



House of Commons

European Scrutiny Committee

Thirty-fifth Report of Session 2005–06

Documents considered by the Committee on 12 July 2006



House of Commons
European Scrutiny Committee

Thirty-fifth Report of Session 2005–06

Documents considered by the Committee on 12 July 2006

Report, together with formal minutes

*Ordered by The House of Commons
to be printed 13 July 2006*

HC 34-xxxv
Published on 19 July 2006
by authority of the House of Commons
London: The Stationery Office Limited
£0.00

Notes

Numbering of documents

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

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

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

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

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

Abbreviations used in the headnotes and footnotes

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

Euros

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

Further information

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

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

Contacts

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

Contents

Report		<i>Page</i>
Documents not cleared		
1	DCA (27608) Termination of the EC USA agreement on the processing and transfer of passenger name data	3
2	DEFRA (27631) (27632) (27633) (27634) (27635) (27636) (27637) (27638) Approval of agricultural pesticides	7
3	DH (27626) (27624) Prevention of injuries and promotion of safety	10
4	DTI (25873) (27581) Financing of Trans-European Networks	14
5	HO (27408) Uniform format for residence permits for third-country nationals	17
6	HO (26453) (27615) Taking previous convictions into account in new criminal proceedings	23
7	HO (27250) (27614) Schengen Information System	27
Documents cleared		
8	DTI (27570) European Information Society	31
9	DTI (26881) (27647) EC research and development: the Ideas programme for 2007-13	35
10	FCO (25615) (27628) Comitology Reform	37
11	FCO (27653) (27654) (27655) EC External Action — new instruments for co-operation	41
12	FC (27603) EU Forest Action Plan	49
Documents not raising questions of sufficient legal or political importance to warrant a substantive report to the House		
13	List of documents	52
Formal minutes		54
Standing order and membership		55

1 Termination of the EC USA agreement on the processing and transfer of passenger name data

(27608) Commission Communication: *Termination of the Agreement*
 10613/06 *between the European Community and the United States of*
 COM(06) 335 *America on the processing and transfer of PNR data by air carriers to*
the United States Department of Homeland Security, Bureau of
Customs and Border Protection

<i>Legal base</i>	—
<i>Document originated</i>	16 June 2006
<i>Deposited in Parliament</i>	23 June 2006
<i>Department</i>	Constitutional Affairs
<i>Basis of consideration</i>	EM of 6 July 2006
<i>Previous Committee Report</i>	None; but see 7571/04 (25470): HC 42–xviii (2003–04), para 5 (28 April 2004)
<i>To be discussed in Council</i>	No date set
<i>Committee’s assessment</i>	Legally and politically important
<i>Committee’s decision</i>	Not cleared: further information requested, but notice of termination of the Agreement may be given pending scrutiny

Background

1.1 Following the attacks on New York and Washington on 11 September 2001, the United States passed legislation requiring airlines flying to, from, or over the United States to provide the United States Bureau of Customs and Border Protection with electronic access to information held by airlines on their passengers. The data is contained in automated reservation and departure control systems, known as Passenger Name Records (PNR). Since the adoption of the legislation by the United States, a number of airlines have been making PNR data available to the Bureau of Customs and Border Protection in the US Department of Homeland Security.

1.2 In June 2002 the Commission informed the US authorities of its view that the requirements imposed by US law could conflict with the obligations assumed by Member States under the Data Protection Directive¹ and with some provisions of Council Regulation (EEC) No. 2299/89 on a code of conduct for computerised reservation systems.² On 23 February 2004 the Council authorised the Commission to negotiate an agreement with the United States which would contain data protection undertakings and allow the Commission to make a finding under Article 25(6) of the Data Protection Directive (an ‘adequacy decision’) that the United States ensured an adequate level of protection so as to permit the transfer of personal data from a Member State to a third-country,

1 Directive 95/46/EC. OJ No. L 281, 23.11.1995, p.31.

2 OJ No. L 220, 29.7.1989, p.1.

notwithstanding the restrictions in Article 25. Council Decision 2004/496/EC³ approved the text of the agreement negotiated between the Commission and the United States and provided for its conclusion by the European Community.

1.3 The agreement provided for access by the Bureau of Customs and Border Protection (CBP) to PNR data from air carriers' reservation/ departure control systems located within the territory of the Member States. The CBP undertook to use PNR data strictly for the purpose of preventing terrorism and related crimes and other serious transnational crime, to treat PNR data as confidential, to limit access to such data by other US Government agencies and not to use sensitive personal data. The CBP also undertook to process PNR data and to treat data subjects in accordance with applicable US laws and constitutional requirements without unlawful discrimination, in particular on the basis of nationality or country of residence.

1.4 The European Parliament brought proceedings for annulment of the Commission's 'adequacy decision' and of Council Decision 2004/496/EC. In its judgment of 30 May 2006⁴ the ECJ annulled the Commission's decision on the grounds that the processing of data in issue concerned public security and the activities of the Member States in relation to criminal law, and therefore did not fall within the scope of the Directive. The Court also annulled the Council Decision as not being properly based on Article 95 of the EC Treaty. The ECJ also stated that Article 95 EC could not justify Community competence to conclude the US agreement.

1.5 The ECJ noted that the European Community could not rely on its internal law as a reason for not fulfilling the obligations assumed towards the United States under the agreement. The agreement provided for termination on 90 days' notice by either side, but during such a period the agreement would remain applicable. The ECJ considered that "for reasons of legal certainty and in order to protect the persons concerned" it was justified to preserve the effect of the Commission's adequacy decision for the period of notice under the agreement with the United States.

The Commission's communication

1.6 The communication from the Commission addresses the consequences for the agreement with the United States of the ruling by the ECJ. It recounts the history of the matter and describes the judgment of the ECJ, noting that by virtue of Article 233 EC the institution or institutions whose act has been declared void has a duty to take the necessary measures to comply with the judgment of the ECJ. The communication notes that the ECJ discussed the consequences of its annulment of the Council and Commission Decisions in the light of the principle of public international law that internal law cannot be invoked as a reason for not complying with an international obligation.

1.7 To resolve the conflict of obligations, the communication recommends that the Council and the Commission act together to give the United States notice of termination of

3 OJ No. L 183, 20.5.2004, p.83.

4 Case No C-317, 318 *European Parliament v. Council*, judgment of 30 May 2006.

the agreement, in accordance with its terms. A draft letter is attached to the communication, the effect of which is to terminate the agreement on 30 September 2006.

The Government's view

1.8 In her Explanatory Memorandum of 6 July 2006 the Parliamentary Under-Secretary of State at the Department for Constitutional Affairs (Baroness Ashton of Upholland) states that it is necessary for the European Community to terminate the agreement with the United States in order to comply with the judgement of the ECJ. The Minister adds that “it has been agreed by the Council that the existing Agreement will be replaced by a new one”, and that the new agreement will be in substantially the same terms. The Minister further explains that the new agreement will be drawn up under the third pillar (i.e. the EU Treaty) rather than the EC Treaty “in order to address the ECJ’s objections to the invalid legal base of the existing Agreement”.

1.9 The Minister makes the following additional comments on the effect of the ECJ judgment on the relevant law of the United Kingdom and the means of giving effect to any new Agreement in domestic law:

“It has ... been necessary to identify a means of implementing the new Agreement under UK law. It would appear likely at this stage that Article 13 of the Chicago Convention of 1944 would allow the UK to introduce secondary legislation, via an Air Navigation Order and section 60(2) of the Civil Aviation Act 1982, providing for the passing of certain elements of passenger information to the United States from UK air carriers or the UK Government. This approach would satisfy requirements in the Data Protection Act 1998.

“An Air Navigation Order would be an Order in Council. It has been proposed that an emergency Privy Council Office meeting be called for early September because it is not possible to draft an Order in advance of the next meeting on 19 July; the following meeting is scheduled for 10 October, after the deadline of 30 September.

“It will also be helpful to have a clearly identified legal base under UK law for the transfer of PNR data in the event that the EU-US Agreement is not completed before the current Agreement expires on 30 September. While the ECJ judgment would not prevent the UK carriers from transferring PNR data under UK law, a clearly identified legal base would offer clarity to both airlines and passengers.”

Conclusion

1.10 It is plainly necessary for notice of termination of the agreement to be given to the United States, following the judgment of the ECJ, so that the European Community can avoid a breach of its international obligations.

1.11 We find the arguments that a new instrument is necessary at EU level to be less than convincing. We note the Minister’s comment that the ECJ judgment “would not prevent the UK carriers from transferring PNR data under UK law”, and that measures could be adopted under the Civil Aviation Act 1982 to satisfy the requirements of the Data Protection Act 1998. From these comments it appears that no instrument is

required at EU level to permit domestic measures to make lawful the transfer of data by UK based carriers. On the other hand, the Minister states that “it will also be helpful to have a clearly identified legal base under UK law for the transfer of PNR data in the event that the EU-US Agreement is not completed before the current Agreement expires on 30 September”, but — if we have understood the Minister correctly — these circumstances would be ones where an EU instrument had *not* been adopted in time to provide such a “clearly identified legal base”.

1.12 We therefore ask the Minister to explain in more detail why an EU instrument is legally necessary in order to make lawful the transfer of PNR data by UK based carriers. We also ask the Minister to explain how such an instrument would comply with the principle of subsidiarity if, as appears to be the case, any necessary authorisations could be granted under national law.

1.13 The Minister refers to consultation with UK transatlantic carriers, and we ask the Minister for an account of their views on this issue. Although we shall hold the document under scrutiny, we make it clear that we accept the need for notice of termination of the Agreement to be given before we receive the Minister’s reply.

2 Approval of agricultural pesticides

(a) (27631) 10930/06 COM(06) 290	Draft Council Directive amending Council Directive 91/414/EEC to include azinphos-methyl as an active substance
(b) (27632) 10931/06 COM(06) 291	Draft Council Directive amending Council Directive 91/414/EEC to include carbendazim as an active substance
(c) (27633) 10932/06 COM(06) 292	Draft Council Directive amending Council Directive 91/414/EEC to include dinocap as an active substance
(d) (27634) 10933/06 COM(06) 293	Draft Council Directive amending Council Directive 91/414/EEC to include fenarimol as an active substance
(e) (27635) 10934/06 COM(06) 294	Draft Council Directive amending Council Directive 91/414/EEC to include flusilazole as an active substance
(f) (27636) 10935/06 COM(06) 295	Draft Council Directive amending Council Directive 91/414/EEC to include methamidophos as an active substance
(g) (27637) 10936/06 COM(06) 296	Draft Council Directive amending Council Directive 91/414/EEC to include procymidone as an active substance
(h) (27638) 10937/06 COM(06) 297	Draft Council Directive amending Council Directive 91/414/EEC to include vinclozolin as an active substance

<i>Legal base</i>	Article 6(1) of Council Directive 91/414/EEC
<i>Documents originated</i>	13 June 2006
<i>Deposited in Parliament</i>	3 July 2006
<i>Department</i>	Environment, Food and Rural Affairs
<i>Basis of consideration</i>	EM of 7 July 2006

<i>Previous Committee Report</i>	None
<i>To be discussed in Council</i>	September 2006
<i>Committee's assessment</i>	Politically important
<i>Committee's decision</i>	(b)–(e), (g) and (h): Cleared (a) and (f): Not cleared (see para 2.5)

Background

2.1 Council Directive 91/414/EEC⁵ regulates the use within the Community of plant protection products (agricultural pesticides). In particular, it provides that only those products which have been specifically authorised following rigorous safety testing should be put on the market, and that such authorisations should be regularly reviewed. Those products which have been authorised are added to Annex I of the Directive by means of measures enacted by the Commission, though where these do not receive the necessary qualified majority, they have to be submitted to the Council for a decision within three months, failing which the Commission is free to adopt its original proposal.

The current proposals

2.2 For some years now, a review has been carried out of about 90 of the 1,000 or so authorised products, and these documents deal with eight such pesticides which the Commission had proposed should be approved subject to certain restrictions on the crops on which they can be used, and to this decision being reviewed in seven, rather than the usual ten, years. More specifically, it proposed that approval should be given for the following uses:

Pesticide	Approved uses
Azinphos-methyl	Potatoes
Carbendazim	Cereals Rape seed Sugar beet Maize
Dinocap	Wine grapes
Fenarimol	Tomatoes Peppers in greenhouses Cucumbers in greenhouses Aubergines Melons Ornamental plants
Flusilazole	Cereals Rape seed Sugar beet Maize
Methamidophos	Potatoes

5 OJ No. L 230, 19.8.1991, p.1.

Pesticide	Approved uses
Procymidone	Cucumbers in greenhouses Plums for processing
Vinclozolin	Rape seed Ornamental plants Chicory (root treatment)

However, when these proposals were put to the Standing Committee on the Food Chain and Animal Health in March 2006, they did not receive the necessary qualified majority, and consequently they have now been submitted to the Council (which has until 27 September 2006 to reach a decision).

The Government's view

2.3 In his Explanatory Memorandum of 7 July 2006, the Minister for Sustainable Farming and Food at the Department of Environment, Food and Rural Affairs (Lord Rooker) says that, on the basis of the extensive scientific review carried out, six of these substances — carbendazim, dinocap, fenarimol, flusilazole, procymidone and vinclozin — have satisfied the Directive's prescribed risk assessment, and that their inclusion in Annex I of the Directive has been supported by the UK. He adds that procymidone is not currently approved in the UK, but that the other five are fungicides approved for use, of which carbendazim and flusilazole are the most widely used (on cereals and oilseed rape respectively).⁶ He says that, although the impact of the Commission's proposals on agricultural and horticultural production is difficult to assess, the restrictions on the approved uses could cause difficulties, particularly in the case of carbendazim, which is used on a range of other crops, notably tomatoes. The Government therefore intends to argue for their unrestricted inclusion in Annex I.

2.4 On the other hand, the Minister says that azinphos-methyl and methamidophos are both organophosphorus insecticides with a relatively high toxicity to man and other species, and that neither is currently approved in this country. He adds that the UK — along with most other Member States — takes the view that their safe use has not been demonstrated, and that they should therefore be withdrawn. However, the Minister also points out that the Commission has attempted in these proposals to reconcile diverging views among Member States on these eight substances, and that previous negotiations suggest that the Council is unlikely to agree significant changes which would improve them for the UK. Consequently, although the Government will be seeking changes of the sort indicated above, it recognises that the proposals on the table are probably the best outcome which can realistically be expected, and could accept them as such.

⁶ According to the Regulatory Impact Assessment attached to the Minister's Explanatory Memorandum, the annual usages are carbendazim (108.6 t), flusilazole (82.7 t), vinclozin (17.1 t) dinocap (1.1 t) and fenarimol (0.11 t).

Conclusion

2.5 Whilst we are content to clear six of these proposals, we view with some concern the prospect of two insecticides (azinphos-methyl and methamidophos) whose safe use has not been demonstrated being approved and we therefore propose to hold these two documents under scrutiny. In doing so, we recognise that it may be difficult for the Government to secure changes in the Council, and that, since the Commission is in any case free to adopt its original proposals if the Council has not acted by the end of September, it will be necessary for the UK to vote on them before we are able to consider them again. Nevertheless, we think it important that we should be able to report the outcome to the House, and we would be glad if the Minister would continue to keep us informed of developments.

3 Prevention of injuries and promotion of safety

(a) (27626) 10950/06 COM(06) 328	Commission Communication: <i>Actions for a safer Europe</i>
(b) (27624) 10938/06 COM(06) 329	Draft Council Recommendation on the prevention of injury and the promotion of safety

<i>Legal base</i>	(a) — (b) Article 152(4) EC; — ; QMV
<i>Documents originated</i>	23 June 2006
<i>Deposited in Parliament</i>	29 June 2006
<i>Department</i>	Health
<i>Basis of consideration</i>	EM of 12 July 2006
<i>Previous Committee Report</i>	None
<i>To be discussed in Council</i>	No date set
<i>Committee's assessment</i>	Politically important
<i>Committee's decision</i>	(Both) Not cleared; further information requested

Legal background

3.1 Article 152(1) of the EC Treaty provides that action by the Community on public health should complement national policies and should be directed to improving public health, preventing illness and removing the causes of danger to human health. Article 152(2) requires Member States, in liaison with the Commission, to coordinate their public health policies and programmes. The Commission may “take any useful initiative to

promote such coordination”. Article 152(4) authorises the Council, acting on a proposal from the Commission, to adopt Recommendations. Article 249 of the EC Treaty provides that Recommendations are not binding.

The Community Public Health Programme 2003–08

3.2 In 2002, the Council and the European Parliament adopted a Decision to establish the Community Public Health Programme for 2003–08.⁷ Its objectives include:

- improving the collection, analysis and dissemination of information and knowledge relating to public health;
- improving Member States’ and the Community’s capacity to respond to threats to health; and
- promoting health and preventing disease through action on the determinants of good and bad health.

The Decision set the Programme’s budget for 2003–08 at €312 million.

Document (a)

3.3 The Communication contains the Commission’s proposals for a Community Action Plan to help reduce the suffering and loss caused by injuries.⁸ The Commission argues that action is needed because injuries are, for example:

- the principal cause of the death of children and young people;
- the cause of 11% of all hospital admissions; and
- the cause of 20% of sickness absence.

3.4 Moreover, there is a wide variation between Member States in the number of deaths from injuries: from, at one end of the range, 27 deaths per 100,000 residents in the UK and the Netherlands to, at the other end, 143 per 100,000 in Lithuania.

3.5 The Commission believes that a Community Action Plan is needed to complement what Member States are doing. It proposes that the priorities of the Action Plan should be:

- to promote the safety of children, adolescents, elderly people and vulnerable road users (such as cyclists); and
- the prevention of sports injuries, self-harm, interpersonal violence and injuries caused by products and services.

3.6 The Commission intends to make its contribution to the Community Action Plan by:

7 Decision No. 1786/2002/EC: OJ No. L 271, 9.10.2002, p.1.

8 Paragraph two on page 3 of document (a) defines an injury as “a bodily lesion resulting from acute exposure to energy (mechanical, thermal, electrical, chemical or radiant) or from an insufficiency of a vital element (drowning, strangulation or freezing). ... Injuries are often classified as unintentional (due to accidents) and intentional (due to self-harm or interpersonal violence).”

- developing an information system to help policy makers, health workers and others understand the scale and causes of injuries and evaluate ways of preventing injuries;
- promoting the identification and exchange of good practice;
- creating a network of experts to pool experience and ideas;
- promoting the inclusion of information about hazards, risk assessment and safety measures in the training of health workers, teachers, architects and other occupational groups;
- encouraging Member States to develop National Action Plans for injury prevention to identify national needs, define responsibilities for action and set targets for the reduction of injuries; and
- mounting Community-wide public information campaigns about risks, prevention and safety measures

Document (b)

3.7 The Commission proposes this draft Recommendation as “a first step to combine the efforts of the Commission with those of the Member States for actions for a safer Europe”.⁹

3.8 Document (b) recommends that Member States should:

- develop national injury surveillance and reporting systems, which would provide comparable data not only on risks and the effects of preventative measures but also about whether new initiatives are needed for product and service safety;
- produce National Plans for Accident and Injury Prevention which are consistent with the priorities of the Community Action Plan; and
- ensure that injury prevention and safety promotion are included in the training of “health care professionals” so that they can be competent advisers to their patients and the public.

3.9 Document (b) also invites the Commission to:

- establish a Community-wide injury surveillance system and disseminate the information it collects;
- create a mechanism for the exchange of information about good practice;
- provide Member States with evidence for inclusion in the injury prevention training of their health professionals;
- use the Community Public Health Programme, the R&D Framework Programmes and the Consumer Protection Programmes to support the development of good

9 Document (b), explanatory memorandum, final paragraph.

practice and action on the safety of, and prevention of accidents to, the priority groups identified in the Community Action Plan; and

- four years after the adoption of the Recommendation, evaluate “whether the measures proposed are working and ... assess the need for further actions”.¹⁰

The Government’s view

3.10 The Parliamentary Under-Secretary of State at the Department of Health (Caroline Flint) tells us that, although the UK has one of the lowest rates of death caused by injury, 10,000 people in the UK die from injuries every year. In Great Britain, road accidents are the cause of more than half the accidental deaths of people aged 5 to 39. Those in the lowest social groups suffer the most injuries. For example, in the UK, residential fire deaths of children in Social Class V are 15 times more numerous than such deaths of children in Social Class I. The Minister draws attention to examples of action by the Government and the Scottish Executive to promote safety and prevent accidents.

3.11 Against that background, the Minister comments on the importance of the exchange of information between Member States and the advantages of sharing best practice. She adds, however, that there is a risk that the data collection requirements for the proposed new Community information system and statistical programme might cause:

“... an extra burden, and it is unclear at present what the cost of a Community-wide surveillance system would be or where the costs would fall ... Whilst we would aim to work with the Commission to ensure these costs are minimised we will need to consider carefully whether the proposals can be accommodated by present information and data collection systems, and if they cannot, how far they can be supported.

“On the communications front we would favour sharing of best practice across the EU rather than having EU-wide campaigns.”

Conclusion

3.12 We do not doubt the potential benefits of sharing information and best practice between Member States. We note, however, that the prevention of injury is an aspect of many other Community programmes and initiatives. We have in mind, for example, the Community’s activities on road safety, consumer protection, health and safety at work, mental health and violence to women and children. It is not yet apparent to us how the proposed new Community Action Plan on injury prevention would add usefully to what is already being done.

3.13 We welcome the Minister’s intention to consider carefully the proposals for new data collection systems so as to reach a view on how far they can be supported.

3.14 We also share her caution about the Commission’s proposal that it should mount Community-wide information campaigns about risks, prevention and safety. The onus

¹⁰ Document (b), page 6, final sub-paragraph.

is on the Commission to demonstrate that such campaigns would meet the subsidiarity requirements of Article 5 of the EC Treaty.

3.15 It seems to us, therefore, that there are some important issues which need examination and discussion by the Member States before conclusions are reached on the proposals in the Communication and on the proposed Recommendation. Accordingly, we ask the Minister to take account of our comments in the negotiations on these documents and to provide us with progress reports on the discussions. Meanwhile, we shall keep both documents under scrutiny.

4 Financing of Trans-European Networks

(a) (25873) 11740/04 COM(04) 475	Draft Regulation determining the general rules for the granting of Community financial aid in the field of the Trans-European Transport and Energy Networks and amending Council Regulation (EC) No 2236/95
(b) (27581) 10089/06 COM(06) 245	Amended Draft Regulation laying down general rules for the granting of Community financial aid in the field of the Trans-European Transport and Energy Networks and amending Council Regulation (EC) No 2236/95

<i>Legal base</i>	Article 156 EC; co-decision; QMV
<i>Document originated</i>	(b) 24 May 2006
<i>Deposited in Parliament</i>	(b) 20 June 2006
<i>Department</i>	Trade and Industry
<i>Basis of consideration</i>	EM of 3 July 2006
<i>Previous Committee Reports</i>	(a) HC 42–xxxi (2003–04), para 6 (15 September 2004), HC 34–xviii (2005–06), para 9 (8 February 2006) and HC 34–xxviii (2005–06), para 5 (10 May 2006)
<i>To be discussed in Council</i>	No date set
<i>Committee’s assessment</i>	Politically important
<i>Committee’s decision</i>	(a) Cleared (b) Not cleared, further information awaited

Background

4.1 Trans-European Networks (TENs) concern three sectors: energy (TEN-E), telecommunications (eTEN) and transport (TEN-T). Development of the TENs is promoted as a key element for the creation of the single market, reinforcement of

economic and social cohesion and promotion of the Lisbon Strategy. Such development includes the interconnection and interoperability of national networks as well as access to them. Funding from the TENs budget is intended to be catalytic, with maximum levels for support and the greater part of the funding coming from either the public authorities of the Member States or, especially in the fields of telecommunications and energy, from the private sector.

4.2 During 2002 and 2003, our predecessors considered a number of proposals to revise the legislation relating to both financing and guidelines for TENs and other related documents. This culminated in a debate in European Standing Committee A on 11 November 2003.¹¹

4.3 These proposals were followed in July 2004 by a further Commission proposal (document (a)), which would have:

- increased the maximum rates of support for TEN-T activities with effect from 1 January 2007;
- established a budget of €20.35 billion for TEN-T and €0.34 billion for TEN-E in the period 2007–13;¹² and
- widened the forms of support available to include loan guarantees to cover risk after the construction phase.

4.4 When our predecessors considered this proposal in September 2004, they noted the Government's caution about the suggested changes to the framework of support for TENs and its refusal to consider the 2007–13 financial envelope for TENs until the new Financial Perspective had been agreed. They did not clear the document, saying that they would wish to consider the matter further as the Financial Perspective prospects became clearer. We were subsequently told of developments following the agreement by the European Council in December 2005 on the Financial Perspectives, and, on 8 February 2006, we reported a significant reduction from the Commission's original proposal for the budgetary sub-heading which includes TENs, together with a call in the agreement for due account to be taken of some priority projects within the TENs. We also noted that the Commission was to propose a breakdown of budgetary sub-headings for the negotiation between the Council and the European Parliament on the Financial Perspectives.

4.5 On 10 May 2006, we reported that:

- the Financial Perspective negotiations had resulted in an allocation for TENs for the period 2007–13 of €7,203 million;
- the Commission was likely to propose that €500 million of this sum should be used to fund the loan guarantee mechanism for TEN-T (with a similar amount to come from the European Investment Bank), and that it expected to make a proposal on the mechanism in the next few months; and

11 (24941) 13297/03 (24970) 13244/03: See HC 63–xxxvi (2002–03), para 3 (5 November 2003) and *Stg Co Deb*, European Standing Committee A, 2 February 2004, cols. 3–26.

12 The funding totals for TEN-T and TEN-E for the period 2000–06 are €4.17 billion euros and €0.41 billion respectively.

- negotiations were now in progress in an ECOFIN Council working group on the amounts to be allocated to each programme and on intervention rates, where the Commission was maintaining its suggestion of 50% for cross-border projects.

4.6 We also noted that, although the Government had argued for no increase in the TENs budget, it supported this revised allocation, given that it represented a significant reduction from the Commission's original proposal. However, since the question of a higher intervention rate for cross-border projects, on which the Government had previously expressed strong reservations, remained open, we said that we would like to hear of the outcome on this issue before considering the proposal again.

The current proposal

4.7 The Commission has now put forward an amended proposal in the light of the decision on the Financial Perspectives and the European Parliament's first reading of the original proposal in February 2005. In addition to the revised financial allocations indicated above, this proposal would incorporate new procedures for the selection of projects, a loan guarantee mechanism, and a contribution to the activities of joint undertakings; clarify how aid is granted and Commission decisions are to be implemented; and define more clearly the types of potential beneficiary. In particular, it would for transport pay special attention to cross-border projects, to those implementing traffic management systems for rail, air and maritime projects, and to inland waterway projects: and it has also establish a number of principles, such as a preference for concentrating funding on major projects, and strict compliance with Community law as a pre-condition for funding.

4.8 In particular, the proposal amend the different maximum intervention rates for TEN-T projects as follows:

	Current	Post-2006	
		Original proposal	Amended proposal
Studies	50%	50%	50%
Priority projects	10%	30%	20%
Cross-border sections of priority projects	20%	50%	30%
Inland waterways	10%	10%	30%
ERTMS/SESAR13	10%	50%	50%
All other projects	10%	15%	10%

The Government's view

4.9 In her Explanatory Memorandum of 3 July 2006, the Minister of State for Industry and the Regions at the Department of Trade and Industry (Margaret Hodge) says that the UK

broadly supports the development of Trans-European Networks, but not at the expense of sacrificing budgetary discipline in the quest for speedy completion. She also reiterates that the Government believes that intervention rates should have remained at existing levels, acting only as a catalyst, and that there should be greater concentration on a more efficient management of the programmes. The Minister adds that the UK strongly opposes the proposal that priority inland waterway projects should have higher levels of financial intervention than priority projects involving other modes of transport, but that — like the majority of other Member States — it supports the increased rates for ERTMS and SESAR. It also welcomes the commitment to concentrate funds on those projects with the highest European added value, but does not believe that the Regulation should implicitly impose a rank order on the priority projects.

Conclusion

4.10 Since document (a) has now been overtaken by the amended Commission proposal, we are clearing it. However, in view of the Government’s continuing concerns over aspects of document (b), we intend to hold it under scrutiny for the time being, and would be grateful if the Government could keep us informed of further developments, particularly as regards the maximum level of intervention envisaged for priority inland waterway projects.

5 Uniform format for residence permits for third-country nationals

(27408) 7298/06 COM(06) 110	Amended draft Council Regulation amending Regulation (EC) 1030/2002 laying down a uniform format for residence permits for third-country nationals
-----------------------------------	--

<i>Legal base</i>	Article 63(3)(a) EC; consultation; unanimity
<i>Department</i>	Home Office
<i>Basis of consideration</i>	Minister’s letter of 5 July 2006
<i>Previous Committee Report</i>	HC 34–xxx (2005–06), para 5 (24 May 2006)
<i>To be discussed in Council</i>	No date set
<i>Committee’s assessment</i>	Politically important
<i>Committee’s decision</i>	Not cleared, pending evidence session with Minister

Previous scrutiny

5.1 In 2002, the Government opted into the Council Regulation which lays down a uniform format for residence permits for third-country nationals.¹⁴

5.2 In 2003, the Commission presented the draft of an amending Regulation to integrate biometric identifiers into the residence permits. The Government told the previous Committee that it strongly supported the inclusion of biometrics and that it had decided to opt into the amending Regulation. Our predecessors cleared the proposal from scrutiny.¹⁵

5.3 The draft Regulation provided for biometric identifiers to be incorporated into both residence permits and residence stickers. After the previous Committee cleared the document, an expert committee advised the Commission that, at present, it is not technically feasible to integrate biometric identifiers into stickers.

5.4 In the light of this advice, the Commission presented a modified draft of the Regulation. When we considered it in April, we asked the Government, among other things, whether the cost to the UK of implementing the modified draft would be similar to the estimates the Government had given the previous Committee of the cost of implementing the first draft of the Regulation.¹⁶

5.5 In his reply of 16 May, the then Minister for Immigration, Citizenship and Nationality at the Home Office (Mr Tony McNulty) told us

“We originally estimated that implementing the Regulation would entail start-up and running costs of £24 million and £15 million respectively. Our thinking has advanced since then. While I am happy to give you some detail on this, you should be aware that our cost estimates are still subject to departmental approval (which is why I did not include them in my original EM). Under current planning assumptions we believe that the start-up costs for biometric residence permits are likely to be in the region of £60 million. This significantly higher figure reflects a) an increase in our programme management costs in line with a programme of this complexity and b) our desire to ensure the issuing process is secure. We are developing additional security measures, particularly related to identity management and ensuring the integrity of the immigration process. Our estimate of running costs has also increased to £56 million. This is because a) it is a ten-year average figure, taking inflation into account, b) it incorporates a larger contingency element, in line with Treasury best practice, and c) in the light of a better understanding of the technical specification we have revised upwards our estimate of unit costs. The objective will be to recover these running costs through charges levied on those who apply for the service.”¹⁷

5.6 When we resumed consideration of the modified draft of the Regulation on 24 May, we decided to ask the Minister for further information and, in particular:

14 Council Regulation (EC) No. 1030/2002: OJ No. L 157, 15.6.2002, p.1.

15 (24918) 13044/03: See HC 42–xi (2003–04), para 22 (25 February 2004).

16 See HC 34–xxvi (2005–06), para 13 (26 April 2006).

17 See headnote.

- Why the Government thought that the increase in cost would be outweighed by the benefits of incorporating biometrics into UK residence permits?
- What are the expected benefits and how will the Government evaluate whether they have been achieved?

The Minister's letter of 5 July 2006

5.7 The Minister of State at the Home Office (Mr Liam Byrne) tells us that:

“Based on our current thinking, a [biometric residence permit] BRP solution that implements only the minimum required to meet the EU Regulation (“BRP Minimum” option) is estimated to have start-up costs of approximately £36 million. The preferred solution for BRP that includes additional features, over and above that required to meet the EU Regulation (“BRP Incremental” option), has estimated set-up costs of approximately £60 million (i.e. a £24 million increase over the BRP Minimum option).

“We have identified benefits for both the BRP Minimum and BRP Incremental options. The attached table, annexed to this letter illustrates clearly that the BRP Incremental solution will deliver more benefit than can be delivered [*sic*]

“Benefit 1 — Contribution to the wider National Identity Scheme: The BRP project forms an integral part of the UK’s wider National Identity Scheme, comprised also of IND’s UKvisas Biometrics, e-Borders and Immigration Asylum Fingerprint System+ (IAFS+) projects, and Identity and Passport Service (IPS). Together, these initiatives will ensure that all UK residents (and anyone requiring a visa) will have some form of recorded biometrics linked to their identity, providing significant benefits in terms of reduced identity fraud, immigration offences and threats to public safety. The additional benefits stem mainly from the increased assurance that biometrics are uniquely associated with an identity, through capabilities that are unique to the BRP Incremental option.

“Benefit 2 — Improvement to immigration control: Whilst the EU proposal for a uniform format biometric residence permit will help simplify immigration control within the wider UK society, including for employers and public offices; the EU Regulation does not stipulate any controls related to ensuring that recorded biometrics are unique. There is also no obligation to ensure that checks are carried out to ensure that biometrics are attached to the correct identity. As such, issues regarding counterfeiting and falsification are only addressed through the introduction of a product that is physically more difficult to counterfeit. The BRP Incremental option has been designed to include additional features that will help to control fraud and abuse, thereby improving immigration control.

“Benefit 3 — Compliance with EU legislation: The UK’s opt-in to the 2003 version of this proposal remains valid, and we are therefore bound to participate in, and implement this new proposal. Whilst compliance with this Regulation would be achieved through the BRP Minimum option, we consider, as noted above, that there are significant benefits in going beyond the requirements of the draft Regulation.

“Benefits Realisation

“Whilst the BRP project is still at a relatively early stage in this process and the benefits are still subject to departmental approval, we can inform the Committee of our current work on benefit realisation.

“The BRP project has been working closely with the Home Office Group Investment Board to agree an approach for benefits identification, quantification and realisation. The project will follow the standard Office of Government Commerce (OGC) guidelines for ensuring the realisation of these benefits, including obtaining agreement from benefit owners and appointing a benefits realisation manager.

“We are also employing a co-ordinated approach to benefits management with the IAFS+ and UKvisas Biometrics projects. The aims of this coordinated approach are to:

- Give business partners a clear understanding of the strategic business benefits that IND’s three major biometric projects (BRP, UKvisas Biometrics Programme and IAFS+) aim to deliver
- Form a realistic picture of how each business area can contribute to the successful delivery of the projects, ensuring that IND strives to maximise the realisation of potential benefits.

“The approach will include:

- Briefing business partners on the strategic objectives of IND’s three major biometric projects
- Outlining the potential benefits identified during development of the business cases and providing an overview of the methodology used to baseline and quantify these
- Validating assumptions and business benefits with representatives from the impacted business areas
- Ensuring that the benefit realisation strategy will be included in future operational business plans
- Establishing a network of business benefit managers to monitor the progress of actual benefit realisation.”

5.8 The Minister concludes by emphasising that the cost estimates “remain subject to departmental approval”. He also says that the information in his letter is subject to the outcome of his review of the Immigration and Nationality Directorate.

5.9 The table attached to the Minister’s letter is reproduced below:

Area	Benefit	BRP Minimum	BRP Incremental
Contribute to the wider National Identity Scheme	Align with the wider National Identity Scheme to ensure no gaps in the system		✓
	Support other organisations/projects in the wider National Identity Scheme by increasing the volume of assured biometrics data held by UK which can be checked against		✓
	De-risk ID Cards for Third Country Nationals (TCNs) by trialling similar technology and processes		✓
	Increase attractiveness of UK for legal migrants by establishing a secure identity with clear entitlements — BRP a contributor		✓
Improved immigration control	Reduce the market for counterfeit documents by increasing document security	✓	✓
	Improve immigration control by identifying multiple applications made under a single identity — BRP a contributor		✓
	Reduce support and processing costs by increasing the detection of asylum and immigration offences — BRP a contributor		✓
	Increase number of illegal applicants identified against which enforcement action to be taken		✓
	Increase cost effectiveness for residence permit appeals by decreasing processing time, enabled by enhanced, evidence based initial decisions — BRP a contributor		✓
	Increase cost effectiveness for removals by detaining people at interview and/or biometric recording stages		✓
	Increase operational efficiency through joined-up processes and technology improvements		✓
Comply with EU legislation	To comply with EU legislation	✓	✓

Conclusion

5.10 The Minister's letter and the table attached to it state what the Government believes to be the benefits of the biometric residence permit if either the "minimum" or "incremental" option were adopted. But neither the letter nor the table gives any indication of the scale of the benefits. For example, they do not explain by how much the market for counterfeit documents would be reduced, how and by how much identity fraud would be reduced or how many more "illegal applicants" would be identified.

5.11 We do not understand the Minister's explanation of "Benefits Realisation". Who are the "business partners" and how will these arrangements enable the Government to assess whether benefits are achieved?

5.12 The Minister's letter says that the estimates of cost are subject to "departmental approval". We do not understand what this means.

5.13 The implementation of the proposed Regulation, through either the "minimum" or "incremental" option would cost a great deal of public money, perhaps even more than the Government's current estimates. At present, the likely benefits appear intangible and we have seen nothing to show that they would exceed the estimated start-up and annual running costs. We doubt that we shall be able to obtain satisfactory answers to our questions through further correspondence. Accordingly, we ask the Minister to appear before us to give oral evidence on the costs and benefits of the proposals. Meanwhile, the document will remain under scrutiny.

6 Taking previous convictions into account in new criminal proceedings

(a) (26453) 7645/05 COM(05) 91	Draft Council Framework Decision on taking account of convictions in the Member States of the European Union in the course of new criminal proceedings
(b) (27615) 10676/06 —	Draft Framework Decision on taking account of convictions in the Member States of the European Union in the course of new criminal proceedings

<i>Legal base</i>	Articles 31 and 34(2)(b) EU; consultation; unanimity
<i>Deposited in Parliament</i>	(b) 26 June 2006
<i>Department</i>	Home Office
<i>Basis of consideration</i>	(b) EM of 10 July 2006
<i>Previous Committee Report</i>	(a) HC 34-ii (2005–06), para 6 (13 July 2005) (b) None
<i>To be discussed in Council</i>	No date set
<i>Committee’s assessment</i>	Legally and politically important
<i>Committee’s decision</i>	(a) Cleared (b) Not cleared; further information requested

Background

6.1 In its explanatory memorandum to the original proposal (document (a)) the Commission suggested that little account was in fact taken of criminal convictions in other Member States and argued that “equivalent effects cannot be attached to a decision taken in another Member State” and that there was a need for legislative action at EU level.

6.2 When we considered the original proposal on 13 July 2005, we noted that the Commission had not explained the basis for its assertion that equivalent effects could not be attached to foreign convictions, and did not explain that this question was already dealt with by Article 56 of the Convention of 28 May 1970 on the International Validity of Criminal Judgments.¹⁸ We therefore asked the then Minister if the proposal met any real practical need which could not be dealt with by a provision similar to the one made in Article 56 of the 1970 Council of Europe Convention. It seemed to us that in seeking to exact equivalence in all circumstances between “convictions” in the Member States, the proposal was disproportionate and likely to work unfairly.

¹⁸ European Treaty Series No.70. The Convention has been ratified by Austria, Cyprus, Estonia, Latvia, Lithuania, the Netherlands, Spain and Sweden. Article 56 provides “Each Contracting State shall legislate as it deems appropriate to enable its courts when rendering a judgment to take into consideration any previous European criminal judgment rendered for another offence after a hearing of the accused with a view to attaching to this judgment all or some of the effect which its law attaches to judgments rendered in its territory. It shall determine the conditions in which this judgment is taken into consideration.”

6.3 In this regard, we drew attention to the wide definition of “conviction” used in the proposal, noting that it would include spent convictions and we asked the then Minister if the definition would include fixed penalty notices, a conditional discharge or binding over or their equivalents in other Member States. We also noted that a foreign conviction could not be disregarded on the grounds that the same conduct did not constitute an offence under domestic law, and that this rule would apply to a list of types of conduct substantially the same as that which appears in Article 2(2) of the European Arrest Warrant.¹⁹ Accordingly, a foreign conviction for “computer-related crime”, “racism and xenophobia”, “swindling”, “sabotage”, “conduct which infringes road traffic regulations”, “smuggling of goods” and infringement of intellectual property rights would be included. We asked the then Minister to confirm that, by reason of the proposal, such a foreign conviction for a road traffic offence (which appeared to us to include on-the-spot fines) must attract penalty points and ultimate disqualification from driving in this country.

6.4 We noted that Article 5(2) permitted a Member State to disregard a conviction where the consequence of being convicted in another Member State in new criminal proceedings on different facts would be that the person concerned would be “treated more unfavourably than if the conviction had been handed down by a national court”. Although this provision was described by the Commission as a “safety net”, we noted that it was not mandatory and was in any event too narrow to deal with the case of a spent conviction being taken into account in a foreign jurisdiction to increase a penalty, when it would not have been taken into account within the United Kingdom. We considered that the then Minister was right to be concerned about the potential for unfairness for UK nationals arising from the treatment in foreign jurisdictions of spent convictions and asked for an account of how this problem was to be addressed.

The revised draft Framework Decision

6.5 The revised draft Framework Decision (document (b)) is a Presidency text reflecting the discussion of the proposal in the Council working group on co-operation in criminal matters. It is apparent that the original proposal has been substantially amended.

6.6 Article 1 (subject matter) has not been significantly amended. As before, it provides that the purpose of the measure is to determine the conditions under which a Member State takes account of a criminal conviction in another Member State in the course of criminal proceedings against the same person but in respect of different facts.

6.7 The definition of “conviction” in Article 2 has been considerably restricted, so that only a final decision of a criminal court establishing guilt in respect of a criminal offence is within the scope of the measure. It appears that a large number of Member States objected to the inclusion of decisions by administrative authorities, but that the Commission still considers it desirable to cover administrative decisions in respect of road traffic offences.

6.8 As before, Article 3 sets out the obligation on Member States to take account of foreign convictions, but there have been a number of amendments. The new Article 3(1) requires Member States to “ensure that their national judicial authorities ... take into account

¹⁹ OJ No. L 190, 18.07.2002, p.1.

previous convictions handed down against the same person for different facts”. (The previous version did not refer specifically to judicial authorities). Such taking into account is to be done in accordance with national law, but the judicial authorities are to be required to attach to such foreign convictions “the same legal effects to [*sic*] as those which they attach to previous national convictions”. (The previous version provided only for equivalent legal effects to be given, and this in accordance with rules determined by the Member States). Article 3(2) (which provided for such effects to be given at the pre-trial stage, at trial and in relation to sentencing) has remained unchanged.

6.9 Articles 4 and 5, which provided for mandatory and discretionary grounds for not taking a foreign conviction into account, have been deleted. Article 6 (which made provision for the recording of foreign convictions in the national register) has also been deleted.

The Government’s view

6.10 In her Explanatory Memorandum of 10 July 2006 the Parliamentary Under-Secretary of State at the Home Office (Joan Ryan) explains that the purpose of the proposal is to ensure that Member States are able to take convictions recorded in other Member States into account during new criminal proceedings in their own jurisdictions. The Minister states that that “this broadly reflects current provisions in all UK jurisdictions which allow courts the discretion to take into account foreign convictions”.

6.11 The Minister further explains that there have been a number of developments to the proposal resulting from recent negotiations and which address the concerns the Government had previously outlined. The Minister notes that the reference to administrative offences in Article 2 has now been deleted and comments that the Government’s initial view is that the new definition would exclude fixed penalty notices for road traffic offences from the scope of the Framework Decision.

6.12 On Article 4, the Minister comments that the chief priority for the Government was the deletion of this provision “which would have impinged upon the courts’ discretion to take foreign conviction into account by providing mandatory grounds for not taking convictions into account”. The Minister adds that the deletion of Article 4 means that there will be no need to amend existing legislation.

6.13 The Minister points out that Article 5 has also been deleted, referring to this as “an obscurely drafted article” which provided permissive grounds for not taking foreign convictions into account, and which “seemed unlikely to have much practical effect”. The Minister also explains that Article 6 has been deleted, because its subject matter (the recording of convictions originating in other Member States) will be addressed in the proposed Framework Decision on the organisation and content of the exchange of information extracted from criminal records.²⁰

6.14 The Minister explains that the Government is content that the proposal complies with the principle of subsidiarity because it “will allow Member States to take convictions

20 (27195): See HC 34–xxxiii (2005–06), para 4 (28 June 2006).

recorded in other Member States into account during new criminal proceedings in their own jurisdictions in accordance with their national practices”.

Conclusion

6.15 We welcome the fact that the proposal will no longer apply to administrative offences and that it will be limited to final decisions of a criminal court establishing guilt in respect of an offence.

6.16 We also welcome the deletion of Articles 4 and 5, with their prescription of mandatory and permissive grounds for not taking a foreign conviction into account, and agree with the Minister that these provisions would have impinged on the discretion of the courts.

6.17 Nevertheless, it is far from clear to us that the proposal, as it is now drafted, leaves it to the discretion of the national court to take a foreign conviction into account, or that it “broadly corresponds” to the current provisions in the jurisdictions of the UK. In this regard, we note first that the new version of Article 3 requires (and does not merely permit) Member States to ensure that their judicial authorities take into account previous convictions in other Member States. The only qualification is that the taking into account is to be done in accordance with national law. This appears to us to leave no discretion to the court not to take a foreign conviction into account. We ask the Minister if she agrees that Article 3 is not consistent with the provisions of section 143(5) Criminal Justice Act 2003 which permit, but do not require, a court to treat a conviction by a court outside the United Kingdom as an aggravating factor “in any case where the court considers it appropriate to do so”.

6.18 Secondly, the provision requires the judicial authorities to attach to such foreign convictions the same legal effects as those which they attach to previous national convictions. This obligation is expressed in absolute terms and is not qualified by a reference to national law. It therefore seems that, whatever the circumstances of the foreign conviction (e.g. whether it was given in the absence of the defendant, or for a crime which is unknown to the court in question), it must be given ‘the same legal effects’ as a previous national conviction. The previous version required only equivalent legal effects to be given, and we ask the Minister to explain what is intended by the reference in the new version to the ‘same legal effects’.

6.19 We also ask the Minister how the provisions of Article 3 are intended to operate in a case where the foreign conviction relates to conduct which is not criminal in a relevant part of the United Kingdom. In such a case, it is not clear to us what is meant by “previous national convictions” in Article 3(1). On its face, the provision seems to provide for the foreign conviction (for conduct which is lawful here) to be used to increase the penalty to be imposed in this country for a subsequent conviction in respect of some other conduct. This would seem to lead to a heavier punishment being imposed because of previous lawful conduct. We ask the Minister to explain whether such a provision would be consistent with Article 7 of the ECHR.

6.20 The previous Minister was concerned about the potential for unfairness for UK nationals arising from the treatment in foreign jurisdictions of spent convictions. We

ask the Minister to explain if this problem has been resolved in the new version and, if so, how this has been achieved.

6.21 We clear document (a) on the grounds that it has been superseded, but we shall hold the current version (document (b)) under scrutiny pending the Minister’s reply.

7 Schengen Information System

(a) (27250) 5710/06 —	Amended draft Decision on the establishment, operation and use of the second generation Schengen Information System (SIS II)
(b) (27614) 5710/2/06 —	Revised draft of the proposed Decision

<i>Legal base</i>	Articles 30(1)(a) and (b), 31(1)(a) and (b) and 34(2)(c) EU; consultation; unanimity
<i>Deposited in Parliament</i>	(b) 28 June 2006
<i>Department</i>	Home Office
<i>Basis of consideration</i>	(b) EM of 10 July 2006
<i>Previous Committee Report</i>	(a) HC 34–xxii (2005–06), para 6 (15 March 2006) (b) None
<i>To be discussed in Council</i>	24 July 2006
<i>Committee’s assessment</i>	Politically important
<i>Committee’s decision</i>	(a) Cleared (b) Not cleared; further information requested

SIS I and II

7.1 The main aim of the Schengen Convention of 1990 was to abolish checks at the borders between the signatory States while strengthening control of the external borders of the Schengen area. In addition, the Convention and subsequent measures contain provisions on police and judicial co-operation for the detection and prosecution of serious cross-border crime. The collective name for the Convention and subsequent agreements is “the Schengen *acquis*”. The UK is not part of the Schengen area and does not participate in the immigration and border control provisions of the *acquis*, but it does participate in the provisions on police and judicial co-operation.

7.2 The present Schengen Information System (SIS I) dates from 1995. It contains information about, for example, people wanted for arrest or extradition, third-country

nationals to be denied entry, missing persons, and stolen vehicles, firearms and other property. It comprises a central database and national databases. The system is capable of serving a maximum of 18 States.

7.3 In 2001, the Commission was given a mandate to develop the second generation of the Schengen Information System (SIS II). The purpose of SIS II is to enable up to 30 States to participate in the System and to include biometric data in the information it holds. In addition to the Member States, Iceland, Norway and Switzerland will take part in SIS II, which is due to become operational in 2007.

Proposals for a Decision and a Regulation

7.4 In May 2005, the Commission presented the draft of a Decision on the police and judicial co-operation aspects of SIS II. It also presented a draft Regulation on the immigration aspects. Separate measures are required because the legal bases for the provisions on police and judicial co-operation are in the EU Treaty, whereas the legal bases for the immigration provisions are in the EC Treaty.

7.5 The UK is excluded from the proposed Regulation because it does not take part in the immigration provisions of the Schengen *acquis*. But it has an interest in it because the draft Decision and the draft Regulation have common provisions on matters such as the purpose, scope, architecture, management and security of SIS II.

7.6 In addition to those common provisions, the draft Decision includes specific provision on the information which may be entered on SIS II about people wanted for arrest, extradition, appearances as witnesses in criminal proceedings and about the surveillance of people or objects (such as stolen vehicles, identity papers, money or firearms).

7.7 When we considered the first draft of the Decision in July 2005, it was our opinion that the most important objective of the negotiations on the document should be to find a proper balance between the protection of personal data and civil liberties, on the one hand, and the needs of law enforcement, on the other.²¹ We noted that the negotiations had only just begun. We decided, therefore, to hold the drafts of the Decision and Regulation under scrutiny pending the progress reports the Government had promised to send us.

Document (a)

7.8 During the UK's Presidency of the Council, some Member States expressed reservations about the extent to which the first drafts of the Decision and Regulation departed from the text of the Schengen Implementing Convention. As a result, the Austrian Presidency produced amended drafts which more closely reflect the terms of the Convention.

7.9 The amendments are extensive. Most do not significantly change the substance of the proposals. But document (a) — the redrafted text of the draft Decision — incorporates two major changes:

²¹ See HC 34–iv (2005–06), para 14 (20 July 2005).

- First, responsibility for the management of SIS II would not be vested in the Commission, as originally proposed; instead, it would be the responsibility of a Management Authority designated by the Council.
- Second, oversight of SIS II would be the responsibility of a Joint Supervisory Board (in accord with the Schengen Implementing Convention), not the European Data Protection Supervisor as proposed in the first draft of the Decision.

7.10 When we considered document (a) in March,²² the Government told us that it broadly supported the proposal to redraft the Decision (and Regulation) to reflect the terms of the Schengen Implementing Convention more closely. It would be seeking clarification of, or changes to, a few of the amendments. The Government had not yet reached a view on the proposals to make a Management Authority responsible for running SIS II and for a Joint Supervisory Board to have oversight of the operation of the System. The Home Office had sent the Information Commissioner a copy of document (a) and the redraft of the Regulation.

7.11 We asked the Minister to tell us the Information Commissioner's comments and the outcome of her consideration of the proposal to give a Joint Supervisory Board oversight of the operation of SIS II. We also asked for further progress reports on the negotiations. Meanwhile, we kept document (a) under scrutiny.

Document (b)

7.12 Document (b) is a revised text of document (a). It was prepared by the Austrian Presidency. It takes account of discussions in the Council Working Group and in the European Parliament.

7.13 Articles 1 to 14 AC of document (b) incorporate amendments which reflect the revision to the corresponding Articles of the draft Regulation. The Articles include provisions on the general objectives of SIS II, the architecture of the new System, responsibility for the costs of the central and national sections, staff training, security and confidentiality, the arrangements for the management of SIS II, and categories of information which may be entered on the System.

7.14 Articles 14 AD to 41 are concerned only with the use of SIS II for the purposes of police and judicial co-operation in criminal matters. They are about, for example, the information which may be entered on SIS II about missing people, people wanted for arrest and witnesses; authorities with access to the information, including specific provision for access by Europol and Eurojust; the period for which information may be kept; and the purposes for which the data may be processed.

7.15 Article 42 and most of the remaining Articles of document (b) are the same as the corresponding Articles in the draft Regulation and include the provisions on data protection.

²² See headnote.

The Government's view on document (b)

7.16 The Parliamentary Under-Secretary of State at the Home Office (Joan Ryan) tells us that the Government welcomes the amendments incorporated in document (b), subject to clarification or minor redrafting of a few of them.

7.17 In particular, the Minister says that the Government is content with the proposed transitional arrangements in Article 12:

“which will delegate responsibility for management of the infrastructure and budget of the SIS II to France and Austria, where the system will be located. France and Austria have successfully managed SIS I to date, and the Government is content that delegation in the short term will allow for smooth transition to SIS II.

“Several options for long term management have been explored during negotiations. These include management by Europol or Frontex [the EC agency for coordinating the management of the Community's external borders], management by the Commission, or the creation of a new cross-pillar agency. Of these, management by Europol or Frontex has been rejected, as one is a purely third pillar and the other a purely first pillar body.²³ Management by Frontex would be undesirable given the UK's exclusion from the Agency. Many Member States were unwilling to accept management by the Commission. Most Member States favour the creation of a new agency or 'Management Authority' to manage SIS II in the long term. This would be subject to a suitable impact assessment, and has the advantage of being able to reflect the cross-pillar nature of SIS II The Government supports this option as the most sensible compromise for the long-term management of SIS II.”

7.18 The Minister also tells us that the Government is broadly content with the data protection regime proposed in Articles 53 to 53 C and that the Information Commissioner has been sent a copy of document (b).

Conclusion

7.19 We are grateful to the Minister for her helpful Explanatory Memorandum. We share her view that most of the amendments incorporated in document (b) have improved the clarity of the draft Decision.

7.20 We remain of the view that the data protection arrangements are crucial and we shall not reach a conclusion on them until we have seen the views of the Information Commissioner. Accordingly, we ask the Minister to tell us the Commissioner's views, to keep us informed of the further consideration of the options for the management of SIS II and to give us progress reports on the negotiations. Meanwhile, we shall keep document (b) under scrutiny. We clear document (a) because it has been superseded by document (b).

²³ Matters, such as immigration, which are covered by the EC Treaty are known as “first pillar” matters. Those, such as police and judicial co-operation in criminal matters, which are covered by the EU Treaty are known as “third pillar” matters.

8 European Information Society

(27570) Commission Communication: *A strategy for a Secure Information
10248/06 Society — Dialogue, Partnership and Empowerment*
+ ADD 1
COM(06) 251

<i>Legal base</i>	—
<i>Document originated</i>	31 May 2006
<i>Deposited in Parliament</i>	9 June 2006
<i>Department</i>	Trade and Industry
<i>Basis of consideration</i>	Explanatory Memorandum of 10 July 2006
<i>Previous Committee Report</i>	None
<i>To be discussed in Council</i>	To be determined
<i>Committee’s assessment</i>	Politically important
<i>Committee’s decision</i>	Cleared

Background

8.1 In its introduction, the Commission says that the availability, reliability and security of networks and information systems are increasingly central to our economies and to the fabric of society, and that the purpose of the present Communication is to revitalise the European Commission strategy set out in 2001 in the Communication “Network and Information Security: proposal for a European Policy approach”.²⁴ It reviews the current state of threats to the security of the Information Society and determines what additional steps should be taken to improve network and information security (NIS).

8.2 The Commission says that, drawing on the experience acquired by Member States and at European Community level, the “ambition is to further develop a dynamic, global strategy in Europe, based on a culture of security and founded on dialogue, partnership and empowerment”. Although what it calls the Community’s “three-pronged approach” to tackling security challenges for the Information Society — specific network and information security measures, the regulatory framework for electronic communications (which includes privacy and data protection issues), and the fight against cybercrime — can, the Commission says, to a certain extent be developed separately, “the numerous interdependencies call for a coordinated strategy. This Communication sets out the strategy and provides the framework to carry forward and refine a coherent approach to NIS”.²⁵

²⁴ COM(2001) 298, 6.6.2001.

²⁵ 10248/06; COM (06) 251.

The Commission Communication

8.3 The Commission recalls the definition in the 2001 Communication of NIS as “the ability of a network or an information system to resist, at a given level of confidence, accidental events or malicious actions that compromise the availability, authenticity, integrity and confidentiality of stored or transmitted data and the related services offered by or accessible via these networks and systems”. European Community action to improve NIS include the regulatory framework for electronic communications, within which the Directive on Privacy and Electronic Communications contains an obligation for providers of publicly available electronic communications services to safeguard the security of their services. Provisions against spam (unsolicited commercial communications) and spyware (tracking software deployed without adequate notice, consent, or control for the user) are also laid down.

8.4 The Commission also recalls: the extent to which trust and security issues are addressed in the 6th and 7th Research Framework Programmes; the Safer Internet Plus programme (networking projects and the exchange of best practices to combat harmful content circulating on information networks); the creation in 2004 of the European Network and Information Security Agency (ENISA, which “contributes to the development of a culture of network and information security for the benefit of citizens, consumers, enterprises and public sector organisations”); and the EU’s role in international fora addressing these topics — most recently at the World Summit on the Information Society in Tunis.

8.5 But, says the Commission, despite these national, European and international efforts, “security continues to pose challenging problems”. Attacks on information systems are increasingly motivated by profit rather than the desire to create disruption for its own sake, using Spam to distribute viruses and engage in fraudulent and criminal activity, such as “phishing” (a form of Internet fraud based on the illegal acquisition of private financial information, such as user IDs and passwords), and relying on “botnets” (compromised servers and PCs used as relays without the knowledge of their owners). The increasing deployment of mobile devices are aggravating the dangers; so too increased connectivity between networks. In a nutshell: “A totally interconnected and networked everyday life promises significant opportunities. However it will also create additional security and privacy-related risks.”

8.6 But businesses and citizens continue to underestimate the risks. Instead:

- Public administrations need to address the security of their systems, not just to protect public sector information, but also to serve as an example of best practice for other players;
- Enterprises need to address NIS more as an asset and an element of competitive advantage than as a “negative cost”; and
- Individual users need to understand that their home systems are critical for the overall “security chain”.

8.7 Improving our knowledge of the problem is one of the cornerstones in developing a culture of security; wherever possible, security should be presented “as a virtue and an opportunity rather than as a liability and a cost”. The key challenge for policy makers “is to

achieve a holistic approach” that recognises the respective roles of the various stakeholders, although “the processes of liberalisation, deregulation and convergence have produced a multiplicity of players among the various stakeholder groups, which does not make this task easier”.

8.8 The Commission then goes on — under the headings *Dialogue*, *Partnership* and *Empowerment* — to make a number of proposals aimed at addressing these challenges:

- Benchmarking national NIS policies with Member States, identifying best practice and raising awareness;
- Structured multi-stakeholder debate on how best to exploit existing tools and regulatory instruments and strike the right balance between security and privacy;
- Tasking ENISA to develop “a trusted partnership” with Member States and stakeholders to develop and appropriate data collection framework, including EU-wide data on security incidents and consumer confidence;
- Using ENISA to examine the feasibility of an EU information sharing and alert system;
- Member States to “leverage the roll-out of e-government services to promote good practice” and develop NIS programmes in higher education; and
- Private sector stakeholders to undertake a variety of initiatives, including an appropriate definition of the responsibilities of software producers and internet service providers in relation to the provision of auditable levels of security, and to work towards affordable security certification schemes for products, processes and services.

8.9 The Commission intends reviewing progress in mid-2007 and, “if appropriate”, will propose a Recommendation on NIS.

The Government’s view

8.10 In her 10 July 2006 Explanatory Memorandum, the Minister of State for Industry and the Regions (Margaret Hodge) says that the analysis contained in the Communication and the accompanying Regulatory Impact Assessment reinforces findings of recent UK surveys, such as the DTI Information Security Breaches survey 2006. She regards it as “a positive contribution to the debate especially in defining the complex threats and challenges faced in developing and maintaining a secure information infrastructure”. She continues as follows:

“The UK Government has regular dialogue with industry, has introduced self-regulation and regulation where appropriate and operates various citizen awareness raising programmes. Examples include the DTI website for best practice, Get Safe on Line and IT Safe for citizen awareness and the CSIA Claims Tested Scheme for certifying security products and services.

“Although these initiatives are having a positive impact, we are not complacent and continue to seek ways to ensure that a culture of information security is firmly embedded within the user and supplier community. We welcome the general thrust of this Communication and look forward to working with the Commission and, other Member States, on developing the principles referred to in the document. We see no immediate need for regulation and continue to support the development of self regulatory alternatives.”

Conclusion

8.11 Although weighed down by a plethora of buzz words and phrases, the need identified by the Commission is self-evident, as all IT users know, and sometimes from bitter experience. We are accordingly drawing the Communication to the attention of the House because of the intrinsic importance of the subject matter.

8.12 We share the Minister’s endorsement of self-regulation, and are gratified that — despite its choice of three of the most egregious of such buzz words as the framework upon which to hang its thoughts — the Commission appears to favour it too. We look forward to its continuation in the outcome of the promised 2007 review.

8.13 We now clear the document.

9 EC research and development: the Ideas programme for 2007–13

<p>(a) (26881) 12730/05 COM(05) 441</p>	<p>Draft Decision on the specific programme “Ideas” implementing the European Community’s 7th Framework Programme (2007–13) for research, technological development and demonstration activities</p>
---	---

<p>(b) (27647) 10235/06 COM (05) 441</p>	<p>Adaptation of the draft Decision on the Ideas programme</p>
--	--

<i>Legal base</i>	Article 166(3) EC; — ; QMV
<i>Document originated</i>	(b) 24 May 2006
<i>Deposited in Parliament</i>	(b) 4 July 2006
<i>Department</i>	Trade and Industry
<i>Basis of consideration</i>	Addendum to EM of 28 June 2006
<i>Previous Committee Report</i>	(a) HC 34–vii (2005–06), para 8 (26 October 2005) (b) None; but see (27580) 10240/06: HC 34–xxxiv (2005–06), para 7 (5 July 2006)
<i>To be discussed in Council</i>	No date fixed
<i>Committee’s assessment</i>	Politically important
<i>Committee’s decision</i>	(Both) Cleared

Background

9.1 In July 2005, we considered the draft Decision to establish the EC’s 7th Framework Programme for research, technological development and demonstration activities (R&D) for 2007–13.²⁶

9.2 The legal base for the draft Decision to establish the EC’s Framework Programme is Article 166(1) of the EC Treaty. Article 166(3) provides that the EC’s Framework Programmes are to be given effect through specific programmes, each of which defines the detailed rules for implementing it, fixes its duration and provides the funds it requires.

Previous scrutiny of document (a)

9.3 In October 2005, we considered the drafts of Decisions to establish the following specific programmes to implement the EC’s 7th Framework Programme:

²⁶ (26581) 8087/05: See HC 34–i (2005–06), para 21 (4 July 2005).

- Ideas
- Co-operation;
- People;
- Capacities; and
- non-nuclear work by the EC’s Joint Research Centre.²⁷

Document (a) proposes the creation of the Ideas programme to support “frontier research” through a new European Research Council.

9.4 We decided to keep all the draft Decisions under scrutiny pending the settlement of the EU’s total budget for 2007–13.

9.5 On 22 May, after the total budget had been agreed, the Parliamentary Under-Secretary of State for Science and Technology at the Department of Trade and Industry (Lord Sainsbury of Turville) told us what the budget of the EC Framework Programme was expected to be.²⁸ He also told us the likely allocation of the budgets between the specific programmes. In our view, there is no “right” figure for the EC research budget and we saw no reason to object to the amounts about which the Minister had told us.

9.6 On 30 May, the Council confirmed the EC Framework Programme’s budget and its allocation.

Document (b)

9.7 Under Article 2 of document (a), the budget of the Ideas programme for 2007–13 would be €11.86 billion. The purpose of document (b) is to insert the amount Council allocated to the programme on 31 May. Accordingly, the proposed budget of the Ideas programme is €7.46 billion.

The Government’s view of document (b)

9.8 The Minister tells us that the Government accepts the proposed budget and says that it is in line with Government’s policy objectives for the 7th Framework Programmes.

Conclusion

9.9 Document (b) gives effect to the budgetary decision of which we were aware from previous scrutiny and to which we did not object. It follows that we see no reason to object to the document and we are content to clear it from scrutiny.

9.10 In October 2005, we decided to keep the draft Decision establishing the Ideas programme under scrutiny pending settlement of its budget. Now that the budget have been settled, we are also content to clear document (a).

²⁷ See headnote.

²⁸ See HC 34–xxx (2005–06), para 12 (24 May 2006).

10 Comitology Reform

(a) (25615) 9087/04 COM(04) 324	Draft Council Decision amending Decision 1999/468/EC laying down the procedures for the exercise of implementing powers conferred on the Commission
(b) (27628) 10126/1/06 —	Amended draft Council Decision amending Decision 1999/468/EC laying down the procedures for the exercise of implementing powers conferred on the Commission

<i>Legal base</i>	Article 202; consultation; unanimity
<i>Department</i>	Foreign and Commonwealth Office
<i>Basis of consideration</i>	(b) Minister’s letter of 29 June 2006 and EM of 3 July 2006
<i>Previous Committee Report</i>	(a) HC 34–xxxii (2005–06), para 6 (14 June 2006) (b) None
<i>To be discussed in Council</i>	(b) At the GAERC on 17 and 18 July 2006
<i>Committee’s assessment</i>	Legally and politically important
<i>Committee’s decision</i>	(Both) Cleared

Background

10.1 Comitology is the system of committees which oversees the exercise by the European 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 are chaired by the Commission. Under Council Decision 1999/468/EC, which currently governs the comitology process, 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.

10.2 Comitology has come under criticism as forming part of the EU’s “democratic deficit”. The Commission’s original proposal addressed many of the criticisms made of comitology, and sought to reform the existing comitology process in several ways. First, the proposal sought to strengthen the role of the European Parliament in the comitology decision-making process by granting the Parliament co-decision status with the Council during the supervisory phase of the comitology process. Secondly, the Commission proposed to reduce the number of committee procedures from three to two and to abolish the management procedure currently available under the 1999 Decision. Thirdly, it proposed that the choice between the two remaining procedures for measures adopted under co-decision by Council and European Parliament should be prescribed and no longer left to the discretion of the legislating institution.

Background

10.3 We last looked at a substantially amended version of the original proposal in response to a Minister's letter of early June 2006. We asked the Minister to deposit a copy of the Presidency text referred to in his letter and to explain the grounds which led him to conclude that the proposed legal base for the proposal was adequate.

The Document

10.4 The Minister has now deposited the requested Presidency text. The amended proposal has the following key features.

10.5 First, the management procedure is not to be abolished.

10.6 Secondly, it prevents the Commission going ahead with the proposal over the objections of the Council or the European Parliament. Under the terms of the latest text, the Commission will need to submit an amended draft or a legislative proposal if either the Council or Parliament objects to its draft. It is possible, however, for the Council and Parliament to provide for application of an urgency procedure where the time limits for scrutiny cannot be met. This would allow the Commission to give the measure a provisional application and also to maintain it in force after objection by either the Council or Parliament until replaced by a definitive instrument. The safeguards on this latter power are that the Committee must have approved the draft and keeping the measure in force has to be justified on health protection, safety, or environmental grounds.

10.7 Thirdly, amended text provides that the European Parliament may oppose draft implementing measures on the grounds that they are not compatible with the aim or content of the basic instrument or do not respect proportionality or subsidiarity and not just on the grounds that proposals may be *ultra vires*. In addition, the text provides for the European Parliament to be informed by the Commission of Committee proceedings on a regular basis following arrangements which ensure that the transmission system is transparent. The Presidency has also negotiated supplementary undertakings in connection with the draft decision. By these the Council, Parliament and Commission agree that implementing powers will normally be conferred on the Commission without time limit. This is intended to put an end to the European Parliament inserting sunset clauses on the operation of comitology to which the Council subscribes in order to secure agreement. They also set out the 25 existing measures which are to be adopted under the new comitology 'regulatory with scrutiny' procedure shortly after its adoption.

10.8 The main points of the 'regulatory with scrutiny' procedure are as follows:

- It is to apply when the implementing measures amend non-essential elements of the basic instrument; the scrutiny procedure differs depending on whether the Committee has approved them; if it has, the draft measures go to the Council and the Parliament and either institution can oppose them on certain grounds within three months;
- If the draft measures are not approved, the measures are sent to the Council and Parliament at the same time, but the Council must first decide whether it has any

objection to them within two months. If it has no objection, the Parliament has four months from receipt to oppose the measures on certain grounds;

- There is provision for the time limits to be extended by one month or to be shortened; and
- The Council and Parliament can make provision for implementing measures to have provisional application on grounds of urgency.

The Government's view

10.9 In his Explanatory Memorandum of 3 July the Minister for Europe (Mr Geoffrey Hoon) welcomes the COREPER agreement on the latest Presidency text. He expresses the Government's view that the agreement should make the comitology arrangements more consistent with the Laken Declaration and create a faster, more effective and accountable decision making process than is currently in place under the Council Decision of 28 June 1999. The Minister is more specific in his letter of 29 June 2006, in which he also sets out the Government's thinking in relation to the proposed legal base for the proposal. The Minister writes as follows:

"I am writing to provide you with the final text of the proposal, agreed at Coreper on 8 June subject to a UK Parliamentary scrutiny reserve, for a Council Decision amending Commission Decision 1999/468/EC on Comitology. I also attach associated statements agreed at Coreper on 22 June. As requested, I am also happy to explain why I consider the proposed legal base for the new 'regulatory with scrutiny procedure' to be adequate. Although the text of the amended proposal is not yet publicly available, I am depositing an Explanatory Memorandum so that your Committee may consider lifting your scrutiny reserve on this item. I will of course formally deposit the document next week once it becomes publicly available.

"For the reasons set out in my letter to you of 1 June, I believe that the agreement over a revised Comitology Decision meets all the UK's principal objectives for comitology reform, chiefly giving the European Parliament more say in implementing co-decided legislation. The outcome represents a major success for the Austrian Presidency on an initiative launched during our Presidency last autumn.

"Your Committee in its meeting of 14 June asked for a further explanation of the basis on which I considered the proposed legal base for the new procedure to be adequate. Article 202 is the legal base for this measure and it provides that the Council shall confer on the Commission powers for the implementation of the rules which the Council lays down. The legal issue which arises is whether the powers granted to Parliament in the amended Decision go beyond the scope of Article 202. The view taken by the Council is that it is not contrary to the EC Treaty to give Parliament, as co-legislator, the possibility of checking that "quasi-legislative" measures envisaged for the implementation of an act adopted under the co-decision procedure do comply with that act. Those checks can extend as far as being able to block the adoption of such measures. By 'quasi-legislative' measures, we mean those that have the purpose of revising and updating provisions of the act using the swifter comitology procedure.

“The particular concerns in relation to the Commission’s proposal were that it might confer implementing powers on the European Parliament and that it altered the interinstitutional balance established by the Treaty. By limiting the comitology reform to ‘quasi-legislative’ measures and by providing that both co-legislators can scrutinise implementing measures and oppose their adoption, I believe that the Council has dealt with these concerns.

“In my letter of 1 June, I mentioned that one Member State wanted a simple majority of Member States to be in favour of the implementing measures before they can be adopted. The Member State in question was particularly concerned about sensitive areas such as GMO authorisations. These concerns have now been addressed by means of the statements in the Draft summary record of the Coreper meeting at Annex III of document 10125/1/06.

“Following agreement in Coreper, the text of the amended Decision is now subject to re-consultation of the European Parliament on 6 July. If approved, it would then go to 17–18 July GAERC for adoption: I would be grateful if your Committee would consider lifting your scrutiny reserve before this date.”

Conclusion

10.10 We thank the Minister for his summary and comprehensive comments on the agreed Presidency text. We remain sceptical about the adequacy and legal certainty of the distinction between quasi-legislative and other comitology measures but accept the Minister’s view that for as long as the proposed comitology reform does not confer on the European Parliament the power to adopt implementing measures, it does not seem obviously incompatible with Article 202 EC. As this answers our last remaining concern we are now content to clear the agreed proposal (document (b)) together with the previous text (document (a)).

11 EC External Action — new instruments for co-operation

(a) (27653) —	Draft Regulation establishing an Instrument for Pre-Accession Assistance
(b) (27654) —	Draft Regulation establishing an establishing a European Neighbourhood and Partnership Instrument
(c) (27655) —	Daft Regulation establishing an establishing an Instrument for Stability

<i>Legal base</i>	(a) Article 181a EC; unanimity for candidate countries, QMV for others; consultation (b) Articles 179 and 181a EC; QMV; co-decision (c) Articles 179 and 181a EC; QMV; co-decision
<i>Department</i>	Foreign and Commonwealth Office
<i>Basis of consideration</i>	EMs of 5 July 2006
<i>Previous Committee Reports</i>	HC 34–iv (2005–06), para 3 (20 July 2005), HC 38–v (2004–05), para 2 (26 January 2005) and HC 38–i (2004–05), para 13 (1 December 2004). Also see (25367) 6232/04: HC 42–xv (2003–04), paras 1–37 (24 March 2004) and (25847) 11607/04: HC 42–xxxiv (2003–04), para 13 (27 October 2004)
<i>To be discussed in Council</i>	17–18 July 2006 General Affairs and External Relations Council
<i>Committee’s assessment</i>	Politically important
<i>Committee’s decision</i>	Cleared, but further information requested

Background

11.1 Hitherto, the EC’s External Actions spending has been funded from a multitude of diverse instruments and budget lines. As part of the 2007–13 Financial Perspective, the Commission proposed, in September 2004, that all External Actions spending should be rationalized and simplified under one heading (Heading 4) and implemented under six Instruments. Three new instruments would support EU external policies directly:

- a *Pre-Accession Instrument (IPA)* for candidate and potential candidate countries covering institution-building, co-operation, rural development and human resources development;

- a *European Neighbourhood and Partnership Instrument (ENPI)* for all countries covered by the European Neighbourhood policy, to enhance political security, economic and cultural co-operation and to offer participation in EU activities; and
- a *Development Co-operation and Economic Co-operation Instrument (DCECI)*, which would both encompass co-operation with developed and developing economy partners and support the poorest countries in reaching the UN Millennium Development Goals, and which the Commission proposed should incorporate the successor to the 9th European Development Fund (i.e. that the EDF should be “budgetised”).

11.2 These three Instruments would be complemented by *three thematic Instruments*, principally to respond to crisis situations until normal co-operation can resume: the existing, essentially unchanged *Humanitarian Aid* and *Macro Financial Assistance* Instruments and a new *Instrument for Stability*.²⁹

11.3 Although broadly supportive of the Commission proposals, the relevant FCO and DfID Ministers had a number of concerns, principally that the IPA, ENPI and DCECI were more geographical than developmental; about the EDF “budgetisation” proposal; and that the Stability Instrument was much less well-defined than the others, with a real risk of overlap with both CFSP and actions under the JHA pillar and an uncertain legal basis (Article 308 TEC).

11.4 Both we and our predecessors considered these documents on several occasions, eventually recommending them for debate.³⁰ On 10 November 2005 the European Standing Committee concluded that it “agrees with the Government that they provide a good basis for discussion of external actions spending (Heading 4) in the next Financial Perspectives 2007–2013”.³¹

The Proposed Regulations

11.5 In his three Explanatory Memoranda of 5 July 2006, the Minister for Europe (Mr Geoffrey Hoon) explains that, following agreement in Coreper, the text of each Instrument was agreed by the European Parliament on 4 July, and the Presidency will aim for Council approval at the 17/18 July General Affairs and External Relations Council.

Instrument for Pre-Accession Assistance

11.6 The countries covered by the IPA are: Croatia, Turkey, the former Yugoslav Republic of Macedonia, Albania, Bosnia and Herzegovina, Montenegro and Serbia, including Kosovo (as defined in UNSCR 1244). The IPA will replace the existing geographic and thematic programmes of assistance (Phare, ISPA, SAPARD and Turkey pre-accession instruments, as well as the CARDS instrument). The Minister continues as follows:

“The IPA’s overall objective is to assist EU candidate countries and potential candidate countries in progressive alignment with the standards and policies of the

29 (26041) 13686/04: see HC 38-i (2004–05), para 9 (1 December 2004).

30 See headnote.

31 *Stg Deb Co*, European Standing Committee, 10 November 2005, cols 3-36.

EU, with a view to eventual membership. The overall scope of the instrument is set out in Article 2, and includes a wide range of areas. IPA programming and implementation is divided into five components. These are Transition Assistance and Institution Building; Cross-Border Co-operation; Regional Development; Human Resources Development; and Rural Development.

“The IPA makes a distinction between EU candidate countries and potential candidate countries. Only candidate countries are eligible for assistance under the Regional Development, Human Resources Development and Rural Development components. These three components are aimed at preparing candidate countries for the management of Structural Funds, and largely mirror Structural Funds regulations. To manage this type of assistance, a country has to operate decentralised management structures, and have demonstrated autonomous programming and management capabilities. Potential candidates are still eligible to receive funds in the areas covered by the three components, but the assistance must be provided through the Transition Assistance and Institution-Building component. This enables potential candidates to build their capacity in these decentralised programming and management structures, and will allow them to prepare for structural funds once they become candidates.

“The political framework for the IPA will remain the annual enlargement package. This includes the European and Accession Partnerships, the Progress Reports and the Enlargement Strategy Paper. This package will also include a Multi-annual Indicative Financial Framework (MIFF), which will present the planned allocation of funds, in line with the priorities outlined in the package. The MIFF will be established on a three year rolling basis.

“A Multi-annual Indicative Planning Document (MIPD) will be established for each country. This planning document will present indicative allocations for the main priorities within each component. Like the MIFF, this will be established on a three year rolling basis, and reviewed annually. Assistance on a programme level will be provided through specific multi-annual or annual programmes, by country and by component. Article 7 outlines the content of these documents.

“The IPA regulation establishes an IPA Committee, composed of Member State representatives and chaired by the Commission. This will assist the Commission in ensuring the co-ordination and coherence between assistance granted under the different components, and will operate according to the procedure laid down for a management committee.”

11.7 The Commission will submit to the Council and European Parliament, by 31 December 2010, a report evaluating the implementation of the Regulation in the first three years. This is in addition to regular evaluation reports, of efficiency and effectiveness against objectives, which shall be sent to the IPA Committee for discussion and feedback into programme design and resource allocation.

The Government's view

11.8 The Minister says that the Government remains a great supporter of EU enlargement; that it has spread security and prosperity across Europe; and that it is in the interests of current and future EU states that the process continues. He continues as follows:

“The new IPA will support candidates and potential candidates in their preparations for EU membership. We welcome the streamlining of all pre-accession assistance within a single framework, which should ensure that EU assistance is provided in a co-ordinated, coherent, and effective manner.

“The UK is committed to improving the effectiveness of EU expenditure. Therefore, we welcome the language on best practice in the delivery of assistance. Specifically, we welcome the requirement in Article 7 that all programme objectives shall be specific, relevant and measurable, and have time-bound benchmarks; we support the provisions for donor co-ordination in Article 20, which will further effective coordination of EU assistance with that of other donors, including member states and other multilateral donors such as the UN; and we are pleased that the regulation has taken on board many of the findings of the recent evaluations of previous instruments of assistance to the region and the lessons from the accession countries. The framework regulation contains sufficient recognition of the economic and social challenges that countries face on the path towards EU integration, and of the need to address these.”

11.9 The Minister says that the *Indicative Financial Framework* for this instrument for 2007–13 is €11,468 million at current prices — a reduction from the Commission's original proposed allocation of €12,919 million — which he believes will provide the necessary funding to support the preparations of all candidates and potential candidates for EU accession.

The European Neighbourhood and Partnership Instrument

11.10 The countries covered by the ENPI are: Algeria, Armenia, Azerbaijan, Belarus, Egypt, Georgia, Israel, Jordan, Lebanon, Libya, Moldova, Morocco, the Palestinian Authority of the West Bank and Gaza Strip, the Russian Federation, Syria, Tunisia and Ukraine. The ENPI will cover all assistance by the European Union to these countries, except areas covered by the Stability Instrument and proposed new Instruments for Democracy and Human Rights and Thematic Programmes³² (including migration and the environment). The ENPI will replace existing geographic and thematic programmes of assistance (TACIS, MEDA, Euratom, financial and technical co-operation with the West Bank and Gaza). The ENPI aims to promote enhanced co-operation and progressive economic integration between the European Union and the partner countries and, in particular, in the implementation of Partnership and Co-operation Agreements, Association Agreements or other existing and future agreements; and to encourage partner countries' efforts aimed at promoting good governance, and equitable social and economic development.

32 See HC 34–xx (2005–06), paras 5 and 15 (1 March 2006).

11.11 The Minister describes an extended list of areas of co-operation, running from (a) to (y), as “combining neighbourhood issues with traditional development objectives” in which “a new emphasis will be placed on cross-border co-operation, bringing together regions of Member States and partner countries sharing a common border (land or sea)”. Assistance is to be for the common benefit of both Member States and partners, and adjoining regions can be associated. “Specific provisions for cross-border programmes, modelled on the Structural Funds approach, are included in the Regulation.”

11.12 The objectives will be met through country or multi-country, and cross-border programmes, based on Strategy Papers and Multi-annual Indicative Programmes for 2007–10. The baseline will be the level of assistance provided under the present Financial Perspectives to beneficiary countries and regions; thereafter, “due account will be taken of the readiness of these countries to set and implement objectives agreed with the Union, and future funding will grow accordingly”. Priorities for assistance will be developed on the basis of action plans established in bilateral agreements between the EU and partner countries. Where action plans do not exist, assistance may still be provided when relevant to pursue EU objectives. The same evaluation process will be applied as in the IPA.

The Government’s view

11.13 The Minister says:

“We support the European Neighbourhood Policy, for which this instrument will provide financial and technical support. This policy is designed to strengthen relationships with neighbouring countries, encouraging the same sorts of reforms that have been generated through the enlargement process. We support the list of countries included in the European Neighbourhood and Partnership Instrument and welcome the new emphasis on cross-border programmes. We are pleased that the scope of the Instrument now specifies support for equitable development in addition to general co-operation and integration.

“We broadly welcome the objectives set out in Article 2 of the draft Regulation, particularly the strengthened references to civil society, and support their implementation. We similarly welcome the provision in Article 4 to waive a requirement for co-financing in certain cases when this is necessary to support the development of civil society and non-state actors for measures aimed at promoting human rights and fundamental freedoms and supporting democratisation.

“We are also pleased that the Regulation does *not* include a percentage split between the eastern and southern neighbours. The annexed Commission Declaration makes clear that, although the baseline for assistance to particular countries and regions will be the levels under the present Financial Perspectives, resource allocation in future years will be determined objectively rather than on historical precedents. We welcome the inclusion of clauses aiming to ensure best practice in the management of these Community programmes, including by strengthening coordination with other donors and increased emphasis on learning lessons from past assistance.”

11.14 The Minister says that the *Indicative Financial Framework* for this instrument for 2007–13 is €11,181m in current prices:

“We believe that there is scope for a smaller overall budget increase than proposed, in order to ensure a fairer share of resources for areas where funding looks set to decline while needs remain acute (particularly Asia). The Government will keep a close eye on annual budget appropriations and will seek to maximise resources where needs and impact are greatest.”

The Stability Instrument

11.15 The Minister says that the scope of the Stability Instrument has changed in the course of the negotiations. He recalls that nuclear safety elements were originally included and says that “the decision (which we supported) to change the legal base of the Instrument from Article 308 to Articles 179 and 181a of the Treaty establishing the European Community meant that a separate Instrument for Nuclear Assistance would be required to cover these elements”. The General Objectives are set out in Article 1 as follows:

- a) “In a situation of crisis or emerging crisis, to contribute to stability by providing an effective response to help preserve, establish or re-establish the conditions essential to the proper implementation of the Community’s development and co-operation policies.
- b) “In the context of stable conditions for the implementation of Community co-operation policies in third countries, to help build capacity both to address specific global and transregional threats having a destabilising effect and to ensure preparedness to address pre- and post-crisis situations.”

11.16 In addition, sub-paragraph 3 of that Article notes that “Measures taken under this instrument may be complementary and shall be consistent with and without prejudice to measures adopted under Title V and Title VI of the TEU”, which are the Titles that relate, respectively, to the provisions on a Common Foreign and Security Policy and on Police and Judicial Co-operation in Criminal Matters.

11.17 Article 2 says that Community assistance under this Regulation shall complement that provided under related Community instruments for external assistance and be provided only to the extent that those instruments are inadequate to the task in hand; be consistent with the strategic policy framework for the partner country; and be closely coordinated, at decision-making level and on the ground, with Member States’ activities. “Long term priorities will be addressed through multi-annual programmes, based on multi-country strategy papers. These will be consistent with, and avoid duplication of, country, multi-country or thematic strategy papers adopted under other Community instruments for external assistance.” Annual Action Programmes will set out measures to be adopted on the basis of multi-country Strategy Papers and Multi-annual Indicative Programmes.

11.18 Article 3 sets out in detail, from a) to p), a wide range of assistance that may be provided “in response to situations of crisis or emerging crisis”. Together with Article 6,

measures are also allowed for in exceptional and unforeseen crisis situations where effectiveness is particularly dependent on rapid or flexible implementation. The Minister explains adds that “these will have a comitology (management procedure) threshold of €20m (below this the Commission is committed to seek the views and guidance of the Council)”. There is also scope for Special Measures not provided for in the multi-country Strategy Papers or Multi-annual Indicative Programmes which, if costing more than €5 million, will be subject to the same comitology procedure.

11.19 Article 4 covers “Assistance in the context of stable conditions for co-operation”, under the headings of:

- threats to law and public order, to the security and safety of individuals, to critical infrastructure and to public health;
- risk mitigation and preparedness relating to chemical, nuclear and biological materials or agents; and
- pre-and post-crisis capacity building.

11.20 The Commission shall regularly evaluate the results efficiency and effectiveness of measures carried out, and send “significant” evaluation reports to the Management Committee for discussion and feedback into programme design and resource allocation. The Commission shall also submit annual reports to the Council and European Parliament, and, by 31 December 2010, a review evaluating the implementation of the Regulation in the first three years.

The Government’s view

11.21 The Minister says that the around 70% of funding under the Stability Instrument will be directed towards short-term assistance to help countries respond to crises or emerging crises, and that the remainder will support longer-term activities to help build capacity to address specific and transregional threats having a destabilising effect, e.g. counter-terrorism, organised crime and trafficking. He goes on to say that the Stability Instrument covers a number of areas where the Government is “keen to see the Community providing financial and technical support including areas where the Community has been very active to date” and that “the UK has therefore been a strong supporter of the Instrument overall”.

11.22 He continues as follows:

“One key concern has been to protect the scope of CFSP action. Given that the Stability Instrument inevitably provides a general basis for Community action across a wide range of areas and in fields which are close to those covered by CFSP, we have taken the lead in seeking to ensure that it does not encroach on CFSP activities and objectives.”

11.23 The Minister says, without further comment, that the *Indicative Financial Framework* for this instrument for 2007–13 is €2,062m in current prices.

Conclusion

11.24 Close to €25 billion over the next Financial Perspective is a large amount of the European taxpayers' money. Measures to rationalise, control and evaluate that expenditure in the ways outlined are therefore much to be welcomed, as is the inclusion in the regulations of mechanisms for continuing Member State involvement in management and for continuing evaluation and feedback.

11.25 Nevertheless, it is plain from some of the Minister's comments that there are still important areas of ambiguity. His remarks on the ENPI suggest that there remain real differences of view over the issue of its "developmental versus geographical" nature. He feels able only "broadly" to welcome its objectives. Moreover, it is not as clear to us as it seems to be to him that the wording in the Commission Declaration to which he refers does make clear that future allocations will be "determined objectively". Furthermore, he suggests that the budget is bigger than it needs to be for the wrong reasons, yet is not able to explain how he will be able to do anything about it, other than to say that he "will keep a close eye on annual budget appropriations" and "seek to maximise resources where needs and impact are greatest" — phrases that are as broad as they are long.

11.26 As for the Instrument for Stability, it is good to know that the UK has taken the lead in seeking to ensure that it does not encroach on CFSP activities and objectives, since it is plain that the very wide range of activities covered by Articles 3 and 4 are precisely those that are being and/or could be carried out inter-governmentally in third countries. But it would have been more reassuring if the Minister had said somewhat more about how this essential outcome has been achieved: were there any difficulties in the negotiations with the Commission and, if so, regarding what aspects? Also, what are the areas where the Community has been very active to date and where the Government is keen to see the Community providing financial and technical support?

11.27 We should therefore be grateful if he would elaborate on the means by which encroachment will be prevented and on his somewhat qualified endorsement of the ENPI, since it will be important in monitoring how these new arrangements work to have as clear a picture as possible of the starting point.

11.28 In the meantime, we clear the documents.

12 EU Forest Action Plan

(27603) Commission Communication on an EU Forest Action Plan
 10448/06
 COM(06) 302

<i>Legal base</i>	—
<i>Document originated</i>	15 June 2006
<i>Deposited in Parliament</i>	23 June 2006
<i>Department</i>	Forestry Commission
<i>Basis of consideration</i>	EM of 29 June 2006
<i>Previous Committee Report</i>	None
<i>To be discussed in Council</i>	October 2006
<i>Committee's assessment</i>	Politically important
<i>Committee's decision</i>	Cleared

Background

12.1 Although forestry is not dealt with in the EU Treaties, a number of Community policies influence the development of sustainable forest management, and consequently an EU Forestry Strategy was adopted in 1998. This emphasized the importance of the multifunctional role of forests, and identified a series of key elements, whilst stressing that, although the Community could make a contribution through common policies, forest policy lies within the competence of Member States. It also underlined the importance of international commitments.

12.2 When the Strategy was adopted, the Commission was asked to report to the Council on its implementation within five years. When it did so in 2005, it confirmed the importance of the forest sector within the Community, and the many benefits of sustainable forestry, and highlighted the extent to which the context for forest policy within the Community had evolved in the intervening period. It also suggested that an EU Action Plan for Sustainable Forestry would provide the framework needed for further steps to be taken.

The current document

12.3 The Commission has now set out in this document such an Action Plan for 2007–11, based upon its earlier Communication. This sets out four main objectives, together with a set of key actions which the Commission proposes to implement jointly with the Member States. These are as follows:

Improving long-term competitiveness

- Examine the effects of globalisation on the economic viability and competitiveness of Community forestry;

- Encourage research and technological development to enhance the competitiveness of the forest sector;
- Exchange and assess experiences on the valuation and marketing of non-wood goods and services;
- Promote the use of forest biomass for energy generation; and
- Foster the co-operation between forest owners and enhance education and training in forestry.

Improving and protecting the environment

- Facilitate Community compliance with the obligations on climate change mitigation of the UN Framework Convention on Climate Change and its Kyoto Protocol and encourage adaptation to the effects of climate change;
- Contribute towards achieving the revised Community biodiversity objectives for 2010 and beyond;
- Work towards a European Forest Monitoring System; and
- Enhance the protection of EU Forests.

Contribute to the quality of life

- Encourage environmental education and information;
- Maintain and enhance the protective functions of forests; and
- Explore the potential of urban and per-urban forests.

Fostering co-ordination and communication

- Strengthen the role of the Standing Forestry Committee;
- Strengthen coordination between policy areas in forest-related matters;
- Apply the open method of coordination to national forest programmes;
- Strengthen the Community profile in international forest-related processes;
- Encourage the use of wood and other forest products from sustainably managed forests; and
- Improve information exchange and communication.

The Government's view

12.4 In his Explanatory Memorandum of 29 June 2006, the Minister for Biodiversity, Landscape and Rural Affairs at the Department for Environment, Food and Rural Affairs (Barry Gardiner) says that the impact of the Action Plan on the UK would be positive,

providing a more coherent framework for Community actions to be implemented, and that the UK therefore welcomes the Communication and its focus on key priorities which add value at a European level. He adds that the Plan is intrinsically linked to the EU Forestry Strategy and other Community strategies such as the Rural Development Strategy, and that it provides necessary links and synergies with the forestry strategies of England, Scotland, Wales and Northern Ireland, which are brought together in the framework of the UK's National Forest Programme.

Conclusion

12.5 Although we do not believe this document merits further consideration, and are therefore clearing it, we think it right to draw it to the attention of the House.

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

Department for Education and Skills

(27616)
10763/06
COM(06) 274

Draft Council Decision on the signature of the Agreement between the European Community and the government of Canada establishing a framework for co-operation in the fields of higher education, training and youth.

Department for Environment, Food and Rural Affairs

(27609)
10637/06
COM(06) 233

Draft Council Regulation amending Council Regulation (EC) No.104/2000 on the common organisation of the markets in fishery and aquaculture products

(27613)
10718/06
COM(06) 285

Commission Report on the implementation of Regulation (EC) No.2792/1999 as amended by Council Regulation (EC) No. 485/2005 of 16 March 2005 regarding a specific action for transfers of vessels to countries hit by tsunami in 2004.

(27622)
10867/06
COM(06) 330

Draft Council Regulation amending Regulation (EC) No. 1788/2003 establishing a levy in the milk and milk products sector.

Foreign and Commonwealth Office

(27652)
—
—

Amendment to Council Regulation (EC) No. 817/2006 in respect of restrictive measures against Burma/Myanmar.

Department of Health

(27642)
10985/06
COM(06) 313

Commission Report concerning the first report on the application of the Blood Directive.

Department of Trade and Industry

(27629)
9734/06
COM(06) 227

Draft Council Regulation amending the Annex to Regulation (EC) No.2042/2000 imposing a definitive anti-dumping duty on imports of television camera systems originating in Japan.

HM Treasury

- (27594)
10480/06
+ ADD1
COM(06) 279
- Annual Report to the Discharge Authority on Internal Audits carried out in 2005.
- (27600)
10562/06
COM(06) 277
- Commission Communication: *Synthesis of the Commission's management achievements in 2005.*
- (27611)
10705/06
SEC(06) 760
- Preliminary Draft Amending Budget No. 4 to the general budget for 2006 — General Statement of Revenue.
- (27612)
10714/06
+ADD1
COM(06) 304
- Commission Communication: *Public Finances in EMU 2006 — The first year of the Stability and Growth Pact.*

Formal minutes

Wednesday 12 July 2006

Members present:

Mr David S Borrow
Mr William Cash
Michael Connarty
Mr Wayne David
Jim Dobbin

Nia Griffith
Mr David Heathcoat-Amory
Mr Lindsay Hoyle
Angus Robertson
Mr Anthony Steen

In the absence of the Chairman, Mr Michael Connarty was called to the Chair.

The Committee deliberated.

Current matters relating to the European Union: Rt Hon Geoffrey Hoon MP, Minister for Europe, Ms Shan Morgan, Director of European Union and Mr Anthony Smith, Director of European Political Affairs, Foreign and Commonwealth Office, were examined.

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 11.26 read and agreed to.

Paragraph 11.27 read, amended and agreed to.

Paragraphs 11.28 to 13 read and agreed to.

Resolved, That the Report, as amended, be the Thirty-fifth 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 19 July 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*)
 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*)
 Sharon Hodgson MP (*Labour, Gateshead East and Washington West*)
 Lindsay Hoyle MP (*Labour, Chorley*)
 Angus Robertson MP (*SNP, Moray*)
 Anthony Steen MP (*Conservative, Totnes*)
 Richard Younger-Ross MP (*Liberal Democrat, Teignbridge*)