House of Commons

European Scrutiny Committee

Thirty-first Report of Session 2007–08

Documents considered by the Committee on 22 July 2008, including the following recommendations for debate:

Carbon dioxide emissions from cars and light commercial vehicles

Cross-border healthcare

Future relations between the EU and the Overseas Countries and Territories

Report, together with formal minutes

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Notes

Numbering of documents

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

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

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

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

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

Abbreviations used in the headnotes and footnotes

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

Euros

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

Further information

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

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

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1 Carbon dioxide emissions from cars and light commercial vehicles

(29314) 5089/08 + ADDs 1–2 COM(07) 856	Draft Regulation setting emissions performance standards for new passenger cars as part of the Community's integrated approach to reduce carbon dioxide emissions from light-duty vehicles

Legal base	Article 95 EC; co-decision; QMV
Department	Transport
Basis of consideration	Minister's letter of 11 July 2008
Previous Committee Report	HC 16–xiv (2007–08), chapter 1 (5 March 2008)
To be discussed in Council	Autumn 2008
Committee's assessment	Politically important
Committee's decision	For debate in European Committee

Background

1.1 Because of the large (and increasing) contribution which carbon dioxide from vehicles makes to overall emissions of greenhouse gases, the Community has taken a number of measures to address this issue, including voluntary agreements with European, Japanese and Korean manufacturers to reduce such emissions; and, in its Energy Efficiency Plan,[1] the Commission said that it would if necessary propose in 2007 legislation to ensure that a target of 120g/km is achieved by 2012. A Communication in February 2007 also suggested that such a requirement was necessary, and that part of this reduction (to 130g/km) should be delivered by improvements in vehicle technology, and the remaining 10g/km by a range of other measures.[2] In addition, the Commission suggested a number of other potential measures, including taxation, consumer labelling and information; driver behaviour; and research towards a lower long term emissions target.

1.2 The Commission accordingly put forward in December 2007 this draft Directive, which would specify that the average specific emissions of new passenger cars should not exceed 130g/km as from 2012. In particular, it would:

- set mandatory targets for the specific emissions of carbon dioxide from new passenger cars according to their so-called "utility" (in practice their mass);
- enable manufacturers to apply these targets to the average of the emissions for all their new cars, rather than to each individual model;
- allow different manufacturers to form a pool, which would be treated as if it was a single manufacturer for the purpose of determining compliance with the targets;

1 (27944) 14349/06: see HC 41–ii (2006–07), chapter 8 (29 November 2006).

2 Notably minimum efficiency standards for air-conditioning systems; the mandatory fitting of tyre pressure monitoring systems; maximum tyre rolling resistance limits; the fitting of gear shift indicators; mandatory targets for fuel efficiency in vans; and increased use of biofuels "maximising environmental performance".

- require a manufacturer which fails to meet its target to pay a premium for each gram in excess of the target, the penalty being €20 for 2012, €35 for 2013, €60 for 2014, and €95 for 2015 (and each subsequent year); and

- oblige manufacturers to include in promotional literature for cars offered for sale information on the model's specific emissions of carbon dioxide.

Certain categories of "special purpose" vehicles (such as those providing wheel chair access) would be exempted from the proposals, and smaller, independent manufacturers registering fewer than 10,000 new passenger cars a year would be able to apply to the Commission for a lower target.

1.3 As we noted in our Report of 5 March 2008, the Government supports the Commission's intention to legislate, and, whilst it had concerns about some particular aspects of the proposal, it generally welcomed its aims. An initial analysis had suggested that the benefits to consumers would outweigh the costs to industry, but this analysis was being updated, the intention being to publish it as part of the Government's forthcoming formal consultation.

1.4 In the meantime, we noted that the Government had said that:

- since the motor industry typically has timescales of 5–7 years for product development, and, since the legislation could not realistically take effect earlier than 2009, there would be very little time for preparation;

- the 10,000 unit threshold was likely to benefit the UK, which has relatively more small-volume manufacturers than other Member States;

- whilst pooling can theoretically reduce total compliance costs by up to 12%, the savings in practice are likely to be substantially lower;

- since the definition of "manufacturer" in the proposal extends to holding companies, formal pooling — rather than offsetting within a holding company — is likely to be used only by companies unconnected with each other;

- UK production should not be especially disadvantaged by the increase proposed in the emissions target in relation to mass, although using mass may encourage a manufacturer to add weight to provide an easier target;

- given a choice between abatement and payment of a charge, manufacturers are likely to choose the least-cost option, and an analysis had suggested that unit charges would have to be at least £70, implying that, for the first three years, the premium will act merely as a charge; and

- manufacturers and car showrooms in the UK already use a colour-coded labelling system indicating a vehicle's actual g/km emissions, and there might be concerns as to how useful the new provision would be.

1.5 We commented that this proposal is clearly relevant to the wider measures being taken to meet the emissions targets for 2020 and beyond set by the European Council, and, for that reason, we believed it was right to draw it to the attention of the House. However, we

said that we would reserve judgement on whether any further consideration was needed until we had seen the Government's Impact Assessment. In the meantime, we were holding the document under scrutiny.

The Minister's letter of 11 July 2008

1.6 We have now received from the Parliamentary Under–Secretary of State at the Department for Transport (Mr Jim Fitzpatrick) a letter of 11 July 2008, enclosing an Impact Assessment. He says that this proposal is a priority for the French Presidency, and that it is likely that negotiations will be further advanced in the early autumn, He also says that a recently announced joint Franco-German position contains some features with which the UK agrees, but also includes others which will need careful consideration.

1.7 In the meantime, the Government has now launched its formal consultation on the contents of the proposal and the UK's position, with the Impact Assessment forming part of the consultation package. That Assessment points out that the automotive sector in the UK is based almost entirely on inward investment and that supply chains have also become much more multinational, so that the UK content of cars made here has declined (although the volume of parts exported has increased). Despite this, the Assessment says that 194,000 people are employed within the UK in the manufacture of vehicles and components, and that the sector directly contributes over £9.5 billion of value added to the economy, equivalent to about 6.4% of total manufacturing value added, and accounts for 11% of UK exports of goods.

1.8 The Assessment goes on to suggest that, over a 23 year period from 2009 to 2032,[3] the Commission's proposals as they stand would generate costs of between £7.683 and £19.656 billion, comprising those incurred by the introduction of fuel-saving technology (£7.683 to £8.421 billion), second order costs arising from greater congestion and a higher accident rate if increased fuel efficiency leads to greater vehicle use (£0 to £8.857 billion), as well as the costs of additional air pollution (£0 to £2.378 billion) arising from such use. It suggests that there would be benefits over that period of £8.545 to £10.337 billion, arising from reduced emissions of carbon dioxide (£1.370 to £1.255 billion) and a reduction in driving costs (£7.176 to £9.082 billion). The net benefit would therefore range from £2.654 billion to minus £11.111 billion, this reflecting the considerable uncertainties which arise from the assumptions made on such factors as oil prices, technology costs, and the efficiency improvements which would arise in the absence of any Directive.

1.9 The Assessment also analyses the implications of pursuing a number of amendments[4] to the Commission's proposals, and, we understand that, although the UK in the main concludes that the original proposals should be supported, it would like to see a number of changes. These include setting the penalties at €60 per gram or above, in order to encourage manufacturers to make the necessary fuel efficiency improvements, and making special provisions for "niche" manufacturers producing a narrow range of cars and unable to achieve compliance jointly with other manufacturers. In particular, the Government has

3 This assumes an average life of 13 years for cars entering the market between 2009 and 2020.

4 Such as basing targets other than on utility, changing the relationship between a vehicles utility and the emission level to be achieved, using properties other than mass to determine utility, and different derogation level for small manufacturers.

looked at the possibility of setting different targets. It believes that, for a variety of reasons (including the penalty regime proposed), the Commission's target of 130g/km by 2012 is unlikely to be delivered (not least in the UK, where the Assessment suggests there would by then be a sales-weighted average of just under 138g/km), and that it would therefore be sensible to explore deferring any target date until 2015, whilst setting then a more stringent target (for example, 128g/km or 125g/km), in conjunction with stricter penalties. It would also support the setting now of a longer-term target of 100g/km for 2020.

Conclusion

1.10 **It is clear from the Impact Assessment provided by the Minister that, in addition to the intrinsic importance of this proposal, there are a number of uncertainties as to its relative costs and benefits, and that, on certain assumptions, there could be very considerable net costs. In addition, there are clearly concerns that the aim of reducing emissions to 130g/km by 2012 may not be attainable, not least in the UK, and we understand that the Government believes there is a case for deferring the target date until 2015, whilst setting then a more stringent limit.**

1.11 **Given these considerations, we now consider that the proposal should be considered further by the House, and we are therefore recommending it for debate in European Committee.**

2 Cross-border healthcare

(a) (29811) 11327/08 COM(08) 415	Commission Communication: *A Community framework on the application of patients' rights in cross-border healthcare*
+ ADD 1	Commission staff working document: *Towards a renewed social agenda for Europe — citizens' well-being in the Information Society*
(b) (29786) 11307/08 COM(08) 414	Draft Directive on the application of patients' rights in cross-border healthcare
+ ADD 1	Commission staff working document: *impact assessment*
+ ADD 2	Commission staff working document: *summary of impact assessment*
+ ADD 3	Commission staff working document: *Towards a renewed social agenda for Europe — citizens' well-being in the Information Society*

Legal base	(b) Article 95 EC; QMV; co-decision
Document originated	(a) and (b) 2 July 2008
Deposited in Parliament	(a) 9 July 2008 (b) 4 July 2008
Department	Health
Basis of consideration	EM of 14 July 2008
Previous Committee Report	None
To be discussed in Council	December 2008
Committee's assessment	Legally and politically important
Committee's decision	For debate in European Committee before December but after receipt of further information

Introduction

2.1 Document (a) introduces the Commission's proposals for EC legislation on cross-border healthcare. Document (b) is the draft of a Directive to give effect to them.

Relevant provisions of the EC Treaty

2.2 The following provisions of the Treaty establishing the European Community (the EC Treaty) are relevant to cross-border healthcare:

- Article 14 provides for the progressive establishment of an internal market comprising an area in which the free movement of goods, persons, services and capital is ensured.
- Article 18 gives every citizen of the European Union the right to move and reside freely within the territory of the Member States, subject to the limitations and conditions laid down in the Treaty and measures to give effect to the Treaty.
- Article 42 requires the Council to adopt such measures on social security as are necessary to provide freedom of movement for workers.
- Article 49 prohibits restrictions on the freedom of people established in one Member State to provide services in other Member States.
- Article 152 provides that Community action on public health should complement Member States' policies and be directed to improving public health and preventing illness. The Community should encourage cooperation between Member States and, if necessary, support their action. The Council is authorised to contribute to the achievement of the objectives of the Article by adopting incentive measures to protect and improve public health, excluding any harmonisation of the laws of the Member States. The Article contains an express proviso that Community action must respect the responsibilities of the Member States for the organisation and delivery of health services and medical care.

Relevant case-law of the European Court of Justice

2.3 In the Communication it published in 2006, the Commission said that, until 1998, it was thought that the EC Regulations on the coordination of social security schemes provided the only Community mechanism enabling patients to receive medical treatment when abroad. However, in 1998:

> "the Court [European Court of Justice] established new principles through its rulings in two cases[5] regarding direct application of the Treaty articles on free movement to the reimbursement of health services provided to patients abroad … In its rulings, the Court made clear that when health services are provided for remuneration, they must be regarded as services within the meaning of [the EC] Treaty and thus relevant provisions on free movement of services apply."[6]

The European Court of Justice (ECJ) also ruled that requiring prior authorisation for reimbursement of a patient's costs for treatment constituted a barrier to the free provision of services.

2.4 In addition, the Commission referred to the ECJ's finding in the *Watts* case that :

5 Case C-158/96 Kohl [1998] ECR I-1931, and Case C-120/09 Decker [1998] ECR I-1831.

6 (27900) SEC(06)1195/4: Commission Communication: Consultation regarding Community action on health services: page 3, final paragraph.

- Article 49 of the EC Treaty (freedom of people established in one Member State to provide services in other Member States) applies in Member States with health services provided from public funds (such as the NHS in the UK); and
- the proviso in Article 152 of the EC Treaty does not exclude the possibility that Member States may be compelled by other Treaty provisions, such as Article 49, and by measures adopted under the Treaty, to make adjustments to their national social security systems.[7]

2.5 The Commission's Communication of 2006 initiated consultations on ways to remove legal uncertainties caused by the ECJ's judgments and invited views on other ways to provide support for Member States' health services.

2.6 When we considered the Communication in November 2006, we concluded that the issues it raised were of such importance and wide interest that they should be debated in the European Standing Committee. The debate took place on 16 January 2007.

Documents (a) and (b)

2.7 The Commission's Communication (document (a)) begins by noting that the vast majority of EU patients receive healthcare in their own countries (which we call their "home States") and prefer to do so. But sometimes they seek treatment in other Member State (which we call "the State of treatment") because, for example, they need highly specialised care not available in their home State or because they live in a frontier area and the nearest suitable treatment is on the other side of the border.[8] Since 1998, the ECJ has consistently ruled that patients are entitled to reimbursement of the cost of healthcare received abroad that they would have been entitled to receive at home.

2.8 The Commission says that the purpose of the draft Directive in document (b) is to:

- clarify the rights of reimbursement; and
- ensure the quality, safety and efficiency of cross-border healthcare.

The Commission also says that the proposal is based on the responses to the questions it posed in its Communication of 1996 (see paragraph 2.5 above) and subsequent discussions with Member States, representatives of the European Parliament, health providers, patients' organisations and others with an interest.

2.9 Article 2 of document (b) provides that the Directive applies to the provision of healthcare regardless of how it is organised, delivered and financed and regardless of whether it is in the private or public sector.

Safeguards for patients

2.10 In the Commission's view, wherever healthcare is provided, it is essential that:

7 Case C-372/04 R (on the application of Yvonne Watts) v. Bedford Primary Care Trust, judgment of 16 May 2006.

8 The Commission estimates that "around 1% of public healthcare budgets is spent on cross-border healthcare, equating to around €10 billion for the Community as a whole" (see the first paragraph of section 3.1 on page 8 of document (a)).

- people have the information necessary to enable them to make informed choices about their care;
- there are mechanisms to ensure the quality and safety of care;
- there is continuity of care; and
- there are accessible and effective means of redress for defects in care.

Accordingly, the Commission proposes that Article 5 of the draft Directive should make the State of treatment responsible for ensuring that these essential safeguards are provided within its territory for patients from other Member States.

Reimbursement for cross-border healthcare

2.11 Articles 6 to 12 set out the proposed responsibilities of the home State for patients' access to, and reimbursement of the cost of, healthcare in another Member State. In the UK, the cost of reimbursement will fall on the commissioning primary care trusts (in Scotland, the Health Board).

2.12 Patients would be entitled to seek *non-hospital care* in another Member State if they would be entitled to that care in their home Member State. They would not have to get prior authorisation from their home State; and they would be entitled to reimbursement by the home State of the cost of the care up to the cost which it would have met if the care had been given in the home State.

2.13 As to *in-patient hospital care for at least one night* or "specialised care",[9] patients would be entitled to reimbursement of the cost of care in another Member State:

- if they would have been entitled to receive the care in the home State; and
- where a requirement for prior authorisation can be justified, if they have obtained prior authorisation from their home State.

The amount of the reimbursement would not exceed what the home State would have paid if the care had been provided in the home State.

2.14 Article 8(3) provides that home States may operate a prior authorisation system only if it is necessary to prevent an outflow of patients to other Member States which would either undermine the financing of the home State's social security system or cause over-capacity in the home State's hospitals and healthcare system. Article 9 specifies procedural guarantees for patients who are required to get prior authorisation (for example, the authorisation system should include time limits for dealing with applications).

2.15 The draft Directive would not replace or limit the right of a patient, under Regulation (EC) 1408/71, to obtain healthcare in another Member State and for the cost to be met from public finds in the home State if the appropriate care for the patient's condition cannot be provided without undue delay in the home State.

9 Under Article 8 (1)(b), the Commission would be required to maintain a list of healthcare, not requiring an over-night stay in hospital, which uses highly specialised and expensive equipment or treatment presenting a "particular risk" (undefined) "for the patient or the population".

Cooperation between Member States

2.16 The draft Directive also includes provision requiring Member States to cooperate with each other through:

- mutual recognition of prescriptions issued in each other's territory;
- the development of "European reference networks" — these would bring together willing healthcare providers to, for example, help find healthcare for patients with rare conditions; evaluate treatments; help match patients with highly specialised and scarce equipment; provide specialist training; and disseminate best practice;
- a network of national bodies responsible for assessing health technology — the network would support cooperation between Member States to achieve the timely, robust and thorough assessment of new technologies and facilitate the exchange of information about the technologies' effectiveness; and
- the interoperability of Member States electronic information technology systems (the contribution of information technology systems to healthcare is discussed in section 5 of the Commission staff working document at ADD 1 of document (a) and ADD 3 of document (b)).

The Government's view

2.17 The Minister of State at the Department of Health (Dawn Primarolo) tells us that the Government considers the proposed draft Directive helpful because it clarifies the case-law on cross-border healthcare. She says that the Government:

> "… is pleased that the Commission has listened to points made previously by the UK and other Member States on the importance of health systems being able to maintain gatekeeper systems. (In the UK, this means the need for a patient to be referred by a General Practitioner (GP) prior to accessing specialist treatment.)
>
> "The current proposal allows Member States to put in place a system of prior authorisation for hospital care … However, the Directive tries to limit the circumstances in which prior authorisation for treatment abroad will be permitted. … The Government believes it is imperative that the home Member State retains responsibility for deciding entitlement to healthcare and that Member States can put in place a system of prior authorisation where necessary for their system. The Government will be seeking to protect this principle during negotiations."

2.18 The Minister also tells us that the Government will be seeking clarification of the provisions in the draft Directive for subsequent implementing measures (such as the list of specialised care referred to in Article 8(1)(b)). She adds that the Government will be doing further work on the impact of the draft Directive on the NHS.

2.19 The Minister notes that the cost of reimbursing patients for healthcare abroad "should be limited to the price which would have been incurred by the local NHS commissioner if the treatment had been provided in the UK".

Conclusion

2.20 **We agree with the Minister and the Commission about the desirability of EC legislation to clarify the entitlement to reimbursement for cross-border healthcare and the responsibilities of the home Member State and the Member State in which the treatment is given. Because of its importance, we recommend that the draft Directive be debated in the European Committee before it is considered by the Council of Ministers.**

2.21 **We believe it would be useful, however, to have the Minister's answers to the following questions before the debate takes place:**

- **Article 95(2) provides that the Council may not adopt measures under the Article which relate to the free movement of persons. The Commission cites Article 95 as the legal base for the draft Directive. The proposed Directive appears to relate to the free movement of people within the EU (as well as the freedom to provide services conferred by Article 49 of the EC Treaty). So we ask the Minister for her opinion on whether Article 95 is an appropriate legal base for the draft Directive.**

- **Article 6(1) of the draft Directive imposes a duty on the home State "to ensure that insured persons travelling to another Member State for the purpose of receiving healthcare there … will not be prevented from receiving healthcare provided in another Member State …" We should be grateful for the Minister's view on the scope of that duty and on whether it is reasonable and enforceable. We ask because it is not apparent that the duty is limited to events within the home State, or that the home State has any power to require healthcare providers in another State to treat a patient. We therefore question how the home State could "ensure" that the patient was not "prevented" from receiving the desired care.**

- **Article 18 of the draft Directive would give Member States a duty to collect statistics about cross-border healthcare. We note that Article 285 of the EC treaty contains a specific legal base for legislation on the production of statistics necessary for the performance of the Community's activities. So we ask the Minister for her opinion on whether Article 285 EC, rather than Article 95, should be cited as the legal base for Article 18 of the draft Directive.**

- **Article 19 of the draft Directive provides for the establishment of a committee of representatives of the Member States, chaired by the Commission, to advise the Commission on the implementing measures required by Articles 8(1)(b), 10(3), 12(3), 15(3) and 17(4). We ask the Minister if she considers it satisfactory to delegate to the Commission authority to legislate on all these matters and whether she is satisfied that Member States will have sufficient control over the contents of the measures.**

3 Future relations between the EU and the Overseas Countries and Territories

(29789) 11238/08 + ADD 1 COM(08) 383	Green Paper: *Future relations between the European Union and the Overseas Countries and Territories*

Legal base	Article 187 EC; unanimity
Document originated	25 June 2008
Deposited in Parliament	7 July 2008
Department	Foreign and Commonwealth Office
Basis of consideration	EM of 17 July 2008
Previous Committee Report	None
To be discussed in Council	To be determined
Committee's assessment	Politically important
Committee's decision	For debate in the European Committee

Background

3.1 Non-European countries and territories of Denmark, France, the Netherlands and the United Kingdom (as listed in Annex II to the EC Treaty) are associated with the Community by virtue of Articles 182 to 188 EC. Such territories include Greenland, Polynesia, Netherlands Antilles, Cayman Islands and the Falkland Islands (Gibraltar and the Sovereign Base Areas in Cyprus are European territories; the EC Treaty applies to Gibraltar but not to the SBAs). They are styled the Overseas Colonies and Territories, or OCT's.

3.2 Whereas Part Four of the EC Treaty contains the basic provisions on the association of the OCTs with the Community, the detailed rules and procedures are laid down by the Council, pursuant to Article 187 EC, through successive Overseas Association Decisions adopted since 1964 — most recently, Council Decision 2001/822/EC. These detailed provisions can be divided into two main categories: provisions on development finance cooperation and provisions on economic and trade cooperation.

3.3 Although the current Overseas Association Decision was initially applicable until 31 December 2011, its duration was extended until 31 December 2013 following technical amendments made in 2007, in order to coincide with the duration of the 10th European Development Fund (EDF) covering the period 2008 to 2013 and the multiannual financial framework for the period 2007 to 2013.

3.4 The basic aim of the Decision is to promote the OCTs' economic and social development and to establish close economic relations between them and the Community as a whole. This is achieved through cooperation: grants from the European Development Fund; loans from the European Investment Bank; and technical assistance. There are relevant provisions included in the Decision on economic cooperation, a trade regime

(described as "one of the most favourable ever granted by the Community", and summarised in Annex III of the Green Paper), human and social development, regional cooperation and cultural development.

The Green Paper

3.5 In the introduction to its Green Paper, the Commission says that the OCTs and the four Member States to which they are linked have, since 2003, called for better recognition of the OCTs' specific situation. At the same time, the Commission says that it and an increasing number of Member States have expressed reservations as regards the amalgamation of the OCT-EC association and the Community's development cooperation policy with its emphasis on the fight against poverty and the UN Millennium Development Goals. The Commission maintains that since 2005 it has suggested building a new relationship "based on the OCTs' and the EU's membership of the same family, rather than the OCTs' development needs per se". Consequently, the Commission wishes "to carry out a holistic review of the relations between the EU and the OCTs and to consider a substantial revision of the OCT-EC association".

3.6 The Commission's intention is:

> "to examine how to step away from the classic development cooperation approach, while enhancing the competitiveness of the OCTs and their gradual integration within the regional and world economies, taking into account not only the challenges they are facing but also their potential".

3.7 The Green Paper should accordingly "facilitate a global and transparent discussion on the future relations between the EU and the OCTs, in particular as regards the overall philosophy that should underpin these relations in the longer term". Its aim is therefore:

> "not to set out a new policy or establish new financial instruments or detailed procedures, but to examine a series of challenges and opportunities and to obtain input from interested parties before defining a new partnership between the EU and the OCTs, in particular in view of the expiry of the current Overseas Association Decision at the end of 2013".

3.8 Having set out the basic background and summarised the changing relationship over the intervening years between an expanding European Union in an increasingly liberalising global economy, the Commission examines:

— the nature of the Partnership between the Community and the OCTs;

— a contemporary interpretation of the purpose of the OCT-EC association;

— their mutual interests;

— the trade arrangements between the Community and the OCTs; and

— the OCTs' specific characteristics,

and poses a number of questions that it sees as arising,[10] and invites comments and contributions by 17 October 2008.

The Government's view

3.9 In his Explanatory Memorandum of 17 July, the Minister for Europe at the Foreign and Commonwealth Office (Mr Jim Murphy) notes that implementation of the Decision is achieved via a Commission/Member State/Overseas Countries and Territories partnership. He lists the twenty Overseas Countries and Territories covered by the Decision: Anguilla, Cayman Islands, Falkland Islands, South Georgia and South Sandwich Islands, Montserrat, Pitcairn, Saint Helena and Dependencies, British Antarctic Territory, British Indian Ocean Territory, Turks and Caicos Islands and British Virgin Islands, with the UK as the Member State; New Caledonia and Dependencies, French Polynesia, French Southern and Antarctic Territories, Wallis and Futuna Isalnds, Mayotte, Saint Pierre and Miquelon with France as the Member State; Aruba and the Netherlands Antilles with the Netherlands as the Member State; and Greenland with Denmark as the Member State. He explains that Representatives meet annually to discuss and develop the Association; Partnership Working Parties concentrate on specific issues; and every two months, officials of the Commission, Member States and Overseas Territories and Countries meet to discuss more general issues.

3.10 Noting that the Green Paper is the start of the re-negotiation process of the Overseas Association Decision, the Minister says that it will be fundamental to the future relationship between the European Union and the OCTs, and that the consultation is the opportunity for all stakeholders to influence the direction the future relationship will take. The UK (in consultation with the Overseas Territories) will, he says, be analysing the questions posed in the Green Paper with a view to submitting a joint response on the key issues to meet the 17 October deadline.

3.11 The Minister makes it clear that the Commission consulted Member States and Overseas Countries and Territories at the concept stage of the Green Paper, and continues as follows:

> "The questions in the Paper put emphasis on enhancing the competitiveness of the Overseas Countries and Territories and their gradual integration within both regional and world economies, taking into account not only the challenges they face but also their potential. Because of the close link between the Overseas Countries and Territories and the Community through the Member States, the trade regime applicable to them is one of the most favourable ever granted by the Community. The Commission believes that a review of the trading arrangements is necessary to take account of changes in the wider world and the Territories' trading partners, especially those of the Africa, Caribbean and Pacific countries.
>
> "The FCO has welcomed the Green Paper as the next phase in the discussion between the Overseas Territories, Member States and the Commission. The FCO shares the overall motivation of the Paper of improving and modernising the

10 The questions are set out in the Annex to this chapter of our Report.

relationship, one that is better adapted to the needs of the UK's Overseas Territories and which recognises the uniqueness of the links with them. The UK will work to ensure that the UK Overseas Territories are not worse off under any new Association or partnership.

"We are in the early stages of considering the questions posed by the Green Paper. Further comment on the main issues and the UK Government's view on them will be submitted to the Commission before the end of the consultation process.

"The Commission will be reviewing responses to the consultation exercise at the end of October. The Commission expect to present the outcome of the process at the annual European Union/Overseas Countries and Territories Forum to be held in the Cayman Islands between 25–29 November. No further decisions have been taken by the Commission as to how this will feed into the re-negotiation of the Overseas Association Decision."

Conclusion

3.12 **Given its long-standing relationship with its overseas colonies and territories, and their diversity and geographical spread, this process is of particular importance to the UK. We therefore consider that the Green Paper should be debated in the European Committee at the outset.**

3.13 **We hope that it will be possible to organise this debate before the consultation process has been completed, so that it can form part of the UK response to the Green Paper. It would also be helpful in that regard if the Minister were able to write to us with the Government response in sufficient time for it to be reported to the House, so that it may then form part of the debate pack.**

Annex: Questions posed by the Commission in the Green Paper

Question 1: How should the solidarity between the Community and the OCTs be translated at policy level, taking into account the special relationship of the OCTs with the Community?

Question 2: Do you agree that we should move to a new approach with the OCTs distinct from the classical development cooperation approach (based on the fight against poverty)? If so, what kinds of actions would you propose in order to better promote the sustainable development of the OCTs and the strengthening of their competitiveness and resilience?

Question 3: How could the partnership between the OCTs and the EU become more active and reciprocal, in the mutual interest of both partners? Which actual responsibilities should this entail for the OCTs or the Member States to which they are linked (within the limits of their constitutional competences)?

Question 4: What are, in your view, the most important domains of mutual interest for cooperation between the OCTs and the EU?

Question 5: What could be the advantage for the OCTs of increased regional cooperation and integration? How could a transfer of knowledge and know-how between the OCTs and their neighbours be encouraged?
Question 6: What is your opinion on a possible reinforcement of the political dialogue between the EU, an OCT and the Member State to which it is linked, in particular in situations where the interests of the EU and the OCT concerned would differ?
Question 7.1: What are in your view the benefits of greater regional economic integration that could present an advantage for certain OCTs in response to globalisation and the erosion of their trade preferences vis-à-vis the Community?
Question 7.2: How could the OCTs engage in wider regional trade and how could the Community facilitate this?
Question 8.1: What is your view on the added value for OCTs of OCT-ACP cumulation of origin?
Question 8.2: By which OCTs and how often is OCT-ACP cumulation used? Does it involve the sourcing of raw materials from ACP states and their transformation on the spot in OCTs?
Question 8.3: How can the modernisation of the rules of origin be adjusted to the specific situation of the different OCTs?
Question 9.1: What is in your view the added value of cooperation with the OCTs in trade-related areas in response to globalisation and the erosion of their trade preferences vis-à-vis the Community?
Question 9.2: How could the OCT-EC association contribute to improving the situation in OCTs more actively in this regard?
Question 10.1: What is your opinion on the real added value of the existing transhipment procedure in the current Overseas Association Decision?
Question 10.2: How could the OCT-EC association be adapted to better promote the development of transport (air, road and harbour) infrastructure?
Question 10.3: Do you have suggestions regarding other ways to help make well-developed but under-utilised harbour infrastructure in OCTs more competitive?
Question 11: How should the Community's promotion of the sustainable development of the OCTs relate to their actual vulnerability as micro-island economies?
Question 12: What is your opinion on the establishment of an index to measure the relative vulnerability of the OCTs, allowing comparison not only between the OCTs, but also with other countries and territories? If such an index is to be established, which criteria should be used?
Question 13: In view of the exposure of many OCTs to natural disasters, how should Disaster Risk Reduction be included in future OCT-EU relations?
Question 14: How could the OCT-EC association be adapted to take greater account of the OCTs' diversity without increasing the administrative burden for the OCTs and the Commission?

4 Maritime safety

(a) (27324) 6843/06 COM(05) 586	Draft Directive on compliance with flag state requirements
(b) (27271) 5907/06 COM(05) 593	Draft Directive on the civil liability and financial guarantees of shipowners
(c) (29106) 14486/07 COM(07) 674	Amended Draft Directive on the civil liability and financial guarantees of shipowners

Legal base	Article 80(2) EC; co-decision; QMV
Department	Transport
Basis of consideration	Minister's letter of 10 July 2008
Previous Committee Report	(a) HC 34–xxxiv (2005–06), chapter 3 (5 July 2006) and HC 41–xxiii (2006–07), chapter 5 (6 June 2007) (b) HC 34–xxi (2005–06), chapter 6 (8 March 2006) and HC 16–i (2007–08), chapter 3 (7 November 2007) (c) HC 16–v (2007–08), chapter 3 (5 December 2007)
To be discussed in Council	December 2008
Committee's assessment	Legally and politically important
Committee's decision	Not cleared; further information awaited

Background

4.1 In November 2005 the Commission proposed seven discrete legislative measures which it described as the "Third Maritime Safety Package". It is also referred to as Erica III, recalling the sinking of the oil tanker *Erica* in December 1999. Five of the proposals have been cleared from scrutiny:

- a draft Directive to amend Directive 2002/59/EC establishing a Community vessel traffic monitoring and information system — cleared in June 2007;[11]
- a draft Directive on port state control (Recast) — cleared December 2006;[12]

11 (27218) 5171/06: see HC 34–xviii (2005–06), chapter 8 (8 February 2006), HC 34–xxx (2005–06), chapter 2 (24 May 2006), HC 41–xxii (2006–07), chapter 2 (16 May 2007) and HC 41–xxiii (2006–07), chapter 14 (6 June 2007).

12 (27238) 5632/06: see HC 34–xx (2005–06), chapter 8 (1 March 2006) and HC 41–iii (2006–07), chapter 14 (6 December 2006).

- a draft Directive on common rules and standards for ship inspection and survey organizations and for the relevant activities of maritime administrations — cleared November 2007;[13]

- a draft Directive establishing the fundamental principles governing the investigation of accidents in the maritime transport sector and amending Directives 1999/35/EC and 2002/59/EC — cleared May 2007;[14] and

- a draft Regulation on the liability of carriers of passengers by sea and inland waterways in the event of accidents and an amended draft Regulation on the liability of carriers of passengers by sea and inland waterways in the event of accidents — cleared in November 2007.[15]

This chapter deals with the remaining two proposals.

4.2 Flag states, that is states which grant ships the right to fly their flag, have a responsibility as members of the International Maritime Organization (IMO) to comply with the Organization's Conventions to which they are party. They must ensure that ships on their register meet the requirements laid down in those Conventions, which are designed to promote safety of life at sea and protection of the marine environment. The key obligations of flag states are set out in the Code for the Implementation of Mandatory IMO Instruments, adopted in November 2005. Compliance with these obligations is to be tested by means of an IMO Member State Audit Scheme, also adopted in November 2005. But participation in the Audit Scheme is voluntary. Moreover the IMO has no power of sanction against state parties which do not implement Convention requirements or enforce these on ships that fly their flag.

4.3 The draft Directive, document (a), is intended by the Commission to ensure the compliance of all Member States with the flag state obligations set out in the IMO's implementation code. It would introduce into Community law the main IMO flag state requirements not yet covered in that law and so extend it. The draft Directive would have the effect of bringing into Community law a range of flag state responsibilities covered under international Conventions and thus transfer competence in these areas from Member States to the Community.

4.4 There are four IMO Conventions relating to the liability of shipowners:

- the 1996 Convention on Limitation of Liability for Maritime Claims (LLMC), to which the UK is a state party and which has the force of law in the UK;

- the 1992 International Convention on Civil Liability (CLC) for Oil Pollution Damage and its associated Fund Conventions (IOPCF), to which also the UK is a state party;

13 (27272) 5912/06: see HC 34–xxi (2005–06), chapter 7 (8 March 2006), HC 41–iii (2006–07), chapter 3 (6 December 2006) and HC 16–iv (2007–08), chapter 21 (28 November 2007).

14 (27305) 6436/06 + ADD1: see HC 34–xxiii (2005–06), chapter 6 (29 March 2006) and HC 41–xxii (2006–07), chapter 8 (16 May 2007).

15 (27323) 6827/06: see HC 34–xxxvi (2005–06), chapter 7 (19 July 2006) and HC 16–iv (2007–08), chapter 24 (28 November 2007); and (29040) 14302/07: see HC 16–iv (2007–08), chapter 24 (28 November 2007).

- the 1996 International Convention of 1996 on Liability and Compensation for Damage in Connection with the carriage of Hazardous and Noxious Substances by Sea (the HNS Convention), which the Government aimed to ratify in 2006; and
- the 2001 International Convention on Civil Liability for Bunker Oil Pollution Damage (the Bunker Convention), which also the Government aimed to ratify in 2006.

4.5 The LLMC sets liability limits for two types of claims — claims for loss of life or personal injury and property claims (such as damage to other ships, property or harbour works). The IMO says it provides for a virtually unbreakable system of limiting liability, allowing unlimited liability against a person only if "it is proved that the loss resulted from his personal act or omission, committed with the intent to cause such a loss, or recklessly and with knowledge that such loss would probably result". The other conventions cover or will cover liability for the maritime transport of oil and other dangerous and polluting substances and the fuel oils of ships and require or will require shipowners to sign financial guarantees.

4.6 In 1999 the IMO adopted guidelines recommending that shipowners take out civil liability insurance. And some countries, including the UK, have established obligatory insurance systems.

4.7 The draft Directive, document (b), is intended to introduce a Community-wide civil liability regime governing liability and compulsory third party insurance. It is primarily aimed at shipowners operating ships in and out of Member State ports and terminals. The proposal would:

- require Member States to ratify the LLMC;
- remove in certain cases, including cases of gross negligence, the right of owners of ships of states that are not party to this convention to limit their liability;
- require financial guarantees (such as insurance or bank or other financial institution guarantee) for both Member State ships and for third country ships entering Community waters; and
- introduce a system of mandatory state certification for all ships, placing an obligation on Member States to validate the insurance of every ship on its register and issue a certificate attesting that insurance is in place.

4.8 The proposal would not affect liability and compensation arrangements contained in the CLC and the associated IOPCF, the HNS Convention and the Bunkers Convention. But the Commission asserted that the conventions need modernising, noted that the CLC was presently undergoing revision, during which it would seek changes including removal of the ceiling on civil liability, and noted also that the other conventions would not be updated in the near future. The Commission suggested therefore that the draft Directive was a first step in a two step process. As the second step it would seek a mandate to negotiate within the IMO for a revision of the LLMC, with a review of the level at which shipowners lose their right to limit their liability.

4.9 The amended draft Directive, document (c), takes account, by insertions into the original text, rather than a complete rewrite, of the European Parliament's first reading amendments to the draft Directive on civil liability, document (b). The Commission has adopted 13 of the European Parliament's amendments — the key ones would have the effect of:

- introducing and defining "gross negligence";
- requiring Member States to ratify the HNS Convention and the Bunker Convention;
- requiring Member States which are still parties to the 1976 Convention on Limitation of Liability for Maritime Claims to denounce it; and
- requiring Member States to monitor compliance with the Directive and to establish penalties for its infringement.

The Commission would also accept a further five amendments subject to rewording, which would have the effect of:

- amending when it would be possible to apply limitation of liability under the LLMC;
- clarifying what items should be covered in the financial guarantee to protect seafarers in the event of abandonment; and
- suggesting that the European Maritime Safety Agency (EMSA) be required to perform the role of keeping a central register of financial guarantees.

4.10 When we first considered the draft Directive on flag state requirements in July 2006, we noted that:

- there was little appetite amongst Member States for this proposal;
- it was unlikely to be progressed with any expedition;
- the Government itself, whilst recognising that the performance of Member States is variable in terms of enforcing internationally agreed standards on vessels flying their flag, had reservations about the proposal; and
- we wished to hear from the Government as to how much success it was having in amending the proposal so as avoid an unacceptable transfer of competence or, if necessary, having it rejected.

In June 2007 we reported that:

- as expected, detailed discussions on the draft Directive had not yet commenced in the Council;
- however, that the European Parliament plenary first reading on 28 March 2007 adopted 51 amendments to the draft. These amendments added further requirements on flag states and make the proposal even less attractive; and

- it was still not known when discussions on the proposal would begin in the Council, since successive Presidencies had been reluctant to commence negotiations on a measure strongly opposed by a number of Member States.[16]

4.11 When we first considered the draft Directive on civil liability in March 2006, we noted:

- a number of Government concerns — possible implications for negotiating future amendments to the LLMC, introduction of the concept of gross negligence into the limitation of liability for ships flying the flag of third party states, introduction of this concept whilst failing to acknowledge the way in which most shipowners insure their ships through the mutuality of Protection and Indemnity Clubs, a possible reduction in the amount of available compensation and significant additional administrative effort, contributing little to the overall safety of ships calling at Member State ports and terminals and not applying to ships transiting Member State or international waters on innocent passage;

- it might be some time before negotiations allowed the Government to report back to us on developments in relation to these concerns; and

- we wished further information on two points — the Government's attitude to obligatory accession to the LLMC and compatibility of the draft Directive with the principle of subsidiarity.

In November 2007 we reported that:

- there had not yet been any Council consideration of the draft Directive — successive Presidencies were reluctant to carry the proposal forward;

- the European Parliament had given it a first reading and had adopted 28 amendments;

- the Government had considerable concerns in relation to those amendments;

- the proposal had attracted widespread opposition from Member States and the affected industries, with which the Government had consulted closely, had lobbied MEPs in an attempt to moderate some of the provisions in the document;

- there was a subsidiarity issue which suggested to us that a draft Directive should not be proceeded with at all and a Council Decision authorising, rather than obliging, ratification would be preferable;

- we still wished the Government to spell out its fears in relation to extending external competence and the consequences for future amendment of the LLMC; and

- we wished to hear in due course about the planned partial Regulatory Impact Assessment and about progress, or preferably about lack of progress, on the draft Directive.[17]

16 See headnote.

4.12 When we considered the amended draft Directive on civil liability in December 2007, we reported that:

- the Government had noted the views of the Commission on the European Parliament amendments, but continued to have significant reservations regarding this proposal;
- the likelihood of progress on this matter was no greater than before; and
- we wished the Government to cover this document when next responding to us on the original draft Directive.[18]

The Minister's letter

4.13 The Parliamentary Under-Secretary of State, Department for Transport (Jim Fitzpatrick) recalls that both the draft Directive on flag state requirements and the draft Directive on civil liability had attracted little support from Member States and says they had not been discussed substantively at working group level until the Slovenian Presidency took them forward.

4.14 Reminding us that the Government thinks that the draft Directive on flag state requirements would have added to the exclusive Community external competence in respect of the responsibilities of flag states in a wide range of IMO instruments, the Minister says:

- during the negotiations in the Council the Commission was prepared to accept the deletion of references to several IMO conventions in the draft Directive to help minimise the increase in Community competence in the maritime sector and to make the proposal more palatable to Member States;
- whilst the Government supports the objective of improving flag state performance across the Community, it continues to consider that there are better, non-regulatory ways of achieving this (such as submitting to audit by the IMO as the UK did in 2006) without the need to increase Community competence;
- additionally the Government holds that the real problem of poor flag state performance is with ships from a number of third country flag states, a problem which this proposal would do nothing to address; and
- despite the efforts made by the Slovenian Presidency and the Commission to reduce the scope of the draft Directive, the Member States felt unable to support the draft Directive on flag state requirements at the April 2008 Transport Council and no further consideration has yet taken place.

4.15 Saying that the Slovenian Presidency also pushed forward discussions on the draft Directive on civil liability, the Minister comments:

17 *Ibid*.
18 *Ibid.*

- the Government has always doubted whether the Directive would work in practice, for example, applying higher limits of liability to shipowners will not provide a disincentive because the mutual system of marine insurance will simply absorb costs;

- the proposal would also impose a substantial additional burden on state administrations which would be tasked with certifying all ships on their registers (confirming that insurance is in place) and ships from third countries entering Member State ports and installations;

- the Government considers that the intended benefit of the proposal could readily be achieved by a Council Decision instructing Member States that have not already done so to ratify the LLMC. This significantly increased the levels at which shipowners are entitled to limit their liability; twelve Member States (including UK) are parties and greater Member State ratification of this Convention would extend the coverage of the higher limits of liability; and

- most Member States agreed at the April 2008 Transport Council that there was no need for Community legislation in this area — indeed, there was even less support for this proposal than on flag state requirements. And no further consideration has yet taken place.

4.16 The Minister continues that the French Presidency has indicated its desire to reopen the discussions on both the draft Directive on flag state requirements and the draft Directive on civil liability in the second half of its Presidency and has scheduled a debate for the December 2008 Transport Council. This is partly because the European Parliament supports both proposals and is pushing for the Council to agree them but also as France has indicated its support for both proposals. But he adds that:

- although supportive of the draft Directives, France does recognise that the majority of Member States continue to oppose both proposals and that it will be very difficult to secure an agreement on them;

- the Presidency has therefore indicated that if, as expected, it proves impossible to reach a political agreement on both proposals, it will try instead to secure some form of Council Conclusion in place of the proposals;

- on the draft Directive on flag state requirements this is likely to involve Member States undergoing IMO audit and adopting the IMO Flag State Code and on the draft Directive on civil liability ratifying the LLMC; and

- the Government would be content for the Presidency to adopt such an approach.

Conclusion

4.17 **We are grateful to the Minister for his account of where matters stand on these two proposals. We note that it is possible that they will be overtaken by less unacceptable mechanisms in relation to adherence to the IMO instruments and hope to hear in due course that this is the case. Meanwhile the documents remain under scrutiny.**

5 Value added taxation

(29570) 7688/08 COM (08)147	Draft Council Directive amending Directive 2006/12/EC on the common system of value added tax to combat tax evasion connected with intra Community transactions Draft Council Regulation amending Regulation (EC) No. 1798/2003 to combat tax evasion connected with intra Community transactions

Legal base	Article 93 EC; consultation; unanimity
Department	HM Treasury
Basis of consideration	SEM of 12 July 2008
Previous Committee Report	HC 16–xx (2007–08), chapter 5 (30 April 2008)
To be discussed in Council	Autumn 2008
Committee's assessment	Politically important
Committee's decision	Not cleared; further information awaited

Background

5.1 Under the transitional VAT arrangements which were adopted when the single market came into operation there is a system for exchanges of information about intra-Community supplies of goods which helps to combat evasion of VAT.

5.2 In this draft Directive and draft Regulation the Commission proposes changes to the information system both to meet a perceived need for improvements to combat VAT evasion and to ensure, in the light of changes to the place of taxation of services supplied cross-border within the Community, including the increased use of the reverse charge (where the ultimate purchaser is responsible for VAT returns, rather than each suppler under the fractionated system),[19] that such supplies are reported and accounted for correctly. This will require Member States to change their procedures for the submission and exchange of information contained within the recapitulative statements (in which suppliers provide information about what they have supplied to whom in other Member States and which in the UK are known as EC Sales Lists) and the VAT return.

5.3 When we considered this proposal in April 2008 we said that we, like the Government, recognised the utility of VAT administrative cooperation and information exchange arrangements in combating cross-border VAT fraud and improving overall levels of taxpayer compliance and accepted that there might be a need to improve the arrangements. We reported the Government's view that:

- some aspects of the Commission's proposal, in particular relating to the frequency of, and time limits for, submission and exchange of recapitulative statements would strengthen the VAT system against fraud; but

19 (25221) 5051/04: see HC 42–ix (2003–04), chapter 19 (4 February 2004), HC 42–xviii (2003–04), chapter 4 (28 April 2004) and *Stg Co Debs,* European Standing Committee B, 10 March 2004, cols. 3–22; and (26739) 11439/05: see HC 34–v (2005–06), chapter 6 (12 October 2005), HC 34–xv (2005–06), chapter 3 (18 January 2006) and *Stg Co Debs,* European Standing Committee, 16 February 2006, cols. 3–20.

- it remained to be convinced that the potential benefits in helping combat fraud of the other aspects of the proposals would be proportionate to the burdens imposed on businesses.

We noted that the Government was discussing with the Commission a subsidiarity issue — the Government accepted that some aspects of the proposal relating to recapitulative statements met the subsidiarity test, but thought that other aspects, particularly those relating to VAT returns were matters for Member States as they primarily concern their domestic VAT systems. We said that we would await the outcome of that discussion and the Government's impact assessment before considering the proposal further. Meanwhile the document remained under scrutiny.[20]

The supplementary Explanatory Memorandum

5.4 The Financial Secretary to the Treasury (Jane Kennedy) attaches to her supplementary Explanatory Memorandum the Government's initial (consultative) impact assessment. The assessment:

- says that, although the proposal as a whole should play a part in reducing Community-wide intra-Community VAT, this benefit is not quantifiable;
- estimates quantified costs for businesses at £21 million for initial implementation followed by £46.7 million annually;
- calls for interested parties to help in refining these costs and in estimating costs not yet quantified; and
- shows that all of the implementation costs and £36.2 million continuing costs so far estimated relate to aspects of the proposal the potential benefits for which the Government needs to be convinced are proportionate to the burden for businesses.

5.5 In the supplementary Explanatory Memorandum itself the Minister says that:

- the Commission has clarified that it is not the intention, for electronic submission of recapitulative statements and VAT returns, that electronic file transfer be the norm. Rather, it wanted to ensure that all Member States offered businesses the opportunity to submit these documents electronically, including by electronic file transfer, if they so wished;
- it is now understood that rather than allowing traders one month to submit a recapitulative statement and a further month for Member States to exchange the data with other Member States, the proposal would require both of these stages to be completed within one month from the end of the month to which they relate;
- the proposal is expected to be considered at an ECOFIN Council in the autumn of 2008; and

20 See headnote.

- the proposal has been discussed in Council Working Groups on four occasions but, because many Member States, like the Government, have been consulting businesses and have not yet decided their attitude to the draft legislation, it is still not clear what the likely outcome will be.

Conclusion

5.6 **We are grateful to the Minister for the impact assessment and the other information she now provides. We observe that:**

- **the question of subsidiarity appears to be unresolved;**
- **the impact assessment suggests that proportionality is also an issue; and**
- **the Government has yet to determine its stance on the draft legislation.**

5.7 **Before considering this matter again we should like to hear further from the Government about developments on subsidiarity, proportionality and its decision on policy on the proposed legislation. Meanwhile the document remains uncleared.**

6 Private damages actions for breach of EC anti–trust rules

(29603) 8235/08 + ADDs 1–3 COM(08) 165	Commission White Paper on damages actions for breach of EC anti–trust rules

Legal base	—
Document originated	2 April 2008
Deposited in Parliament	9 April 2008
Department	Business, Enterprise and Regulatory Reform
Basis of consideration	EM of 21 July 2008
Previous Committee Report	None; but see (27161) 5127/06: HC 34–xvii (2005–06), chapter 2 (1 February 2006), HC 34–xx (2005–06), chapter 10 (1 March 2006) and HC 34–xxiii (2005–06), chapter 19 (29 March 2006)
To be discussed in Council	Not applicable
Committee's assessment	Legally and politically important
Committee's decision	Cleared; but further information requested

Background

6.1 Articles 81 and 82 of the EC Treaty contain the EC antitrust rules, and are directly applicable and thus enforceable by both public and private enforcement proceedings of the national and EC courts. Both public and private enforcement serve the same set of objectives: to deter anti–competitive practices prohibited by competition law and to protect consumers and firms against these practices. In its case law the European Court of Justice (ECJ) has consistently confirmed that, in addition to annulment proceedings and fines under the public enforcement regime, effective protection under the Treaty regime against anti–competitive practices requires that individuals who have suffered a loss arising from the infringement of Articles 81 and 82 EC Treaty must have the right to claim private damages against the offending party/parties. The ECJ also emphasised that, in the absence of Community legislation on the matter, it is for the legal systems of the Member States to provide for detailed rules allowing individuals to bring effective damages claims.

6.2 In 2005 the Commission published a Green Paper which identified the principle obstacles to private enforcement of EU competition law. It notes that compared to the situation in the United States, private damages claims continue to play only a minor role in EU Member States. The reasons for this, the Commission explains, are the continuing under–development of private enforcement regimes in national law and the divergence between national legal systems. The Green Paper suggests various options for consideration and legislation by Member States combined with possible complimentary Community action. We cleared the Commission Green Paper on the understanding that, should the Commission pursue this initiative, the Government would consult widely on the matter and seek to minimise the extent of any obligatory harmonisation in any future proposed Commission legislation on private enforcement rules.

6.3 Following a Green Paper consultation, published on 20 December 2005, the European Parliament called on the European Commission to prepare a White Paper with detailed proposals to facilitate private antitrust damages actions in Europe.

The document

6.4 On 3 April 2008, the European Commission published for public consultation the White Paper and Commission staff working papers on damages actions for breach of the EC antitrust rules. The White Paper suggests specific policy proposals for Member States which would improve the scope for consumers and business to obtain compensation for harm suffered as a result of infringements of EC competition law. The White Paper is based on extensive further work which includes the results from the Green Paper consultation exercise and from discussions between the Commission and relevant parties.

6.5 The White Paper reiterates the findings of a study commissioned by the Commission in 2004 which concluded that damages actions for breach of competition law were under developed in Europe. The Impact study, commissioned by the Commission for the White Paper, shows that, since 2004, there has been limited growth of private antitrust cases across Europe and that successful actions are still rare and the majority of Member States have had no experience with private damages actions to date.

6.6 The Commission's aim with the White Paper is "to foster and further focus ongoing discussions on actions for damages by setting out concrete measures aimed at creating an effective private enforcement system in Europe". In other words, to put forward policy choices and possible measures for consideration in an effort to tackle the barriers to private damages actions for breaches of EC competition rules. The White Paper invites comments and views on the proposals by 15 July 2008.

6.7 In the White Paper, the Commission explicitly recognises that the legal framework should be based on "a genuinely European approach" and that the policy choices in the White paper consist of measures "that are rooted in European legal culture and traditions". This is an important acknowledgement of the different legal frameworks in Member States and the different levels of development in respect of the scope to bring private actions in Member States.

6.8 The main proposed measures and policy choices in the White Paper are:

i) two complementary forms of **collective redress**,

a) representative actions brought by qualified entities such as consumer bodies or trade associations on behalf of a group of consumers or businesses; and

b) opt-in collective actions, where victims expressly decide to combine their individual claims into one single action.

ii) improved **access to evidence**, with a minimum level of disclosure between the parties to litigation with strict judicial control.

iii) binding effect of **national competition authority** (NCA) decisions. Where the NCA has given a final infringement decision and/or there has been a final judgment by a review court, victims of the infringement can rely on this decision as binding proof in civil proceedings for damages and national courts will not be able to take decisions running counter to any such decision or ruling.

iv) limitations on the **fault requirement** in those Member States whose national law require fault to be proven. In some Member States, a claimant has to show not only that the defendant has harmed competition contrary to the competition rules, but also that this was done intentionally or negligently. The Commission considers that this could infringe the principle of effectiveness (i.e. the principle that national rules cannot make the exercise of Community law rights excessively difficult or impossible). The Commission therefore suggests that proof of a breach of the terms of Article 81 or 82 ought to be sufficient to found a damages claim, unless the defendant can show that there was an excusable error. This suggestion does not affect those Member States, like the UK, who apply the principle of strict liability, ie the infringement in itself is considered sufficiently serious to found a right to damages for victims of that infringement, without making this conditional on proving fault. The purpose of this recommendation is to limit the scope for a defence based on an absence of fault in those Member States with a fault requirement and, by this, ensure that national rules do not make a claim for damages for breach of the competition rules excessively difficult.

v) a framework, with non-binding guidance for quantification of **damages** in antitrust cases. This recognises that it is for Member States' courts, and ultimately the discretion of national judges, to determine the level of damages but that, in competition cases, this can become a very cumbersome and complex process. Courts in some Member States require the claimant to prove the amount of loss to the precise Euro cent, but this is not the practice in the UK. We understand that the Commission's aim is to provide some pragmatic guidance on the scope and calculation of damages in anti-trust cases.

vi) the defendant's entitlement to invoke the **passing-on defence** where the argument can be made that the claimant suffered no loss because they passed on the illegal overcharge to their customers. This is intended to avoid the situation where the defendant must pay damages to customers at various levels of the supply chain which exceed those customers' actual losses (multiple liability). The Commission suggests that the burden of proving the passing-on of the overcharge down the supply chain should lie with the defendant, recognising the difficulties that purchasers at or near the end of the supply chain have in proving pass-on to them. Under Community law, all persons who have suffered loss have a right to recover damages for a breach of the competition rules but the laws of the Member States provide the detailed rules on the availability of damages.

vii) commencement of **limitation periods**. This has two elements to ensure that claimants are not unduly obstructed in their recovery of damages by the expiry of a limitation period:

> a) that a limitation period should not start to run until the infringement has ceased and the claimant can reasonably be expected to know of the infringement and the harm; and
>
> b) a limitation period of at least two years should start once there is a final infringement decision.

viii) encouraging Member States to reflect on their **costs** rules, giving due consideration to fostering settlement and thus encouraging early resolution of cases, possible limits on court fees, and the possibility of national courts issuing costs orders derogating, in some circumstances, from the general "loser pays" principle. This acknowledges the important role courts can play in addressing the issue of costs in what are often complex and time-consuming cases, especially where the claimant's financial position is significantly weaker than that of the defendant.

ix) limitation on **disclosure** by NCAs of corporate statements (broadly, confessions) from leniency applicants in cartel cases and the possibility of protecting successful immunity applicants from **joint and several liability** (according to which each cartelist can be held to account for all of the harm caused by the cartel). As the leniency regime highlights the behaviour of leniency applicants, such applicants could become the main target for damages claims. The Commission's suggestions are intended to ensure that leniency applicants are not exposed to a greater risk from private actions than other members of the cartel. The aim is to ensure that NCAs' leniency programmes can still attract applications.

6.9 Civil law is a devolved matter under the UK's devolution settlements and the devolved administrations in Scotland and Northern Ireland have been consulted in the preparation of this EM. Although this is not a devolved issue for Wales a copy of the White Paper has been sent to the Wales Office and the Wales Assembly Government.

6.10 The Commission has indicated that although the White Paper is not proposing any new regulations or directives, it is envisaging further steps but that this will only be in response to "a collective desire expressed in the responses to the White Paper consultation". The Commission confirmed at a meeting on 5 June[21] that it will come forward with legislative proposals by the end of 2008. However, pending further consideration of the responses to the White Paper, the Commission said it was not in a position to provide more detail on these proposals, although it did indicate there will be more discussion with Member States after the summer break.

6.11 There are no proposals in the White Paper for any new regulation or directives but the Commission has indicated that, whilst the White Paper should be a stimulus to adapt/adopt national law and procedures at Member State level, Community level action may still be necessary to ensure consistency across the EU in key areas such as the passing-on defence, access to evidence, collective actions, binding effect of National Commission Authority decisions, fault requirement and common rules on the treatment of leniency applicants. In this context and when pressed by a number of Member States, the Commission mentioned the following articles as providing possible legal bases for Community action depending on what might be proposed, but has stressed that this is speculative at this stage:

i) Article 65, to provide for judicial cooperation to eliminate obstacles to civil proceedings having cross-border implications;

ii) Article 83, to provide for measures to give effect to Articles 81 and 82;

iii) Article 95, to provide for the approximation of national laws for the functioning of the internal market; and

iv) Article 308, to provide powers to meet the objectives of the internal market.

If legislative proposals are brought forward at Community level, we shall need to give careful consideration to the proposed legal bases.

The Government's view

6.12 In his Explanatory Memorandum of 21 July 2008 the Parliamentary Under-Secretary of State for Trade and Consumer Affairs at the Department for Business, Enterprise and regulatory Reform (Gareth Thomas) comments as follows on the Commission White Paper:

"The UK is one of the major supporters of the aim, at both national and EU level, to build an effective system of private actions in Europe. This is on the basis that

21 Council Secretariat Working Party on Competition meeting on 5 June.

facilitating meritorious damages claims for breaches of EC competition rules will not only strengthen the enforcement and deterrent effect of these rules but also make it easier for consumers and businesses who have suffered harm from infringement of these rules to recover their losses from the infringer. It is also on the basis that much of the action is for Member States, especially those Member States where the current regime is still very underdeveloped, and that action may be necessary at Community level where this advances consistency across Europe. Clearly the UK will need to consider the implications for the current regimes in the UK of any Commission legislative proposals and we would also need to see how such legislation would fit with our proposals for the national systems."

Conclusion

6.13 **We thank the Minister for his helpful summary of and comments on the Commission White Paper. We support the Government's position that, in principle, the suggested extension of the private enforcement regime for the EC's competition rules is a desirable objective. At the same time we wish to remind the Minister of the Government's previous assurance to us in connection with the spent Commission Green Paper that any future Commission legislative proposal would be looked at very carefully in the light of the subsidiarity principle and the need for the Commission to justify any proposed harmonisation of private enforcement rules at a time when the public enforcement regime of EC competition law has been the object of decentralising legislation.**

6.14 **As the Minister appears to affirm the Government's previous approach in his comments on the White Paper, we are content to clear the document from scrutiny and ask the Minister to keep us informed of developments.**

7 EC Development Assistance in 2007

(29779) 11137/08 + ADD 1 COM(08) 379	Annual Report on the European Community's Development Policy and the Implementation of External Assistance in 2007

Legal base	—
Document originated	23 June 2008
Deposited in Parliament	1 July 2008
Department	International Development
Basis of consideration	EM of 10 July 2008
Previous Committee Report	None; but see (28734) 11141/07: HC 16–viii (2007–08), chapter 15 (16 January 2008) and HC 41–xxxi (2006–07), chapter 7 (18 July 2007)
To be discussed in Council	15 September General Affairs and External Relations Council
Committee's assessment	Politically important
Committee's decision	Cleared; but further information requested

Background

7.1 The overall objectives of European Community development policy and external assistance are set out in Article 177 EC. Each year, the Commission produces an annual report on the activities carried out thereunder.

The Annual Report

7.2 This Report covers the activities under the European Community's external assistance programme in 2007. It consists of a 12 page Report noting highlights and a detailed 169 page annex in the form of a Commission Staff Working Document.

7.3 The Commission notes that the EU continues to consolidate its status as the world's leading donor, giving 60% of total official development assistance. In 2007 the Commission says that it "rapidly improved the effectiveness of its assistance following the major innovations in policy and procedures introduced over the past two years: adoption of the European Consensus on Development in December 2005, a European Consensus on Humanitarian Aid in December 2007, and overhaul of the instruments of the external assistance programmes".

7.4 The Summary looks at activity in 2007 under four main headings:

— Policy Coherence;

— Working Together;

— Better Strategies; and

— Better Delivery.

7.5 It concludes with a passage in which the Commission seeks to illustrate how its external action was geared to achieving a number of specific objectives (set out at the annex of this Chapter) and tables illustrating the 2000–2007 Poverty Focus and the sectoral breakdown of EC assistance.

7.6 In his Explanatory Memorandum of 10 July 2008, the Parliamentary Under-Secretary at the Department for International Development (Mr Shahid Malik) says that "there is some positive news buried within the text and tables", *viz*:

> "The Commission reports €9.95 billion (£7.88 billion) in commitments and €8.49 billion (£6.72 billion) in disbursements, including the committal of all European Development Fund (EDF) IX funds before the onset of EDF 10: apparently the first time that this has been achieved. Budget support comprised 23% of total aid commitments. Africa continues to be the top ranking region for EC aid (unchanged from 2006 at 38%), and Social Infrastructure including Education and Health is the primary sector for EC disbursement (42.8%)."

7.7 The Minister notes that the Report continues last year's innovation of a synthesis of main lessons learned, and says that there is a good balance here between some positive assessments and the identification of areas for improvement. He identifies two aspects upon which he feels that progress should continue to be monitored:

> "(a), a lack of sustainability in implementation strategies because of insufficient ownership by partner country stakeholders; and
>
> "(b), a sometimes negative impact of EC projects on the sectoral policy of some partner countries."

7.8 He describes "the Synthesis" as painting "a mixed picture of the result of de-concentration to EC delegations in the field: good results when delegations have been flexible enough to adapt to the specific country context, but sometimes counterbalanced by fragmented visions and insufficient coordination between sectors in delegations."

The Government's view

7.9 In his Explanatory Memorandum, the Minister notes that Annual Reports are made available to the public, and are thus important for building awareness of EU citizens about the work of the European Commission in this field. He continues as follows:

> "For the UK it is important (particularly within the context of the Prime Minister's Call to Action) that a clear link between EC development policy (as expressed in the Consensus for Development) and poverty reduction or meeting the MDGs is established. Unfortunately this year's Annual Report still does not do enough to underpin the centrality of this link, particularly within the opening Policy section (the MDGs are better addressed in the descriptions of implementation under the various financial Instruments). The Report also includes a Feature Article on the challenge of reconciling Millennium Development Goals (MDGs) and the fight against Climate Change: this emphasises the need for mainstreaming climate change

> because of its cross-cutting nature, and publicises the EC's Global Climate Change Alliance."

7.10 Overall, the Minister says, the report is "strong on narrative descriptions of activities and new strategies, and is adequate on describing processes. It provides insufficient information on quantifiable results and concrete outcomes, and fails to articulate an overall vision."

7.11 The Minister recalls that when his fellow Parliamentary Under-Secretary of State (Mr Gareth Thomas) reported to the Committee on the 2007 Annual Report,[22] he noted a number of areas for structural improvement, which, the Minister says, have "by and large" been addressed in the 2008 Report. He cites as examples expansion of the Analysis of the impact upon Poverty and Inequality in Middle Income Countries, and agreement by the Commission to create an interactive web site which will provide information on contractors used for EC projects, including their national origin. However, he says, the sub-sections on "Working towards the MDGs" in Section 2 (Implementation) are inconsistent in the presentation of quantifiable results, and notes that the Report also does not include references to Paris Declaration[23] baseline data (which he describes as "a major concern of the Minister"). Against that, he notes that the Report "does refer to the 2006 OECD Survey on Monitoring the Paris Declaration (in section 1.6 on aid effectiveness and co-financing)".

7.12 The Minister notes that the Government continues to push for a greater proportion of Community assistance to go to Low Income Countries and Least Developed Countries in particular:

> "However, the only opportunity to lever a major shift is in the negotiation of a new Financial Perspective (FP). The present FP continues until the end of 2013. A concern noted in the 2007 Annual Report was a downward trend in disbursement to Least Developed Countries (LDCs) recorded for 2006. This trend was reversed in 2007 (although the LDC net disbursement rate of 35% for 2007 is still too low in the context of the EC's aspiration to show global leadership in MDGs attainment[)]. Unfortunately there was also a slight decline in disbursement to Lower Middle Income Countries (LMICs) in 2007 (from 27.9% to 26.8%) in spite of the Council conclusions for 2007 recommending continued EC focus on this."

7.13 Procedurally, the Minister notes, each Annual Report should take account of all the Council Conclusions on the preceding year's Annual Report:

> "Out of twelve Conclusions on the 2007 Report[24] we assess that for 2008 five conclusions have been fully met, six partially met and one not met (the Report does not explain changes to the Commission's Results Oriented Monitoring System). Significantly, a major structural change has been influenced by Council Conclusions:

22 (28734) 11141/07: HC 16–viii (2007–08), chapter 15 (16 January 2008) and HC 41–xxxi (2006–07), chapter 7 (18 July 2007); see headnote.

23 The Paris Declaration, endorsed on 2 March 2005, is an international agreement to which over one hundred Ministers, Heads of Agencies and other Senior Officials adhered and committed their countries and organisations to continue to increase efforts in harmonisation, alignment and managing aid for results with a set of monitorable actions and indicators. See http://www.oecd.org/document/18/0,2340,en_2649_3236398_35401554_1_1_1_1,00.html for further information.

24 Available at http://register.consilium.europa.eu/pdf/en/07/st12/st12699.en07.pdf.

> the geographical activities are now described under the respective financial Instruments instead of by region. The Commission has also provided sectoral breakdowns per Instrument in the financial annex."

7.14 Summing up, the Minister supports this year's Report because:

> "it continues to function as the European Commission's main vehicle of information dissemination to EU citizens on development policy and external assistance. It has some good messages on the need for improved Policy Coherence and Mainstreaming of Cross-Cutting Issues. Also, the Commission has largely followed the guidance of Member States (as expressed in the Council Conclusions on the 2007 Annual Report) in general layout."

7.15 The Minister has "nevertheless informed the Commission (via CODEV) of our concerns regarding the weak presentation of the context of poverty reduction and the MDGs; and the need for more focus on quantifiable results with a direct link to the MDGs rather than on inputs and processes." Looking ahead, the Minister says that he will be looking for significant improvements in results presentation in 2009, "particularly as the Commission has stated (in CODEV) that ongoing improvements to their information management systems should enable the disaggregation of data in future Reports (particularly important for measuring the impact of EC programmes on gender equality within the MDGs, and the lives of women and girls in partner countries)".

7.16 Finally, the Minister says that Council Conclusions are due to be approved in September:

> "The current Presidency initially postulated that Council Conclusions were unnecessary, but the UK and several other Member States are resisting any move away from Conclusions because of their role in informing the Commission of possible improvements for future Annual Reports."

Conclusion

7.17 **The Commission often states that development assistance is one of the areas of EU activity that the European taxpayer values most highly. As the Minister notes, it is all the more important that this key document is as effective a communication tool as possible. The Commission has plainly worked hard over recent years towards this end and, like the Minister, we welcome the improvements that he highlights.**

7.18 **We endorse the Minister's remarks on those areas which need further attention, and hope that they will be addressed in subsequent Council Conclusions. As the Minister says, although the Commission has largely followed the guidance of Member States (as expressed in the Council Conclusions on the 2007 Annual Report) in general layout, it has yet to do so sufficiently with regard to information on quantifiable results and concrete outcomes, articulating an overall vision and establishing a clear link between EC development policy and poverty reduction or meeting the MDGs. We also note that, a year on, the Minister highlights a continuing failure by the Commission to include references to Paris Declaration baseline data, which is key to monitoring progress in achieving effectiveness in aid coordination.**

7.19 **We agree with the Minister about the importance of these Conclusions as a follow up tool. Next year, it would be even more helpful if the Minister were to outline more fully each component and how it has been addressed by the Commission, rather than simply saying that "x" have been met and "y" partially met.**

7.20 **In the first instance, however, we should be grateful if, after the September GAERC meeting, the Minister would outline to us what further aspects the Council has invited the Commission to focus on in the coming year, with particular reference to the continued shortcomings that he has identified, and explaining why consideration has been brought forward from the customary November meeting at which development ministers are present.**

7.21 **In the meantime we clear the document.**

Annex: External Action Objectives

IN 2007, THE COMMISSION'S EXTERNAL ACTION WAS GEARED TOWARDS ACHIEVING THE FOLLOWING OBJECTIVES:

- **A renewed EU market access strategy taking into account competitiveness, social and environmental concerns:** EU Strategy on Aid for Trade adopted by Council in October; Commission and Member States working on concrete follow up activities; €16 million earmarked for further integration of ACP states into the WTO and for further support of the enhanced integrated framework; regional programming for the 10th EDF is ongoing, with major attention to trade and EPA related support.

- **Concluding negotiations on Economic Partnership Agreements**: full EPA initialled with all CARICOM Member States; Pacific ACP Interim Agreement signed by Papua New Guinea and Fiji; Interim agreements reached with seven African countries, the East African Community and the Eastern and Southern Africa group; Gabon and Congo Brazzaville examining adhesion to interim agreement; agenda and timetable set for progressing towards a full EPA in 2008.

- **Reinforcing the European Neighbourhood Policy. Prepare new arrangements with Ukraine, Moldova and Israel. Enhancing the EU presence in Black Sea cooperation:** negotiations on a new Enhanced Agreement between the EU and Ukraine started in March; Black Sea Synergy regional cooperation initiative presented in April; first ENP Ministerial Conference with all EU and ENP states held in September; Communication A strong European Neighbourhood Policy issued in December.

- **Negotiating Association Agreements with partners in Asia and Latin America. Progress in negotiations with Russia, China and Ukraine:** negotiations started on Association Agreements with Andean Community and Central America;

negotiations started with Ukraine and progressed with Russia (including two summit meetings) and China (including one summit meeting).

- **Continuing the European Security Strategy and stabilisation efforts in the Middle East and South Asia:** UN plans to promote system-wide coherence supported, especially the launching of "Delivering as One" initiatives in eight pilot countries; over €550 million made available to the Palestinian people this year; Temporary International Mechanism continued throughout the year (with €350 million of EC funding); Partnership for Peace Programme continued; support to Afghanistan continued (with just under €196 million of EC funding).

IN ADDITION TO THE ABOVE-MENTIONED OBJECTIVES, THE COMMISSION MADE PROGRESS IN THE FOLLOWING FIELDS, FOR WHICH IT HAD ANNOUNCED STRATEGIC INITIATIVES IN 2007:

- **Establishing Erasmus Mundus II:** Erasmus Mundus II approved in July with some €950 million of funding over five years.

- **A Communication on complementarity, division of labour and scaling up of development aid:** EU Code of Conduct on Complementarity and Division of Labour in Development Policy adopted on 15 May.

- **A Communication reviewing the state of play of EU-Africa relations:** EU-Africa Partnership adopted at Lisbon Summit in December; Communication on the implementation of the Joint EU-Africa Strategy to be published in 2008.

8 The Social Package

(29818) 11517/08 COM(08) 412	Commission Communication: *Renewed social agenda: opportunities, access and solidarity in 21st century Europe*
+ ADD 1	Commission staff working document: *impact assessment*
+ ADD 2	Commission staff working document: *summary of impact assessment*
+ ADD 3	Commission staff working paper: *report on the EU contribution to the promotion of decent work in the world*

Legal base	—
Document originated	2 July 2008
Deposited in Parliament	10 July 2008
Department	Work and Pensions
Basis of consideration	EM of 17 July 2008
Previous Committee Report	None
To be discussed in Council	October 2008
Committee's assessment	Politically important
Committee's decision	Cleared

8.1 In 2005, the Commission proposed the EC's Social Agenda for 2005–10.[25] It listed 28 initiatives. The Commission says that action on 24 of them has already been taken; three have been abandoned; and the remaining item (legislation to modernise the EC Regulation on the social security of mobile workers) is currently being considered by the Council and the European Parliament.

8.2 In this Communication, the Commission explains why it believes that the time has come to renew the Social Agenda. It needs to be updated to take account of globalisation; technological change; demographic change; immigration; and climate change. As well as bringing opportunities, these forces can cause unemployment, social exclusion, poverty and other hardships.

8.3 The Commission proposes three goals for the Renewed Social Agenda:

- to create opportunities (such as more and better jobs and equal treatment);
- to provide access (for example, to education, health services and lifelong learning); and

25 (26381) 6370/05: see HC 34–i (2005–06), chapter 44 (4 July 2005).

- to demonstrate social solidarity between the regions, the generations, the rich and the poor, and the EU and the rest of the world.

8.4 The Commission recognises that Member States have the primary responsibility for action to achieve these goals. But it says that the EC can make a valuable contribution by, for example, giving financial support from the Cohesion and Structural Funds, bringing Member States together through the Open Method of Coordination,[26] encouraging dialogue between the representatives of employers and employees ("the social partners") and supporting the work of voluntary and charitable organisations. The Commission believes there is scope to improve the contribution that each of these "instruments" can make.

8.5 In the light of its extensive consultations about the Social Agenda throughout 2007, the Commission considers that priority for action should be given to:

- improving the life-chances of children and young people;
- investing in human capital (by, for example, providing vocational training and lifelong learning);
- removing obstacles to the free movement of workers within the EU;
- promoting longer and healthier lives;
- poverty-reduction and social inclusion;
- countering all forms of unfair discrimination; and
- contributing to international action to promote decent working conditions, protect the environment and provide opportunities, access and solidarity.

8.6 The Commission lists under each of these headings the subject-specific documents it has recently published or will present later this year or in 2009. The lists include, for example, proposals for a new Directive on patients' rights to cross-border healthcare and for a Recommendation on "active inclusion".

8.7 The Commission says that the Renewed Social Agenda:

> "is an integrated policy response [to the challenges of globalisation, technological and climate change and an ageing population], complementing the Lisbon Strategy and demonstrating a commitment to delivering results for citizens. It shows that European values remain at the core of EU policies and are an integral part of the EU response to globalisation. It reflects this Commission's strong commitment to the social dimension … and is an essential contribution to wider efforts to make the Union economically strong, socially responsible and secure. This agenda, including

26 The purpose of the open method of coordination is to help Member States develop their own policies by agreeing European guidelines and timetables for short, medium and long-term goals; quantitative and qualitative indicators; and benchmarks. Member States then translate the guidelines into national and regional policies. They then monitor progress, evaluate performance and take part in peer reviews of the outcomes.

> its actions and instruments, will be reviewed together with the Lisbon strategy for the post 2010 period."[27]

The Commission calls on the Council and the European Parliament to endorse the Renewed Social Agenda.

The Government's view

8.8 The Parliamentary Under-Secretary of State at the Department for Work and Pensions (Mr James Plaskitt) tells us that the Communication itself does not have any direct policy implications for the UK. Those implications will be found in each of the Commission's subject-specific documents — the draft legislation, Green papers and so on — which will, together, constitute "the social package". The Minister adds, however, that the Communication provides:

> "an overview of the Commission's intentions … in the medium term which helps to put the individual detailed proposals in context.
>
> "The Government welcomes the overall theme of opportunity, access and solidarity for European citizens, and it believes that the renewed Social Agenda and the Lisbon Agenda post 2010 should focus on delivering benefits for people in Europe and provide a framework for dignity, fairness and choice for all."

In particular, the Government welcomes the Communication's recognition of the important contribution of skills and education to the Social Agenda and shares the Commission's view that economic and social policies reinforce each other.

Conclusion

8.9 **The goals the Commission proposes for the renewed Social Agenda are clearly desirable. The Communication provides a useful introduction to the individual proposals that will come to us for detailed scrutiny and on which it would, therefore, be premature for us to comment at this stage. Accordingly, we clear it from scrutiny and make this short report to draw the document to the attention of the House.**

27 Commission Communication, page 19, penultimate paragraph.

9 European Satellite Centre

(28082) — —	Council Joint Action amending Joint Action 2001/555/CFSP on the establishment of a European Union Satellite Centre

Legal base	Article 14 EU; unanimity
Department	Foreign and Commonwealth Office
Basis of consideration	Minister's letter of 13 July 2008
Previous Committee Report	HC 4–iii (2006–07), chapter 18 (6 December 2006)
Discussed in Council	11–12 December 2006 General Affairs and External Relations Council
Committee's assessment	Politically important
Committee's decision	Cleared (reported to the House on 6 December 2006)

Background

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

9.2 Based in Torrejon in Spain, the EUSC has 73 staff. Its annual budget was approximately €10.6 million in 2006. It is funded by Member States according to a gross national income scale.

9.3 Member States exercise political supervision over the centre including setting its priorities, while the Secretary General/High Representative (SG/HR) and his staff provide operational direction to the Centre. The SG/HR reports to the Council on the Centre's activities every 5 years with a view to altering the Joint Action if appropriate.

The Joint Action

9.4 In his Explanatory Memorandum of 30 November 2006, the then Minister for Europe at the Foreign and Commonwealth Office (Mr Geoffrey Hoon) said that the SG/HR's report (which he enclosed with his EM) made "a number of practical recommendations intended to improve the running of the Centre and clarify its role", which were incorporated in the revised Joint Action:

— *Mission*: supporting ESDP operations was already being performed by the Centre but a specific reference was being added to the mission statement for clarity;

— *Budget*: The original Joint Action required the budget to be set annually. The Centre would now have a Financial Framework agreed by the Council every three years, allowing it to plan its expenditure further in advance. Annual budgets would be approved by the Board within the constraints of this Framework;

— *Deputy Director*: Term limits had been set at a maximum of two three year terms; and

— *Association with the Commission*: A new article, Article 20a, had been inserted to ensure that the EUSC "can benefit from the EU-wide expertise available in these areas while avoiding duplicating activities carried out elsewhere in the EU". The Minister mentioned in particular the Commission's Joint Research Centre (JRC).

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

9.6 For our part, we noted that the Joint Research Centre had been an integral part of the European Commission since its creation in 1957: a Directorate-General of the European Commission under the responsibility of the European Commissioner for Research, whose Board of Governors assists and advices the Director General on matters relating to the role and the scientific, technical and financial management of the JRC, and with a principal task of providing the Commission and its policy-making Directorates-General, as well as the Council, European Parliament and Member States, with independent scientific and technical advice.[28]

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

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

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

The Minister's letter of 13 July 2008

9.10 The Minister informs on these issues as follows:

28 For further information, see http://www.jrc.cec.eu.int

"The primary objective of the JRC is to use the analysis of satellite imagery in its research work to support EU Commission policy in a number of areas, for example, measuring deforestation and environmental monitoring. The JRC is also active in a number of policy areas related to CFSP/ESDP, such as nuclear security, disaster response and maritime policy.

"The SatCen's role on the other hand is in supporting the Council's CFSP objectives. It does this by providing analysis of satellite imagery for EU crisis management operations conducted under ESDP on behalf of the Council and Member States. While this can lead to a limited overlap between work programmes, the SatCen and JRC liaise closely to deconflict their work and ensure complementarity where policy work strands are related. For example, the JRC and SatCen worked jointly on providing situational awareness during the Lebanon crisis of 2006, and are currently working together on providing situational awareness of the security barrier and settlements in the West Bank.

"In the future there is potential for synergies between SatCen work to support EUFOR Tchad/RCA and JRC work to support humanitarian work in Darfur.

"In monitoring the SatCen's achievement of its objectives, its Director reports at least annually, to the Political and Security Committee to explain the SatCen's annual work programme. The SatCen's Board, consisting of representatives from Member States and the EU Commission, also provides political oversight and guidance on the activities of the SatCen on a regular basis."

Conclusion

9.11 **The growth in the range and geographical spread of the security challenges facing the European Union, and the ongoing review of the 2003 European Security Strategy, have led, among other things, to a heightened discussion of the satellite capacity able to support the prosecution of European Security and Defence Policy and Common Foreign and Security Policy.**

9.12 **We accordingly report this further information to the House.**

10 European Neighbourhood Policy: Black Sea Synergy

(29782) — COM(08) 391	Commission Communication: *Report of the first year of implementation of the Black Sea Synergy*

Legal base	—
Document originated	19 June 2008
Deposited in Parliament	3 July 2008
Department	Foreign and Commonwealth Office
Basis of consideration	EM of 10 July 2008
Previous Committee Report	None; but see (28560) 16371/06: HC 41–xxi (2006–07), chapter 16 (9 May 2007) and (28120) 16371/06: HC 41-iv (2006–07) chapter 14 (14 December 2006)
To be discussed in Council	To be determined
Committee's assessment	Politically important
Committee's decision	Cleared

Background

10.1 In the introduction to its Communication 16371/06 of 4 December 2006, which we considered on 14 December 2006,[29] the Commission recalled the premise of the European Neighbourhood Policy (ENP) — "that the EU has a vital interest in seeing greater economic development and stability and better governance in its neighbourhood". Responsibility lies primarily with the countries themselves, "but the EU can substantially encourage and support their reform efforts" and also recalled that "the ENP remains distinct from the process of EU enlargement — for our partners, considerably enhanced cooperation with the EU is entirely possible without a specific prospect of accession and, for European neighbours, without prejudging how their relationship with the EU may develop in future, in accordance with Treaty provisions".

10.2 The first 18 months had laid a substantial foundation — a single policy framework, 11 ENP Action Plans and a new financial instrument (the European Neighbourhood Policy Instrument; ENPI) — and shown its worth. It was now time for the EU to build upon this by strengthening its commitment to the ENP via a series of proposals encompassing:

— *Enhancing the trade and economic component*: deep and comprehensive Free Trade Agreements with all partners; enhanced support for reforms; efforts to improve the trade and economic regulatory environment and the investment climate; strengthened economic integration and cooperation in key sectors.

— *Facilitating mobility and managing migration*: removing obstacles to legitimate travel while at the same time ensuring well-managed mobility and migration.

29 See headnote: (28120) 16371/06: HC 41-iv (2006–07) chapter 14 (14 December 2006).

— *Promoting people-to-people exchanges*: educational, youth, business and civil society exchanges; training; increasing the visibility of the EU.

— *Building a thematic dimension*: multilateral dialogue on energy, transport, environment, information society, public health, financial services, border management and migration.

— *Strengthening political cooperation*: more active EU role in conflict resolution; informal ministerial meeting with partner countries; intensified parliamentary cooperation.

— *Enhancing regional cooperation*: particularly in the Black Sea region.

— *Strengthening financial cooperation*: making the most of the new, larger funding instrument, including a new *Governance Facility* and *Investment Fund*.

10.3 The Conclusions subsequently adopted at the 11 December 2006 GAERC underlined the importance the Council attaches to the ENP "as one of the core priorities of the Union's external action" and looked forward to considering future proposals from the Commission.[30]

The Commission Communication

10.4 The Black Sea Synergy Communication's main proposals for developing cooperation both within the Black Sea region[31] and between the region and the EU were:

— promoting democracy, respect for human rights and good governance;

— improving border management and customs cooperation to increase security and tackle cross-border crime;

— more active EU involvement in efforts to address the so-called "frozen conflicts" (involving Moldova (Trans-Dniester), Georgia (Abkhazia and South Ossetia), and between Armenia and Azerbaijan (Nagorno-Karabakh));

— aim to provide a clear transparent and non-discriminatory framework in line with the EU *acquis* for energy production, transport and transit and cooperate on the upgrading and construction of energy infrastructure;

— supporting regional transport cooperation to improve the efficiency, safety and security of transport operations (including aviation and maritime safety);

— encouragement of Member States to work within the framework of regional seas conventions, to enhance implementation of multilateral environmental agreements and establishing more strategic environmental cooperation in the region;

30 See http://ec.europa.eu/world/enp/faq_en.htm for full information on the ENP.

31 The Black Sea region includes Greece, Bulgaria, Romania and Moldova in the west, Ukraine and Russia in the north, Georgia, Armenia and Azerbaijan in the east and Turkey in the south. Though Armenia, Azerbaijan, Moldova and Greece are not littoral states, history, proximity and close ties make them natural regional actors.

— promoting sustainable fisheries development through management, research, data collection and stock assessment;

— continuing EU support for trade liberalisation and implementation of ENP Action Plans' trade provisions;

— stimulating research cooperation, harmonisation and establishing regulatory authorities;

— promoting Science and Technology capacity building and dialogue; and

— promoting social cohesion and better integration of minorities through training, information sharing and awareness raising campaigns.

10.5 There would be no new institutions or bureaucratic structures. The majority of EU funding would be through established Commission-managed programmes. The Commission planned also to enhance the existing *Black Sea Cross Border Cooperation Organisation*, which includes Turkey and Russia (funded through the European Neighbourhood and Partnership Instrument: ENPI) and which aims at supporting civil society and local level cooperation and contact building in Black Sea coastal areas. The Commission intended to apply for observer status, and encouraged Member States to do the same. New cross-border cooperation programmes would also take place between Bulgaria and Romania (funded through the European Regional Development Fund) and between Bulgaria and Turkey (through the Instrument for Pre-accession Assistance). The Commission proposed "a kick-off high level political event" to provide political orientation and visibility to EU-Black Sea Synergy, which might stimulate regular ministerial meetings between EU and Black Sea Economic Cooperation Organisation countries and between the EU and ENP partners from the Black Sea region. All of this was broadly welcomed by the then Minister for Europe at the Foreign and Commonwealth Office (Mr Geoffrey Hoon).[32]

The Commission Report

10.6 The Commission's Communication reports that a number of projects have reinvigorated cooperation in important areas such as tackling climate change, maritime policy and fisheries management, energy, transport, and managing migratory movement (which will include the establishment of a *Cooperation Platform on Migration in the Black Sea region*). A seminar has been held in Moldova on democracy, respect for human rights and good governance. The Commission states that it has continued to advocate an active EU role in addressing the underlying causes of the frozen conflicts in the region, including cooperation programmes to bring the otherwise divided parties together.

10.7 The *Black Sea Interconnection (BSI) project* (approved for funding in 2007 and the largest of its kind in the region) will build a regional research and education network linking it to GÉANT2, the high bandwidth, pan-European research network.

10.8 Under the *Black Sea Cross-Border Cooperation Programme*, 10 states' national and regional authorities have drawn up a Joint Operational Programme with €17.5 million at

32 See headnote: (28560) 16371/06: HC 41–xxi (2006–07), chapter 16 (9 May 2007).

its disposal, and the *Romania-Moldova-Ukraine CBC programme*, with €126 million of funding , should start in autumn 2008. The first civil society activities included a meeting in Odessa of 29 environmental NGOs.

10.9 All Black Sea countries have been involved. A *Foreign Ministers' meeting in Kiev* in February, initiated by the EU, welcomed the Black Sea Synergy as "a common endeavour" and stated that greater European Union involvement can increase the potential of Black Sea regional cooperation. Relations were also strengthened with the *Organisation of Black Sea Economic Cooperation*,[33] including the Commission becoming an observer.

10.10 In 2007 €837 million of Community assistance under the ENPI and the Instrument of Pre-Accession were committed (details are provided in the Annex to the Communication) In addition, the creation of the Neighbourhood Investment Facility (NIF)[34] offers a vehicle for pooling grant resources from the Community and the Member States. These resources can also leverage additional loan financing from European public finance institutions for investments in neighbouring countries, including in the Black Sea region. The NIF will make it easier to mobilise additional funding for priority projects and can thus also sustain Black Sea regional cooperation efforts.

10.11 Measures to take the BSSI forward include long-term measurable objectives in each area, lead countries and organisations to ensure coordination, sectoral partnerships (which could include Belarus), increasing people-to-people contacts (including a possible Black Sea Civil Society Forum) and Ministerial meetings when justified.

10.12 All in all, the Commission sees the initial results as revealing the practical utility and the potential, in a complex environment, of this new policy approach of EU-supported Black Sea regional cooperation. The launch phase has been completed and implementation begun. Participants favour the establishment of a long-term cooperation process and have formulated converging ideas about its content and arrangements. Continued progress requires the consistent and active involvement of a growing number of actors, including both Member States and Black Sea partners. As in the first year, the Commission stands ready to contribute to this important work.

The Government's view

10.13 In his Explanatory Memorandum of 10 July, the Minister for Europe at the Foreign and Commonwealth Office (Mr Jim Murphy) describes this review of the Black Sea Synergy as "timely", and notes that the Black Sea region represents a challenge for the EU in a number of strategic areas including stability, security, governance, energy, migration and trafficking. He sees "a well-coordinated EU policy which inspires greater intra-regional cooperation, at all levels of society" as having "great potential for mutual benefit". He continues as follows:

33 The BSEC was established in 1992. Initially focusing on economic cooperation, its remit has been gradually widened. Membership includes all Black Sea countries as listed under footnote 2 plus Albania and Serbia.

34 The Commission intends to put €700 million (over the period 2007–2013) into a fund which would be used to support IFI lending in ENP partner countries. EU Member States would be invited to match this amount, with the idea that the fund could then leverage as much as four to five times this amount of grant funding, in concessional lending for investment products in ENP partner countries, in priority sectors as identified in their ENP Action Plans.

"The key will be for the Commission to synergise activity without duplication, and ensure effective EC spending. In this context, the Commission's proposal to set measurable long-term targets, is welcome. We will continue to work closely with the Department for International Development to influence and monitor Commission programming, through their participation in the European Neighbourhood and Partnership Instrument (ENPI) Management Committee. We shall continue to urge that the Synergy focus on practical projects which will deliver concrete results in priority areas."

10.14 The Minister welcomes in particular:

— "the Synergy's early focus on the environmental sector, including the Commission's ongoing discussions with partners to address climate change in the region, and a proposal to build capacity to implement Kyoto and participate in international negotiations on a post-2012 agreement;

— "that partners intend to make the most of existing mechanisms on energy. Moldova, Ukraine and Georgia have confirmed their intention to join the Energy Community Treaty, which will help ensure they implement the EU's gas and electricity *acquis*;

— "the inclusion of projects to tackle human trafficking, and the establishment of a Cooperation Platform on Migration in the Black Sea region. This should help strengthen dialogue and practical cooperation between partners;

— "the aim to set measurable objectives for the longer term — these will help to focus on priorities and enable monitoring of results; and to consider whether Belarus may be eligible to participate in some sectoral activities;

— "the range of other valuable initiatives complementing the EU's tools of engagement in the region, in particular ENP, conflict resolution initiatives, and trade liberalisation; while harnessing the support of civil society in the region, aiming to create a Black Sea Civil Society Forum."

10.15 The Minister agrees with the Commission that the Black Sea Synergy has potential, and says that it will now need to maintain a focus on delivering practical results to prove its worth:

"The Commission's recognition that 'long-term, measurable objectives … should be set to spur more concerted action', without creating pre-ordained Ministerial meetings, is particularly welcome."

10.16 The Minister notes that the June European Council invited the Commission to develop the Polish/Swedish proposals for an Eastern Dimension to ENP, and that the Commission will present its proposals to the Council next Spring:

"The 'Eastern Dimension' covers EU bilateral and multilateral cooperation with the Eastern neighbours of Moldova, Ukraine, Armenia, Azerbaijan, Georgia and Belarus, and thus will provide another forum needing to gel with the Black Sea Synergy. We welcome the Eastern Dimension as a further vehicle to support progress for these

countries, especially to promote Ukraine's and Moldova's further integration with the EU. We shall be alert to arguments from other Member States that improved Black Sea cooperation would lessen the need for an Eastern Dimension."

10.17 Turning to the *Financial Implications*, the Minister underlines the fact that the Black Sea Synergy already draws on the programmed budget for cross-border, ENPI and Instrument for Pre-Accession (IPA) funding and contains no proposals for additional spending, and the Commission suggestion that additional private sector or funding leveraged through the Neighbourhood Investment Facility could be used for Black Sea projects.

10.18 The Minister then recalls that, in clearing the April 2007 Black Sea Communication, the Committee asked for reassurance that any FCO funding withdrawn from regional NGOs as a result of strengthening EU/Black Sea relations would be replaced by ENPI funding. He says that, in his 24 May 2007 reply, his predecessor explained that the objectives of FCO and ENPI funding overlapped to a degree, but had different decision-making processes:

"FCO funding was aligned with the FCO strategic priority of building an effective and globally competitive EU in a secure neighbourhood; whereas ENPI funding, supporting sustainable development and approximation to EU standards, focussed on support for ENP Action Plan implementation, which we argued should be at the heart of the Black Sea Synergy."

10.19 The Minister then says:

"Current FCO funding is through the Strategic Programme Fund — Reuniting Europe Programme (SPF-RE, formerly the Global Opportunities Fund). Its objectives include good governance and promotion of human rights, as well as capacity building and efficiency in policy-making processes and structures, and projects to pump-prime larger-scale projects funded by other donors, e.g. the EU. The 2008/9 SPF-RE allocations for the Eastern ENP neighbours are £150k each for Belarus, Georgia and Moldova; £100k each for Armenia and Azerbaijan, and £650k for Ukraine."[35]

10.20 No dates have yet been set for discussion of the Communication, but the Minister expects the Council to endorse it later in the French Presidency.

Conclusion

10.21 **The BSSI has got off to a good start. However, as well as the proposed "Eastern Dimension" to the ENP, the Synergy will also interface with the proposed Mediterranean Union aimed at reinvigorating the southern dimension of the EU's relations with its neighbours (the Barcelona Process). In its observations on the BSSI, the European Parliament sees Bulgaria, Greece and Romania as the natural protagonists among existing Member States. The same sort of model may need to be**

35 The Minister provides the following link to the database of current SPF-RE projects at: http://www.fco.gov.uk/en/about-the-fco/what-we-do/funding-programmes/strat-progr-fund/strat-pro-fund-europe.

explored if the regional approach (which also includes the so-called "Northern Dimension") is to avoid overload and instead gain and maintain momentum and avoid the pitfalls of the Barcelona Process hitherto. It will also require some hard thinking on the part of the Commission: as the Minister rightly emphasises, "the key will be for the Commission to synergise activity without duplication, and ensure effective EC spending", so as to generate "practical projects which will deliver concrete results in priority areas".

10.22 **We now clear the Communication, which we are reporting to the House because of the widespread interest in the region.**

11 Evaluation and future development of FRONTEX

(29477) 6664/08 COM(08) 67	Commission Communication: *Report on the evaluation and future development of the FRONTEX Agency*
+ ADD 1	Commission staff working documents: *impact assessment of the Report*
+ ADD 2	Commission staff working document*: summary of the assessment*
+ ADD 3	Commission staff working document: *statistical information on the outputs of FRONTEX in 2006 and 2007*

Legal base	—
Department	Home Office
Basis of consideration	Minister's letters of 24 April and 15 July 2008
Previous Committee Report	HC 16–xvi (2007–08), chapter 8 (19 March 2008)
Discussed in Council	19–20 June 2008
Committee's assessment	Politically important
Committee's decision	Cleared

Background

11.1 FRONTEX is the European Agency for the Management of Operational Coordination at the External Borders of the Member States. It began work in October 2005. Its budget for 2008 is €75 million. It is based in Warsaw and has 125 staff.

11.2 The Regulation which established FRONTEX gives the Agency six tasks: coordination of operational cooperation between Member States in the management of the external boarders; training border guards; doing risk analyses; R&D; organising technical and

operational help for Member States in need of it; and helping organise the return of illegal immigrants. [36]

Previous scrutiny of the Commission's Communication

11.3 We first considered this Communication in March.[37] It was requested by the European Council. It contains the Commission's evaluation of the Agency's performance of each of its tasks so far. It recommends short-term action — not requiring new legislation — to strengthen FRONTEX's contribution to border management (for example, the Agency should itself buy or lease some equipment so as not to be entirely reliant on loans from Member States). The Communication also suggests some possible additions to FRONTEX's functions in the longer term (for example, closer cooperation between customs and border control authorities; and empowering FRONTEX to carry out pilot projects in third countries).

11.4 The Communication concludes with an invitation to the Council to discuss the recommendations. In the light of the Council's discussion and an independent assessment (due by the end of 2008) of the Agency's effectiveness, the Commission will decide whether to make proposals for amendments to the FRONTEX Regulation.

11.5 The Parliamentary Under-Secretary of State at the Home Office (Meg Hillier) told us that, contrary to the Government's wishes, the UK is excluded from full participation in FRONTEX because the European Court of Justice has ruled that the founding Regulation builds on provisions of the Schengen *acquis* to which the UK is not party. But the Government is able to participate in some of the Agency's activities (for example, as observers of selected joint operations; risk analysis; training).

11.6 The Minister also told us that the Government believed that FRONTEX has made a promising start and has already made a valuable contribution to the control of the external borders. The Government broadly agreed with the Commission's recommendations for action in the short term and supported its view that any development of FRONTEX in the longer-term should be gradual.

11.7 We concluded that it would be premature to reach a view on the Commission's evaluation of FRONTEX before the Council had had an opportunity to discuss it and the Commission's recommendations. So we asked the Minister to send us a report on the Council's discussions. We also asked her to enlarge on what she sees as the benefits to the UK of FRONTEX and on whether it provides value for the UK's financial contribution.

The Minister's letter of 24 April 2008

11.8 The Minister's letter of 24 April replies to out request for her further views on the benefits of FRONTEX to the UK. The key points of her letter are as follows:

- Ensuring that the EU's external border is effectively managed and secure in the interests of all Member States. UK participation in joint operations helps the

36 Council Regulation (EC) No. 2007/2004: OJ No. L 349, 25.11.04, p.1.

37 See HC 16–xvi (2007–08), chapter 8 (19 March 2008).

Government to tackle problems and threats where they occur and before they reach the UK.

- Because the UK is excluded from full participation in FRONTEX, the Government contributes only to the cost of joint operations. Its contribution in 2008 will be €570,000.

- In 2007, the UK took part in 14 joint operations. For example, six UK Immigration Officers and one Chief Immigration Officer took part in Operation Poseidon between 26 June and 15 July 2007 in the eastern Mediterranean area. During the Operation, 673 illegal immigrants were caught and 225 forged or falsified documents were detected.

- The benefits of participation include not only the deterrence and apprehension of illegal immigrants but also the acquisition of data and intelligence and the development of stronger links with other countries' immigration authorities.

11.9 The Minister's letter also says that the Government's participation in FRONTEX is of considerable benefit to the UK politically, strategically and operationally; and that the Agency's use of the UK's financial contribution represents value for money.

The Minister's letter of 15 July 2008

11.10 In reply to our request for a report on the Council's discussion of the Commission's evaluation of FRONTEX, the Minister refers us to the following conclusion of the European Council's meeting in June:

> "The European Council underlines the importance of continuing work on the further development of the integrated border management strategy, including addressing particular pressures faced by some Member States and promoting a fair sharing of responsibilities. Rapid progress is needed on the future development of FRONTEX, including through the enhancement of operational cooperation. Modern technologies must be harnessed to improve the management of the external borders. The Commission is invited to present proposals for an entry/exit and registered traveller system by the beginning of 2010. The European Council looks forward to the forthcoming studies and possible legislative proposals on an electronic system for travel authorisation and on the creation of a European Border Surveillance System. The European Council invites the Commission to step up efforts on these issues and to rapidly report back on progress achieved and further possible steps, with a view to the development and implementation of the overall strategy as soon as possible."[38]

11.11 The Minister tells us that the Slovene Presidency consulted the Government about the drafting of the European Council's Conclusions and that the UK's comments are reflected in the final text. She says that:

> "There were no substantive issues raised by other Member States in respect of FRONTEX during the consultation process. The UK Government is content with the

38 See 11018/08: Brussels European Council, 19–20 June 2008, Presidency Conclusions, paragraph 19.

Council's views on the direction of FRONTEX and supports its position, although of course we are excluded from the FRONTEX Regulation and are therefore not bound by the strategies proposed."

Conclusion

11.12 **We are grateful to the Minister for providing the further information for which we asked. There are no further questions that we need put to her. We shall await the further proposals referred to in the Commission's Communication and in the passage from the European Council's Conclusions which we have quoted in the preceding paragraph. We are now content to clear the Communication from scrutiny.**

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

Department for Business, Enterprise and Regulatory Reform

(29751) 10678/08 COM(08) 334	Commission Communication: Final evaluation of the eTEN Programme.

Department for Environment, Food and Rural Affairs

(29802) 11349/08 COM(08) 413	Commission Recommendation concerning proposals, on behalf of the European Community together with the Member States, for amendments to Annex I of the Protocol on Persistent Organic Pollutants (POPs) under the UN-ECE Convention on Long-Range Transboundary Air Pollution.

Foreign and Commonwealth Office

(29784) 11159/08 COM(08) 237	Commission Report — Annual Report 2007 on relations between the European Commission and national parliaments.

Home Office

(29810) 10546/08 —	JHA External Relations Multi-Presidency Work Programme.

HM Revenue and Customs

(29788) 11195/08 COM(08) 352	Draft Council Decision Approving on behalf of the Community Annex 8 to the International Convention on the Harmonisation of Frontier Controls of Goods.

Department for Transport

(29793) 11280/08 COM(08) 405	Draft Council Decision concerning the signing and conclusion of a Protocol amending the Agreement on Maritime Transport between the European Community and its Member States and the Government of the People's Republic of China to take account of the accession of the Republic of Bulgaria and Romania to the European Union.

HM Treasury

(29776) 11050/08 COM(08) 376	Draft Council Directive on tax exemptions applicable to the permanent introduction from a Member State of the personal property of individuals (codified version).
(29787) 11094/08 + ADD 1 COM(08) 327	Commission Report: Annual Report on the Guarantee Fund and its Management in 2007.
(29797) 11304/08 COM(08) 429	Preliminary Draft Amending Budget No. 6 to the general budget 2008 — Statement of Expenditure by Section III — Commission.

Department for Work and Pensions

(29820) 11554/08 COM(08) 421	Commission Communication on Solidarity in the face of Change: *The European Globalisation Adjustment Fund (EGF) in 2007 – Review and Prospects.*

Formal minutes

Tuesday 22 July 2008

Members present:

Michael Connarty, in the Chair

Mr Greg Hands
Mr David Heathcoat-Amory
Keith Hill
Mr Lindsay Hoyle
Mr Bob Laxton

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2. The Committee met in public for the scrutiny of documents

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

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

Paragraphs 1.1 to 12 read and agreed to.

Resolved, That the Report be the Thirty-first Report of the Committee to the House.

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

[Adjourned till Wednesday 10 September 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

Michael Connarty MP (*Labour, Linlithgow and East Falkirk*) (Chairman)
Mr Adrian Bailey MP (*Labour/Co-op, West Bromwich West*)
Mr David S. Borrow MP (*Labour, South Ribble*)
Mr William Cash MP (*Conservative, Stone*)
Mr James Clappison MP (*Conservative, Hertsmere*)
Ms Katy Clark MP (*Labour, North Ayrshire and Arran*)
Jim Dobbin MP (*Labour, Heywood and Middleton*)
Mr Greg Hands MP (*Conservative, Hammersmith and Fulham*)
Mr David Heathcoat-Amory MP (*Conservative, Wells*)
Keith Hill MP (*Labour, Streatham*)
Kelvin Hopkins MP (*Labour, Luton North*)
Mr Lindsay Hoyle MP (*Labour, Chorley*)
Mr Bob Laxton MP (*Labour, Derby North*)
Angus Robertson MP (*SNP, Moray*)
Mr Anthony Steen MP (*Conservative, Totnes*)
Richard Younger-Ross MP (*Liberal Democrat, Teignbridge*)