this would enable employers, job seekers and users and providers of education in one country to understand how any particular qualification equates to qualifications awarded by other counties. The document also suggests that each Member State should establish its own National Qualifications Framework, identifying how all the qualifications awarded in the Member State fit into the levels of the EQF. It would also be necessary to set up quality assurance and certification arrangements for the qualifications. Clear links could be established between, for example, the documents in an individual's "Europass" and the levels of the EQF (the Europass contains: a curriculum vitae; a statement of the holder's linguistic and cultural skills; a statement of the holder's vocational qualifications; a statement of the holder's higher education degrees; and a statement of any periods of learning in another country[30]).

12.5 The staff working document sets out 14 questions about an EQF system on which comments are invited by the end of December. The Commission will hold a conference in February to consider the responses. It will present the Council and the European Parliament with a draft Recommendation for an EQF in the first half of 2006.

30 See (25218) 5032/04: HC 42-xx (03-04), para 12 (18 May 2004).

The Government's view

12.6 The Minister of State for Lifelong Learning, Further and Higher Education at the Department for Education and Skills (Mr Bill Ramell) tells us that the document is the product of a working group, led by the Commission, of national experts on qualification systems. The Government believes that the EQF has the potential to improve the supply of skills throughout Europe by allowing national qualifications to be equated more effectively across borders. The Minister says that the eight-level structure would be compatible with the qualifications frameworks in the UK. He understands that, at present, the UK qualifications bodies have no technical concerns about the EQF and that the existing credit transfer systems in Scotland, Wales and Northern Ireland, and the proposed system for England, would also fit within the EQF.

12.7 In September, the Scottish Executive organised a conference on "Qualifications Frameworks in Europe: Learning Across Boundaries", which discussed the EQF.

12.8 The Department for Education and Skills has initiated public consultations on the Commission's document and asked the administrations in Scotland, Wales and Northern Ireland to publicise the consultations and contribute to them. The consultation period ends on 23 November. The Government will then prepare its response to the Commission.

Conclusion

12.9 **We can see the potential benefits of a European Qualifications Framework of the kind described in the Commission staff working document. Our summary of the proposals is far simpler and much easier to understand than the document. The extensive use of educational jargon in the document makes it difficult to understand by anyone who is not an expert in qualification systems. We regret this because the idea for an European Qualifications Framework is of wide interest and we believe it can be explained in plain words.**

12.10 **We ask the Minister to send us a copy of the Government's response to the Commission's questions and to give us progress reports on the consideration of the proposals. Meanwhile, we are content to clear the document from scrutiny.**

13 Global satellite navigation system

(26771) 11669/05 COM(05) 350	Draft Decision on the signing of the Cooperation Agreement on a civil global navigation satellite system (GNSS) between the European Community and its Member States and Ukraine

Legal base	Articles 133, 170 and 300(2);—; QMV
Document originated	2 August 2005
Deposited in Parliament	26 August 2005
Department	Transport
Basis of consideration	EM of 29 September 2005
Previous Committee Report	None
To be discussed in Council	Not known
Committee's assessment	Politically important
Committee's decision	Cleared

Background

13.1 The Community has a two-phase policy for developing a global navigation satellite system (GNSS). The first phase, GNSS 1, is the European Geostationary Navigation Overlay System (EGNOS) programme. The second phase, GNSS 2, is the programme, named Galileo, to establish a new satellite navigation constellation with appropriate ground infrastructure. It is based on the presumption that Europe ought not to rely indefinitely on the GPS (the US Global Positioning System) and GLONASS (the Russian Global Navigation Satellite System) systems, augmented by EGNOS. Galileo is being carried out in conjunction with the European Space Agency (ESA). In the pre-concession stage Galileo is being managed by the Galileo Joint Undertaking (GJU), a joint venture between the Community and the ESA. The GJU will be superseded by the GNSS Supervisory Authority (GSA), a Community body, when a concession to carry Galileo forward is granted.

13.2 The services it is suggested could be provided by Galileo are:

- an Open Service (OS), free of charge at the point of use;
- a Commercial Service (CS), offering added value for more demanding uses;
- a Safety of Life Service (SoL), for safety-critical applications that require high integrity;
- a Search and Rescue Service (SAR), to complement the current COSPAS-SARSAT system (International Satellite Search and Rescue System founded by Canada, France, the former USSR and the USA in 1988 and with 33 countries now participating); and

- a Public Regulated Service (PRS), a high-performance, encrypted service for authorised civil government applications.

13.3 The statutes of the GJU allow for a minority involvement by non-Member States and other investors. Full agreements are already in place with China and Israel and another, with India, has been initialled.

13.4 Over the last six years or so the previous Committee reported on many aspects of the Galileo project, the last occasion being in November 2004; the matter has also been debated three times in European Standing Committee A, the last occasion being in December 2004.[31]

The document

13.5 In this document the Commission propose a Decision by the Council to authorise signature on behalf of the Community of an agreement, if concluded, between the Community and its Member States and Ukraine on cooperation on a civil GNSS, which has been negotiated by the Commission and was initialled on 3 June 2005. The agreement sets out:

- the principles, scope and forms of cooperation;
- provision for protection and enforcement of intellectual property, as well principles for authorising exports of sensitive items by the Ukraine to third countries;
- the objective to promote the Open, Commercial and Safety-of-Life Services to be offered by Galileo; and
- detailed provisions governing the working arrangements between the two parties — particularly regarding cooperation between the parties in promoting the use of Galileo and coordinated approaches to be followed at international fora in relation to the development of GNSS and augmentation systems and in ensuring the security of the Galileo programme.

13.6 The Public Regulated Service is not included in the scope of the Agreement. But it makes clear that including that service would be possible in a separate agreement, if both parties were willing.

The Government's view

13.7 The Minister of State, Department of Transport (Dr Stephen Ladyman) tells us the Government believes that there are potential advantages for Galileo and benefits for European industry in extending formal co-operation between the Community and Ukraine. He cites particularly advantages for civil aviation if EGNOS coverage is extended through an augmentation system using Galileo and EGNOS in Ukraine. The Minister adds however that there are issues which remain to be clarified including:

31 See (25690) (25715) 9941/04 (25879) 11834/04 (26012) 13300/04: HC 42-xxxvii (2003-04), para 1 (17 November 2004) and *Stg Co Deb*, European Standing Committee A, 2 December 2004, Cols 3-30.

- the amount of any financial contributions by Ukraine, and how these would be used, which would need to be governed by a further agreement; and
- the possible participation of Ukraine in the management structure of Galileo, which is envisaged in the present document. In particular is the question of whether Ukraine should be allowed to vote in the GSA — this would need to be separately addressed in accordance with the relevant legislation.

13.8 On Galileo more generally the Minister tells us that the Government's key objectives are:

- a robust negotiating process and a strong commercial focus in the concession agreement, with a full assessment of the benefits and risks to the Community;
- ensuring the outcome is a robust public-private partnership, delivering benefits for Member States industrially and value-for-money services for users;
- decisions about locating Galileo control and operational facilities to be taken on transparent and commercial grounds;
- minimising the Community funds necessary to support the initial operating phase of the project and moving as quickly as possible to a position where there is no longer a requirement for public money to underwrite the system;
- in the context of the Ukraine and other international agreements, maximising benefits to European industry and users of cooperation with the USA, Russia, China, Israel, India and other non-Member States;
- maintaining close oversight, taking into account NATO and European Union security concerns, of future negotiations with potential non-Member State participants, including any proposals for joining the GJU and the GSA;
- ensuring that non-Member States do not have any control of the system or access to sensitive technology, including the Public Regulated Service, should Council be convinced of the case for having such a service; and
- ensuring that the frequencies selected for Galileo do not affect NATO or European Union military effectiveness by overlaying the planned GPS Military code.

Conclusion

13.9 **We note the conditions that are built into the agreement with Ukraine and the Government's caveated support for it and we clear the document.**

13.10 **We are grateful to the Minister for the more general update he gives us on the Government's objectives in relation to Galileo and take this opportunity to remind him that we would like to have a comprehensive account of where matters stand generally on the Galileo project in plenty of time for us to consider it before the Transport Council in December 2005.**

14 EU spectrum policy and the digital switchover

(26886) 12817/05 COM(05) 461	Commission Communication: "EU spectrum policy priorities for the digital switchover in the context of the upcoming ITU Regional Radiocommunication Conference 2006 (RRC-06)"

Legal base	—
Document originated	29 September 2005
Deposited in Parliament	5 October 2005
Department	Trade and Industry
Basis of consideration	EM of 18 October 2005
Previous Committee Report	None; but see HC34-ii (2005-06) paras 1 and 10 (13 July 2005) and HC34-vi (2005-06) para 16 (19 October 2005)
To be discussed in Council	To be determined
Committee's assessment	Politically important
Committee's decision	Cleared. Relevant to the debate on 8 November 2005 on "i2010: European Information Society for Growth and Employment"

Background

14.1 The planning of radio and TV broadcasting frequencies has traditionally been coordinated at international level, given the high potential for long distance interference created by the transmission of broadcasting signals from high-power towers. The current international frequency plan dates back to the Regional Agreement for the European Broadcasting Area (Stockholm 1961).

14.2 In this context, the Regional Radiocommunication Conference (RRC) was established by the International Telecommunications Union (ITU) to plan the new terrestrial digital broadcasting frequencies (i.e. the bands 174-230 MHz and 470-862 MHz). The new plan will be applicable to the geographic territory of the negotiating parties, i.e. Europe, including the Russian Federation, Africa, and parts of the Middle East[32] and will eventually replace the Stockholm plan. The technical preparation of the Conference in Europe is supported by CEPT,[33] which adopts European Common Positions, i.e. initial technical negotiating positions, to coordinate the negotiating process.

32 Formally, ITU Region 1, which includes countries situated to the west of meridian 170°E and to the north of parallel 40°S (except Mongolia) and the Islamic Republic of Iran (120 nations in total). The Member States are the legal negotiating parties in the RRC. The Commission is a non-voting delegation in the ITU negotiations, formally an ITU "sector member" (category: regional and Other International Organisations).

33 The European Conference of Postal and Telecommunications Administrations, or CEPT: the 46-strong European intergovernmental organisation pre-dating the EU's involvement in telecoms and spectrum, and which is a recognised regional entity in the ITU.

14.3 The RRC negotiation process is divided into two sessions: the first took place in May 2004 (RRC-04), where the technical conditions for designing a new plan were adopted; Regional Radiocommunication Conference (RRC) 2006 will take place from 15 May-16 June 2006 to produce a new international agreement and plan for terrestrial digital broadcasting (covering the frequency bands 174-230 MHz and 470-862 MHz) based on the actual demand for frequencies put forward by negotiating countries.

14.4 EU radio spectrum policy is subject to the Radio Spectrum Decision 676/2002/EC, which established a regulatory framework in the European Community, through which harmonisation of the use of the radio spectrum could be achieved in areas relevant to Community policy objectives. Under the Decision, the Radio Spectrum Policy Group (RSPG)[34] was established to provide the Commission with a high level strategic steer. Radio spectrum is a key resource and its efficient use is increasingly seen as crucial both to essential services and to meeting the Lisbon Agenda by stimulating growth, innovation, competitiveness and employment. Co-ordinated spectrum policy aims at a single market for radio services and equipment; to effect this, the Commission plans to lower barriers to spectrum access and remove restrictions to allow convergence,[35] including between broadcasting and mobile communications.

The Commission Communication

14.5 This Communication aims at presenting EU priorities concerning radio spectrum availability in the context of the switchover from analogue to digital broadcasting and the upcoming RRC-06. In outlining the broader broadcasting policy perspective, the Commission recalls the earlier May 2005 Communication on "accelerating the transition from analogue to digital broadcasting",[36] which sets out the Community policy objectives for the transition. But the scope and modalities of the future plan to be developed at the RRC were not systematically assessed against other possible approaches such as a more decentralised system of planning and/or a limitation of the central planning to a smaller portion of the broadcasting spectrum: "In particular, it is necessary to address the relationship between the RRC planning approach and the market and policy developments. It is key to find practical arrangements in the RRC planning to meet these challenges, especially when considering that the new plan is expected to last for several decades. It should be further ensured that the plan will contribute to a truly internal market for goods and services, whilst giving the flexibility to allocate spectrum according to local market demand".

14.6 The switchover will release a "spectrum dividend", which the May Communication identified as one of the major advantages of the switchover. As the Communication explains, if analogue TV broadcasting is switched to digital transmission (same image resolution and size, same number of channels), three to six times less radio spectrum will be needed, enabling some 300 to 375 MHz of the current amount allocated to terrestrial broadcasting to become available for other uses. The Commission is urging Member States

34 The RSPG consists of the Commission and high-level representatives of Member States, which also provide the Chairman (currently the United Kingdom, via OFCOM).

35 "digital convergence" refers to the power of digital media to combine voice, video, data, text, and money in new applications, devices and networks.

36 COM(2005) 204.

urgently to debate, and decide upon, the potential use of this “spectrum dividend”, bearing in mind both the objectives of a genuinely single market for equipment and services and spectrum flexibility according to local market demand and the deadline of 2012 for analogue switch-off. The Commission intends to play a leading role where the benefits of EU-wide coordination are evident and to seek the active collaboration of Member States. It notes that the Radio Spectrum Policy Group (RSPG) has thus far distinguished three categories of spectrum demands:

- Spectrum needed for the improvement of terrestrial broadcasting services: e.g. services with higher technical quality (notably HDTV), increased number of programmes and/or enhancement of TV experience (e.g. multi-camera angles for sports, individual news streams and other quasi-interactive options);
- Radio resources needed for “converged” broadcasting services which are expected to be primarily “hybrids” of traditional broadcast and mobile communication services; and
- Frequencies to be allocated to new “uses” which do not belong to the broadcasting family of applications. Some of these potential new “uses” of the spectrum dividend are future services and applications which are not yet marketed and others are existing ones which do not operate yet in these frequencies (e.g. extensions of 3G services, short range radio applications).

14.7 The Commission points to the importance of ensuring that the *regulatory treatment* to be given to the spectrum dividend complies with the EU framework for electronic communications services and is consistently applied across the EU.

14.8 On *harmonisation*, Member States and the Commission are urged to: confirm the benefits and feasibility of harmonising some frequency bands; analyse bands' characteristics in order to maximise their economic and social value; and develop a common strategy to support harmonisation.

14.9 Finally, noting that *the switchover to digital broadcasting* “is as much a political issue as it is a technical one” and that decisions taken at RRC-06 may significantly influence the transition process, the Commission calls on Member States to adopt a common position in the RRC negotiations to ensure that the end of the transition period will take place as close as possible to 2012.

The UK Position

14.10 In his 18 October Explanatory Memorandum, the Minister of State for Industry and the Regions (Mr Alun Michael) sets out the UK position as follows:

- “The UK is responsible for management of national spectrum assets. As a Member State however, it supports the importance of a common European Union policy for the establishment of an internal market.
- “The 15 September 2005 announcement confirmed that digital switchover will take place between 2008 and 2012 on a UK region-by-region basis as agreed by

broadcasters in consultation with Ofcom and the Government. The Government is platform and technology neutral in relation to the switchover scheme.

- "Ofcom estimated that in June 2005, 63% of homes (15.7 million) were already accessing digital television through all platforms. Further, Ofcom estimates indicate that, in addition to providing increased capacity through digital broadcasting, at least 112 MHz of spectrum could be released for new services as a result of UK switchover.

- "The UK is committed to the development of a flexible approach to spectrum management and the removal of constraints in the use of spectrum wherever possible. This will lower barriers to spectrum access, which will promote competitiveness and innovation. The UK considers that harmonisation can often have beneficial aspects but that it should be introduced with maximum flexibility and on a technology and application neutral basis. Any constraints on spectrum use which are imposed should be justified through an Impact Assessment".

14.11 He goes on to explain that, although the Secretary of State for Trade and Industry is ultimately responsible, spectrum policy is relevant for a wide range of government policy issues and is co-ordinated formally through the Cabinet Office UK Spectrum Strategy Committee, which includes Ofcom, as the regulator for the UK communications industries with responsibilities across television, radio, telecommunications and wireless communications services. He also notes that, since the Communications Act 2003 imposes a duty on Ofcom to secure the optimal use of the radio spectrum and to provide representation on behalf of Government at international meetings about communications, Ofcom not only represents the United Kingdom in the Radio Spectrum Policy Group, where it also currently holds the chairmanship, and in the ITU, but will also lead the UK delegation to RRC-06.

The Government's view

14.12 The Minister says:

- "The United Kingdom Presidency supports the need for flexible and responsive spectrum management policies and the need to promote innovation through an effective combination of flexibility and coordinated use of spectrum. However it is important to note the importance of ensuring that Community action provides benefit and does not act to stifle national innovation".

Conclusion

14.13 **The importance of the issues discussed in this document is self-evident. On 19 October we examined two related documents — the Commission Communications on "A market-based approach to spectrum management in the European Union" and on "A forward-looking Radio Spectrum Policy for the European Union: second annual report"[37] — both of which we considered relevant to the debate on the i2010 initiative**

37 see headnote.

that is to be held in European Standing Committee on 8 November 2005. We consider this further Communication likewise relevant.

14.14 **We now clear the document.**

15 EU-Palestinian Co-operation

(26934) 13521/05 COM(05) 458	Commission Communication: "EU-Palestinian cooperation beyond disengagement — towards a two-state solution"

Legal base	—
Document originated	5 October 2005
Deposited in Parliament	21 October 2005
Department	Foreign and Commonwealth Office
Basis of consideration	EM of 25 October 2005
Previous Committee Report	None
To be discussed in Council	7 November 2005 General Affairs and External Relations Council
Committee's assessment	Politically important
Committee's decision	Cleared

Background

15.1 The key elements of the international consensus on what a negotiated settlement of the Israel/Palestine conflict might look like build on Crown Prince Abdullah's initiative, adopted by the Arab League in Beirut on 28 March 2002, which offers full normalisation of relations between the Arab States and Israel, in the context of a final settlement. They include an end to occupation, the exchange of "land for peace" leading to a viable state of Palestine alongside the State of Israel, both secure and respected within recognised borders, as set out in UN Security Council Resolutions 242, 338 and 1397.

15.2 The path towards a renewed political process is through the Quartet (US, UN, EU, and Russia) Roadmap, a performance based plan leading to a final and comprehensive settlement to the conflict. The situation on the ground, however, has not been conducive to the Roadmap timetable, which envisaged completion by the end of 2005. But the successful conclusion of the Israeli disengagement from Gaza and parts of the northern West Bank on 15 September 2005 has given the process renewed impetus.

15.3 In anticipation of this, and recognising that the Palestinian Authority (PA) would need considerable support post-disengagement, the G8 meeting at Gleneagles in July 2005 welcomed and endorsed the approach presented by World Bank President James Wolfensohn, as the Quartet's Special Envoy for Disengagement, to support economic

regeneration and further Palestinian governance reform. The G8 Declaration supported his intention to stimulate a global financial contribution of up to $3bn per year over the coming three years. It called on domestic and international investors to be full partners to this process; pledged its own practical support for Mr Wolfensohn's efforts and looked forward to further development of his plans and their presentation to the Quartet and the international community in September; noted "the strong interest of Arab States and members of the Organisation of the Islamic Conference"; and encouraged them "to provide substantial additional support".

The Commission Communication

15.4 As well as being a member of the Quartet, the EU is currently the biggest donor to the Palestinians, providing around €500 million each year, over half of which comes from the EC budget and the remainder from bilateral EU Member State funding. The priorities set out in this Communication are based on the priorities of Mr Wolfensohn. The Commission's proposals are helpfully summarised in his 25 October 2005 Explanatory Memorandum by the Minister of State for Europe in the Foreign and Commonwealth Office (Mr Douglas Alexander):

> "The Special Envoy has presented six points or joint issues for the Israelis and the Palestinians to address in order to ensure the success of the disengagement plan and future engagement of the international donor community. These cover questions relating to border crossings, the West Bank/Gaza link, air and seaports, houses in the settlements, and the greenhouses in the settlements. In the context of agreements between Israel and the Palestinian Authority on these points, the Commission is making available support for customs operations at the border, and has provided resources for infrastructure which could be used for the sea or air ports.
>
> "Looking beyond the disengagement period, the Quartet Envoy has also presented three priorities on which the Palestinian Authority should focus: fiscal stabilisation, a medium-term development plan and job creation. The Commission is addressing these priorities through its contribution to the World Bank Public Financial Management Trust Fund, as this multilateral channel has proved to be the most efficient system in the current circumstances, as well as making available resources for quick-start projects.
>
> *Priorities for EU support*
>
> "As identified in the Commission Communication, the main institution-building priorities are already set out in the EU-Palestinian Authority European Neighbourhood Policy (ENP) Action Plan. This pays particular attention to establishing a functioning judiciary, effective enforcement of legislation and strengthening the rule of law; strengthening institutions and reinforcing administrative capacity and building on the progress already made in establishing an accountable system of public finances. These agreed priorities provide guidance for the Commission's financial assistance programme to the Palestinians.
>
> "The Commission Communication identifies that a key issue for the development of Palestinian authority is the question of political and economic viability of the future

state, with economic and political dimensions interlinked and inseparable. Political viability requires the strengthening of democratic institutions, proper control of the security situation, accountability, and the rule of law, respect for human rights and fundamental freedoms and a thriving civil society. Economic viability depends to a large extent on access to and from Gaza and the West Bank, movement within the West Bank, territorial contiguity and economic interaction with Israel. The Commission proposes action in the following areas:

Political Priorities

- Reinforcing legitimacy and accountability: Support to the electoral process
- Strengthening the rule of law: Assist Palestinian reform efforts in the judiciary; develop short-term strategy for consolidating the rule of law including the fight against corruption and organised crime
- Promoting respect for human rights and fundamental freedoms: Continue to address the issue of incitement in political dialogue with the PA, support civil society initiatives for human rights
- Improving security: Complement EU Special Representative's work on transformation of civil police
- Engaging civil society: Promote civil society initiatives in support of the Middle East Peace Process
- Making public administration more effective: Support Palestinian public administration reform efforts, including twinning
- Jerusalem: Develop a strategy of assistance for East Jerusalem
- Addressing the refugee issue beyond immediate humanitarian needs: Contribution to discussion on the future role of the United Nations Relief and Works Agency (UNRWA) for Palestine Refugees in the Near East

Economic priorities

- Developing bilateral and regional trade relations: Improve market access for Palestinian products; provide technical assistance; facilitate dialogue to overcome administrative and regulatory obstacles; develop scenarios for economic arrangements with Israel; and encourage integration of the Palestinian economy in the region
- Building up a customs administration: Provide support to customs administration; consider seconding experts; offer to provide third party presence
- Reconstructing and rehabilitating the West Bank and Gaza Strip: Provide funds for quick-start infrastructure projects; promote a renewed inflow of investment

- Creating the enabling environment for private sector investment: Assist Palestinian efforts to review legal framework
- Supporting the private sector: Work with the European Investment Bank (EIB) to combine loan and grant resources for private sector investment; provide assistance and training to SMEs to improve management capacity and performance
- Improving the management of public finances: Support Palestinian efforts to modernise revenue administration; provide assistance for further development of financial control
- Developing a knowledge-based economy: Examine options for support to rollout of broadband applications
- Addressing the social dimension: Contribute to social welfare programmes, in particular the World Bank's Social Safety net reform programme.

Facilitating Israeli-Palestinian Cooperation

"The Commission aims to establish a programme for energy cooperation with a view to enhancing joint security for energy supplies. In this context a joint energy office will be established and a commercial agreement should be reached dealing with electricity exchanges between both parties in compliance with international standards. A joint transport office is also in the process of being established between the parties covering transport infrastructure planning and the facilitation of transport of goods and persons.

"The Commission hopes for similar progress on trade issues. Such efforts should continue and be expanded to cover areas such as customs cooperation, environment, science and technology and as appropriate, issues relating to justice and home affairs. Use should also be made of the possibilities for regional cooperation in the context of the European Neighbourhood Policy between the PA, Israel and Jordan.

"As progress is made on Final Status issues, the Communication calls for the EU to be ready to commence negotiations on a full Association Agreement. In the interim, the Commission recommends consultation with both Israel and the PA to develop the EC Interim Association Agreement with the PLO (for the benefit of the Palestinian Authority) and to implement it more effectively. The EU should also continue to press for full recognition of the Interim Association Agreement by Israel.

Improving EU Effectiveness and Viability

"The Commission Communication calls for efforts and activities of the EU to be more visible, to strengthen political and reform messages. The Union should step up its efforts to present its messages in a co-ordinated manner.

"In order to coordinate Member States and Community resources more closely in support of the main policy objectives of the EU the Commission Communication calls for the establishment of a local Clearing House mechanism. It is hoped this will

> improve the effectiveness and visibility of EU assistance. This should include a regular flow of information on Community and bilateral plans and projects, facilitating planning and burden-sharing according to the specialist capacity of Member States and the Commission."

The Government's view

15.5 The Minister says that the Communication

> "is broadly in line with HMG thinking. Its recommendations correspond with the areas the Government believes the EU will be able to add value to Palestinian regeneration post-disengagement. The emphasis put on protecting the status of East Jerusalem, as well as the work co-ordinating a rule of law strategy with the Reform Support Group, is in line with HMG's approach. The proposal to increase EC funding by between €200 to €300 million a year is welcome, so long as the Commission draws up a clear plan for appropriate use of these funds and an assessment of their viability in the context of developments on the ground.
>
> "HMG supports, in principle, the creation of an EU Agency for Reconstruction. But we would not commit to this in the absence of a detailed proposal. The success of similar projects such as the EU Agency for Reconstruction in Kosovo, and the current difficulties in securing effective donor co-ordination, suggest that a new mechanism could play a useful role."

15.6 In commenting on the *Financial Implications*, the Minister says that the doubling of the international effort proposed by Mr Wolfensohn "will only be possible as a joint effort, with significant burden sharing, in particular on the part of the Arab states". The increase in support from the Community Budget of about €200-€300 million per year would need to be accompanied by an increase in Member State bilateral assistance. These resources would be targeted on the priorities set out in this paper, "addressing the objectives of fiscal sustainability, strengthening institutions and an improvement of the economic situation through increased investment". But "for these significant additional resources to have an impact on the economic situation in the West Bank and Gaza, meaningful progress in security and access policy needs to be achieved". The Commission will come back with further details on proposals for additional resources in the 2006 budget by early 2006 at the latest, taking into account progress on the Quartet Envoy's six point plan, more detailed plans from the Palestinians and "further consultations with the international community".

15.7 On the *Timetable*, the Minister says that, having been approved by the College of Commissioners on 5 October 2005, the Communication will next be discussed by EU Foreign Ministers at the 7 November General Affairs and External Relations Council, which is expected to endorse the objectives and priorities set out in this Communication as the basis of European Community action.

Conclusion

15.8 **We share the Minister's broad endorsement of the Commission's plans, and the essential caveats. The Commission correctly underlines the inextricable linkage between economic and political progress; so too the Minister, when he says that**

"meaningful progress in security and access policy needs to be achieved" for this additional support to have the desired impact. Plainly, as with the Roadmap itself, whether the Commission will be able to put forward detailed proposals in some months' time will depend utterly on developments on the ground. It goes without saying that we hope that, when we come to scrutinise any detailed proposals, it will be sooner rather than later, and because this partial disengagement has engendered the right response, including from the rest of the international community, and not renewed violence.

15.9 **We now clear the document.**

16 EU assistance to the Palestinian Territories

(26957) —	Joint Action on the European Union Police Mission for the Palestinian Territories

Legal base	Articles 14, 25, 26, and 28(3) TEU; unanimity
Department	Foreign and Commonwealth Office
Basis of consideration	EM of 27 October 2005
Previous Committee Report	None
To be discussed in Council	7 November General Affairs and External Relations Council
Committee's assessment	Politically important
Committee's decision	Cleared

Background

16.1 An EU Co-ordinating Office for Palestinian Police Support (EU COPPS) was established in January 2005 within the office of the EU Special Representative (EUSR) to the Middle East Peace Process.[38] It currently consists of four police advisers seconded and funded by Sweden, Denmark, the United Kingdom and Spain and a local office manager based in the PNA Ministry of Interior in Ramallah, a liaison office in Jerusalem and a forward office in the Palestinian Police HQ in Gaza. Non-personnel related start-up and running costs for EU COPPS are funded by the UK Department for International Development until 31 December 2005.

38 EU Special Representatives (EUSR) are appointed to represent Common Foreign and Security Policy where the Council agrees that an additional EU presence on the ground is needed to deliver the political objectives of the Union. The aim of the EUSRs is to represent the EU in troubled regions and countries and to play an active part in promoting the interests and the policies of the EU. There are currently seven EUSRs in different regions of the world.

The draft Joint Action

16.2 At the 18 July GAERC, EU Foreign Ministers discussed the possibility of an ESDP mission to build on the work that the EU COPPS is undertaking. The draft Joint Action reflects the preparatory work by the Council Secretariat, including an earlier fact-finding mission under the guidance of the Political and Security Committee (PSC).[39] The plan currently under consideration would see the ESDP mission build on the current EU-COPPS police support mission with staff increasing to 33. The mission, which would continue to be known as EU-COPPS, would be expected to launch on 1 January 2006, with a three-year mandate.

16.3 In his 27 October Explanatory Memorandum, the Minister of State for Europe in the Foreign and Commonwealth Office (Mr Douglas Alexander) says that the aim of this "measured increase over the [current] EU-COPPS mission" is to "contribute to the establishment of sustainable and effective policing arrangements under Palestinian ownership, in cooperation with the European Community's wider institution building programmes as well as other international efforts in the context of justice reform". It would support both institutional change and capacity-building of the Palestinian police "together with wider Rule of Law elements with aim of creating an effective Palestinian police force". In particular, the Mission would:

- assist the Palestinian Civil Police in implementation of the Police Development Programme by advising and closely mentoring the Palestinian Civil Police, and specifically senior officials at District, Headquarters and Ministerial level;
- co-ordinate and facilitate EU Member State assistance, and — where requested — international assistance to the Palestinian Civil Police; and
- advise on police-related Criminal Justice elements.

16.4 The Minister adds that:

- "The security situation will be closely monitored by the mission in co-ordination with the Council Secretariat. The mission will apply specific minimum security standards that are being developed by the Council Secretariat's Security Office. The Palestinian Authority will also be required to take necessary and appropriate measures to ensure the security of the mission members. Additionally mission personnel will undergo mandatory security training organised by the Council Security Office.
- "EU COPPS has been established in full partnership with the Palestinian Authority. Since its inception, EU COPPS has closely co-ordinated with the US Security Co-ordinator General Ward. EU COPPS has worked in full transparency with Israeli Authorities. Where required, political consultations and technical co-ordination have been held, on a regular basis, with relevant Israeli interlocutors.

39 The committee of senior officials from national delegations who, under article 25 of the EU Treaty, monitor the international situation in areas covered by the CFSP and, under the general responsibility of the Council, exercise political control and strategic direction of crisis management operations.

- "Mission personnel will be seconded by EU Member States together with other third county contributors. The current Head of Mission (HoM) of EU-COPPS is Jonathan McIvor (UK). Staff for the ESDP mission have yet to be appointed but we will be looking to see how the UK can best contribute once job descriptions have been confirmed. To ensure effective coordination with other EU actors on the ground the mandate of the EUSR is being amended to take account of the new ESDP mission. The EUSR is expected to give guidance to the Head of Mission/Police Commissioner".

16.5 As is customary with ESDP missions, control of the mission will come under the responsibility of the Council, with political control being exercised by the PSC.

The Government's view

16.6 The Minister says:

- "Our objective has been to find a way to continue Palestinian policing support with greater EU support and funding.
- "The ESDP proposal envisages a three year mandate, longer than normal, but we consider this is necessary if the EU is to support the Palestinian's comprehensive Police Development Programme (PDP). The PDP, developed jointly by EU COPPS and the Palestinian Police, is divided into longer term institutional change work and shorter term capacity building elements and is designed to support the development of a transparent and accountable Palestinian police force with the capacity to fulfil an effective and robust role. The commitment of the ESDP mission to the PDP will ensure continuity with EU COPPS earlier work.
- "The proposals recognise that close cooperation with wider international efforts, including the European Commission's institution building work, will be essential to the success of the EU follow-on ESDP mission.
- "More widely, the mission reflects our desire to support the Palestinian Authority in complying with its Roadmap-obligations, in particular with regard to 'security' and 'institution-building'. In parallel the support of the EU also aims to increase the safety and security of the Palestinian population and support the Palestinian Authority in reinforcing the rule of law".

16.7 On the *Financial Implications*, the Minister explains that funding for Common Costs (HQ, in-country transport, office equipment, etc.) for 2006 is expected to be in the region of €6.1 million (£4.16 million), which will be met from the CFSP budget, to which the UK contributes approximately 17% (€1.04 million, £0.707 million); and that the cost of any UK policing expertise contributed to the mission would come from the Whitehall Peacekeeping Budget, "which is a call on the Treasury's central contingency reserve".

Conclusion

16.8 **We consider elsewhere in this Report a Commission Communication on "EU-Palestinian Co-operation beyond disengagement — towards a two-stage solution",**

which examines more broadly how the EU might best contribute to the impetus given to the Middle East Peace Process by Israeli disengagement from Gaza and parts of the northern West Bank settlements.[40] In the meantime, we are content with the current proposal, which seems both sensible and well-prepared, and are reporting it to the House in view of the widespread interest in both European Security and Defence Policy and the Peace Process.

16.9 **We now clear the document.**

17 Economic and Monetary Union

(26801) 11857/05 COM(05) 357	Draft Regulation amending Regulation (EC) No 974/98 on the introduction of the euro

Legal base	Article 123(4); —; QMV (of those Member States in the eurozone)
Document originated	2 August 2005
Deposited in Parliament	6 September 2005
Department	HM Treasury
Basis of consideration	EM of 3 October 2005
Previous Committee Report	None
To be discussed in Council	Not known
Committee's assessment	Politically important
Committee's decision	Cleared

Background

17.1 Under the terms of their accession treaties the ten Member States which joined the Community in 2004 are expected to adopt the euro as their currency. Some have indicated their wish to join as soon as January 2007. However, the Regulation governing the introduction of the euro was designed for the current eurozone countries. It includes specific dates that would not be applicable to future entrants and the changeover arrangements for possible future entrants to the eurozone would also be different. So the existing Regulation needs revision to provide a proper legal framework for Member States to join the single currency.

40 Paragraph 16 of this Report.

The document

17.2 This document is a draft Regulation to amend Regulation (EC) 974/98, which currently governs introduction of the euro. The draft would remove existing dates and allows for three possible changeover scenarios:

- a process of transition under which euro services would be introduced in phases with euro notes and coin being issued at the end of the transition phase. This is the approach that was used for existing eurozone Member States;
- a scenario in which euro services including notes and coin would be introduced at the same time. This is the approach favoured by most new Member States; and
- the second scenario but with a phasing out period. Under this approach euro services including notes and coin would be introduced at the same time, but the use of national currency for some transactions, such as legal instruments, would be allowed for a further specified period.

17.3 The intention is to have the present Regulation adjusted so that when a Member State was entering the euro area its preferred timetable and chosen changeover scenario would be added to the Regulation's Annex by a further amendment.

The Government's view

17.4 The Economic Secretary to the Treasury (Mr Ivan Lewis) reminds us that the Government's policy on membership of the single currency is unchanged. He repeats the substance of this in familiar terms. He notes that, if it is decided to join the single currency, the draft Regulation would apply to the UK and that it includes the Government's preferred approach of a "managed transition" for a changeover.

17.5 The Minister also tells us that although Article 123(4) EC is the legal base proposed for the draft Regulation some Member States consider that it should be Article 123(5) EC. The former would require a qualified majority of Member States without a derogation, the latter unanimity. In neither case would the UK have a vote.

17.6 The Minister says the proposal itself respects the principles of subsidiarity. But he notes that a provision relating to bank obligations to exchange national notes and coin free of charge marginally fails the subsidiarity and proportionality tests.

Conclusion

17.7 **We note that the Government has no voting rights on this document and clear it. However we observe that if the UK were joining the eurozone it would be covered by the proposed legislation. We assume therefore that the Government will be lobbying the Member States who do have voting rights about the subsidiarity and proportionality matters he mentions to us.**

18 Statistics

(a) (26419) 6924/05 COM(05) 71	Draft Regulation amending Regulation (EC) No. 3605/93 as regards the quality of statistical data in the context of the excessive deficit procedure
(b) (26595) 9461/05 COM(05) 217	Commission Communication on the independence, integrity and accountability of the national and Community statistical authorities Commission Recommendation on the independence, integrity and accountability of the national and Community statistical authorities

Legal base	(a) Article 104(14) EC; consultation; QMV (b) Article 211 EC; —; —
Department	(a) Office of National Statistics (b) HM Treasury
Basis of consideration	Minister's letter of 27 October 2005
Previous Committee Report	(a) HC 38-xv (2004-05), para 8 (6 April 2005) (b) HC 34-ii (2005-06), para 5 (13 July 2005)
To be discussed in Council	8 November 2005
Committee's assessment	Politically important
Committee's decision	Cleared, but further information requested

Background

18.1 In 2004 Greek budgetary statistics underwent significant revisions. Earlier this year the previous Committee considered Commission Communications about issues arising from that situation, the second of which discussed possible improvements in the production of fiscal statistics and outlined some related proposals.[41] The previous Committee also considered the draft Regulation in document (a), which is designed to address both the quality of statistical data used in the context of the Excessive Deficit Procedure[42] and the operational capacity of the Commission — two of the areas in which the Commission had proposed action. The Committee echoed the Government in saying it regarded the proposed legislation as a disproportionate response to the problem, which breached the principle of subsidiarity, and urged the Government to resist strongly the adoption of the proposal. It also suggested that the Government demand of the Commission the impact assessment required for this sort of proposal.[43]

18.2 In July 2005 we ourselves considered the Communication and Recommendation in document (b), in which the Commission addressed a third area for action — establishing

41 (26193) 15553/04 + ADD 1; see HC 38-iv (2004-05), para 15 (19 January 2005) and (26253) 5049/05; see HC 38-vii (2004-05), para 12 (2 February 2005).

42 Action, in relation to the Stability and Growth Pact, under Article 104 EC and the relevant Protocol on an excessive government deficit.

43 See headnote.

Europe-wide standards to reinforce the independence, integrity and accountability of national statistical authorities. The Communication:

- reports on a code of practice drawn up by a task-force of statisticians and endorsed by the Statistical Programme Committee (an advisory body composed of representatives of the statistical institutes of Member States and chaired by the Commission). The code establishes 15 principles to be applied in the production of Community statistics and proposes a number of indicators for considering whether these principles have been fulfilled. It is to apply not only to national statistical institutes but also to Eurostat;

- makes a case for a high-level advisory body to assist the Commission in monitoring implementation of the code of practice; and

- makes a case for a rebalancing of statistical priorities.

18.3 In its Recommendation the Commission asks Member States to adopt the code of practice as a self-regulatory instrument to be monitored through a peer-review process. The Recommendation also records the Commission's decision to apply the code to Eurostat and its intention to consider further the proposal for a high-level advisory body, possibly in the shape of a reformed European Advisory Committee on Statistical Information in the Economic and Social Spheres (CEIES).[44] We commented that the code of practice seems unexceptional. But before considering the document further we asked to hear about the outcome of the Council's consideration of the proposal for a high-level advisory body, particularly in relation to the subsidiarity principle.[45]

The Minister's letter

18.4 The Financial Secretary to the Treasury (Mr John Healey) writes now to inform us of developments on both these documents. He says that there has been discussion recently which has lead to the proposals, as amended, in the two documents being now a package which is a significant improvement on the Commission's original proposals.

18.5 On the draft Regulation in document (a) the Minister tells us that given the overwhelming majority of Member States favoured legislation — but were concerned to ensure that any new powers were clearly defined and limited in scope — the Government decided that it should focus its energy on working with like-minded Member States to ensure the proposed Regulation met its concerns on substance, in other words seek to achieve a more proportionate, albeit legislative, outcome. He says negotiations have agreed on a text that provides that

- methodological visits (originally referred to as "in-depth monitoring visits") should only be undertaken by Eurostat in cases where it identifies substantial risks or potential problems with the methods, concepts and classifications applied to a Member State's data; and

44 CEIES was established in 1991 "to assist the Council and the Commission in the coordination of the objectives of the Community's statistical information policy, taking into account user requirements and the costs borne by the information producers".

45 See headnote.

- such visits should not go beyond the purely statistical domain.

18.6 In limiting the scope of the Regulation to statistical methodology, rather than an investigation into the underlying data, the scope of the new Eurostat powers has also been limited significantly. The amendments have considerably reduced the likelihood of the UK ever being subject to a methodological visit. The Minister says the Government is pleased that the limits are to be enshrined in the body of the Regulation rather than in a less forceful Ministerial declaration. He concludes that given the improvements to the original Commission proposal the Government now believes that legislative action in this area is acceptable.

18.7 As for document (b) the Minister tells us that the ECOFIN Council is likely to endorse a consensus among the 25 Member States that, if a high-level advisory body were to be set up:

- its role should be limited to monitoring Eurostat in the fulfilment of its mission and its professional independence, rather than the whole European Statistical System (which also embraces national statistical institutes);
- it should be small, with its chair selected by the Council; and
- the CEIES should be reformed separately, and it should not be replaced by the new body.

18.8 In relation to suggestions as to a rebalancing of statistical priorities in document (b) the Minister says the Government has argued in negotiations that, if Eurostat is to receive any additional powers, there should also be a substantial reduction on the administrative burden on national statistical institutes, as well as on providers of data. Following the ECOFIN Council's view that work on this matter needs to be accelerated draft conclusions have been negotiated which would set a deadline of December 2005 for Eurostat to provide an update on progress, and July 2006 to deliver results. He says that this increases the pressure on Eurostat, which has the right of initiative with respect to statistical Regulations, to cut back burdens that are no longer necessary.

18.9 The Minister tells us that there is likely to be a consensus, which the Government would join, in the ECOFIN Council in favour of adopting the draft Regulation in document (a) on 8 November 2005. He adds that the ECOFIN Council will take no formal decisions then on the other aspects of the statistics package.

Conclusion

18.10 **We accept that there has been such considerable improvement in the content of the draft Regulation in document (a) as to warrant the Government supporting this measure, as no longer disproportionate nor a compromise of the subsidiarity principle and we clear the document. We note also the progress that has been made in relation to document (b), again particularly in relation to a high-level advisory body and its threat to the subsidiarity principle, and clear this document too.**

18.11 **However we note in relation to document (a) that the Minister makes no reference to the previous Committee's suggestion that the Government demand of the**

Commission the impact assessment required for this sort of proposal. We should like to hear from the Minister what action was taken on this and what the Commission's response was.

19 Stability and Growth Pact

(a) (26677) 10605/05 SEC(05) 834	Draft Opinion in accordance with Article 5(3) of Regulation (EC) No. 1466/97 of 7 July 1997 on the updated stability programme of Portugal, 2005-2009
(b) (26791) 10801/05 SEC(05) 887	Draft Decision on the existence of an excessive deficit in Italy: Application of Article 104(6) of the Treaty establishing the European Community
(c) (26792) 11282/05 SEC(05) 951	Commission Communication: The action taken by Hungary in response to the Council Recommendation of 8 March 2005 according to Article 104(7) under the excessive deficit procedure
(d) (26793) 11478/05 + REV 1 SEC(05) 992	Draft Decision on the existence of an excessive deficit in Portugal prepared in accordance with Article 104(6) of the Treaty
(e) (26794) 11480/05 SEC(05) 994	Draft Council Recommendation to Portugal with a view to bringing an end to the situation of an excessive government deficit
(f) (26936) 11124/05 —	Draft Council Recommendation to Italy with a view to bringing an end to the situation of an excessive government deficit – application of Article 104(7) of the Treaty establishing the European Community

Legal base	(a) Articles 99(4) and 104 EC; —; QMV (b) and (d) Article 104(6) EC; —; QMV (c), (e) and (f) Article 104 (7) EC; —; QMV
Documents originated	(a) 22 June 2005 (b) 29 June 2005 (c) 13 July 2005

	(d) 20 July 2005
	(e) 20 July 2005
Deposited in Parliament	(a) 1 July 2005
	(b)-(e) 2 September 2005
	(f) 24 October 2005
Department	HM Treasury
Basis of consideration	(a) EM of 3 October 2005
	(b)-(e) EM of 3 October 2005
	(f) EM corrigendum of 21 October 2005
Previous Committee Report	None
Discussed in Council	(a), (b) and (f) Adopted by ECOFIN 12 July 2005
	(c) Not known
	(d) and (e) Adopted by ECOFIN 29 September 2005
Committee's assessment	Politically important
Committee's decision	Cleared

Background

19.1 In the context of the Stability and Growth Pact adopted by the Amsterdam European Council in June 1997, the Council of Economic and Finance Ministers (ECOFIN) issues an Opinion each year on the stability or convergence programme of each Member State.[46] These Opinions, which are not binding on Member States, are based on a recommendation from the Commission. The economic content of the programmes is assessed with reference to the Commission's current economic forecasts. If a Member State's programme is found wanting, it may be invited by ECOFIN, in a Recommendation, to make adjustments to its economic policies, though such Recommendations are likewise not binding on Member States.

19.2 The Stability and Growth Pact emphasised the obligation of Member States to avoid excessive government deficits, defined as the ratio of a planned or actual deficit to gross domestic product (GDP) at market prices in excess of a "reference value" of 3%.[47] The Pact also endorsed action in cases of an excessive government deficit — the excessive deficit procedure provided for in Article 104 EC and the relevant Protocol. This procedure consists of Commission reports followed by a stepped series of Council Recommendations (the final two steps do not apply to non-members of the eurozone). Failure to comply with the final stage of Recommendations allows the Council to require publication of additional information by the Member State concerned before issuing bonds and securities, to invite the European Investment Bank to reconsider its lending policy for the Member State concerned, to require a non-interest-bearing deposit from the Member State concerned whilst its deficit remains uncorrected, or to imp ose appropriate fines on the Member State concerned.

46 The twelve Member States that have adopted the euro have Stability Programmes, whereas the other 13 Member States (UK, Denmark and Sweden and the ten new Member States) produce Convergence Programmes.

47 This obligation does not apply to the UK whilst it remains outside the eurozone, but the UK is required to endeavour to avoid excessive deficits.

The documents

19.3 Document (a) provides the Council's Opinion on the stability programme of Portugal, which is assessed in relation to the Commission's Spring 2005 economic forecasts. (Our predecessors have already reported on the Opinions for 23 Member States and we reported on that for Greece in July 2005.)[48] A summary of the Council's comments for Portugal is provided by the Economic Secretary to the Treasury (Mr Ivan Lewis) in his helpful Explanatory Memorandum, as follows:

> "The Council Opinion notes that the Programme is built around the need to correct a government deficit, which at 6.2% of GDP in 2005 is planned to be well in excess of 3% of GDP. This figure follows a deficit of 2.9% of GDP in years 2002 to 2004. The deterioration is explained by weaker than expected growth, reassessment of expenditure growth, over-runs compared to the budget and the non-introduction of one-off measures planned in the previous Programme, as well by a corrective package of some 0.6% of GDP adopted by the new government in June 2005.
>
> "The Opinion notes that the general government deficit is projected to decline to 4.8% of GDP in 2006, 3.9% in 2007 and 2.8% in 2008. In the early part of the Programme period, consolidation is relying mainly on increasing revenues, through higher tax rates, lower tax credits and improved tax collection. In the outer years, the increased contribution from expenditure restraint is foreseen to come from measures of a permanent nature, such as the reform of the public administration, containment of the wage bill and changes in the social security retirement schemes.
>
> "The Opinion also notes that the budgetary outcome in the Programme is subject to several risks. First, the acceleration in economic activity may be slower than expected. Second, the revenue raising and expenditure restraining measures may be less effective than projected or take longer to produce the desired results. In view of this assessment the government might be called to fulfil its commitment to take additional measures in order to avoid the deficit exceeding 3% of GDP for longer than planned. The Opinion goes onto note that the Programme is insufficient to ensure that the Stability and Growth Pact's medium-term objective of a budgetary position of close to balance is achieved within the Programme horizon.
>
> "The Programme projects that after reaching 66.5% of GDP in 2005; it will peak at 67.8% of GDP, declining thereafter until it reaches 64.5% in 2009. The evolution of gross debt suffers from the same risks as the fiscal plus debt-increasing stock flow adjustments, in particular the accumulation of financial assets. With regard to the long-term sustainability of the public finances, the Opinion notes that Portugal appears to be at risk on grounds of the projected budgetary cost of an ageing population.

48 See (26300) 5254/05 (26301) 5255/05 (26302) 5260/05 (26303) 5261/05 (26304) 5262/05: HC 38-viii (2004-05), para 11 (10 February 2005), (26367) 6082/05 (26368) 6083/05 (26369) 6084/05 (26370) 6085/05 (26371) 6086/05 (26372) 6087/05 (26373) 6088/05 (26374) 6089/05 (26375) 6090/05 (26376) 6091/05 (26377) 6092/05: HC 38-xi (2004-05), para 13 (15 March 2005), (26409) 6634/05 (26410) 6636/05 (26411) 6637/05 (26412) 6638/05 (26413) 6639/05 (26414) 6640/05 (26415) 6641/05: HC 38-xv (2004-05), para 17 (6 April 2005) and (26483) 7805/05: HC 34-i (2005-06), para 54 (4 July 2005).

> "The Opinion notes that in the light of the deficit and debt figures for 2005 and following years presented in Programme, the Commission initiated the excessive deficit procedure for Portugal on 22 June."

19.4 Documents (d) and (e) concern the excessive deficit procedure for Portugal flowing from document (a). In the first document the Commission proposes that the Council adopt a Decision that an excessive deficit exists in Portugal. In the second it presents to the Council a draft Recommendation to Portugal that establishes a deadline of six months for it to present corrective action and until 2008, at the latest, to bring its excessive deficit to an end. It recommends a reduction in the deficit of 1.5% of GDP in 2006 from the 2005 level, followed by a further decrease of at least 0.75% of GDP in each of the two subsequent years.

19.5 Documents (b) and (f) concern the excessive deficit procedure for Italy. In the first document the Commission proposes that the Council adopt a Decision that an excessive deficit exists in Italy. In the second it presents to the Council a draft Recommendation to Italy that establishes a deadline of six months for it to present corrective action and until 2007 to bring its excessive deficit to an end. It recommends a reduction in the deficit of 1.6% of GDP in 2006 and 2007 from the 2005 level, with at least half the correction in 2006.

19.6 Document (c) is a Commission assessment of Hungary's response to a Council Recommendation of March 2005 to deal with its excessive deficit.[49] The Commission finds that the Hungarian authorities had taken effective action regarding the 2005 budget deficit, in line with the Council advice. But achieving the deficit target of 3.6% of GDP in 2005 may require further action and important and decisive adjustments will be needed to cut it further to 2.9% in 2006.

The Government's view

19.7 On document (a) the Minister comments, as his predecessor did on previous Opinions, that the Government supports a prudent interpretation of the Stability and Growth Pact, which takes into account the economic cycle, sustainability and the role of public investment. On the other documents he comments that they have no direct policy implications for the UK.

Conclusion

19.8 **We clear these documents, but, as with earlier documents, draw them to the attention of the House as background information on the operation of the Stability and Growth Pact and on the economies of other Member States.**

49 See (26418) 6599/05: HC 38-xv (2004-05), para 16 (6 April 2005).

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

Department for Environment, Food and Rural Affairs

(26923) 13309/05 COM(05) 478	Draft Council Regulation amending Regulation (EC) No. 27/2005, as concerns herring, Greenland halibut and octopus.
(26940) 13487/05 COM(05) 502	Draft Council Regulation concerning the conclusion of the Partnership Agreement between the European Community and the Federated States of Micronesia on fishing in the Federated States of Micronesia.

Foreign and Commonwealth Office

(26942) — —	Council Joint Action on the mandate of the European Union Special Representative for the Middle East peace process.
(26943) — —	Council Decision extending and amending Decision 1999/730/CFSP with a view to a European Union Contribution to combating the destabilising accumulation and spread of small arms and light weapons in Cambodia.
(26944) — —	Council Decision implementing Council Joint Action 2005/556/CFSP appointing a Special Representative of the European Union for Sudan.
(26945) — —	Council Decision implementing Joint Action 2005/557/CFSP on the European Union civilian-military supporting action to the African Union mission in the Darfur region of Sudan.

Home Office

(26860) 12467/05 COM(05) 426	Draft Council Decision concerning the signing, on behalf of the European Community, of Council of Europe Convention No. 198 on laundering, search, seizure and confiscation of the proceeds from crime and on the financing of terrorism.

Department of Trade and Industry

(26736) 11341/05 COM(05) 312	Commission Report — Development and implications of patent law in the field of biotechnology and genetic engineering.

Formal minutes

Wednesday 2 November 2005

Members present:

Mr Jimmy Hood, in the Chair

Mr David S Borrow
Mr Michael Connarty
Wayne David
Jim Dobbin

The Committee deliberated.

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 20 read and agreed to.

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

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

The Committee further deliberated.

[Adjourned till Wednesday 9 November at 2.30 p.m.

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

Jimmy Hood MP (*Labour, Lanark and Hamilton East*) (Chairman)
Richard Bacon MP (*Conservative, South Norfolk*)
David S. Borrow MP (*Labour, South Ribble*)
William Cash MP (*Conservative, Stone*)
Michael Connarty MP (*Labour, Linlithgow and East Falkirk*)
Rosie Cooper MP (*Labour, West Lancashire*)
Wayne David MP (*Labour, Caerphilly*)
Jim Dobbin MP (*Labour, Heywood and Middleton*)
Michael Gove MP (*Conservative, Surrey Heath*)
Nia Griffith MP (*Labour, Llanelli*)
David Hamilton MP (*Labour, Midlothian)*
David Heathcoat–Amory MP (*Conservative, Wells*)
Lindsay Hoyle MP (*Labour, Chorley*)
Angus Robertson MP (*SNP, Moray*)
Anthony Steen MP (*Conservative, Totnes*)
Richard Younger–Ross MP (*Liberal Democrat, Teignbridge*)