House of Commons

European Scrutiny Committee

Fifth Report of Session 2008–09

Documents considered by the Committee on 21 January 2009, including the following recommendations for debate:

Fisheries: catch quotas and effort limitation 2009

EU Special Representatives

Standards for the reception of asylum seekers

EURODAC

Rules to determine which Member State is responsible for examining an application for international protection

HC 19-iv

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Report, together with formal minutes

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Notes

Numbering of documents

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

> Numbers in brackets are the Committee's own reference numbers.
>
> Numbers in the form "5467/05" are Council of Ministers reference numbers. This system is also used by UK Government Departments, by the House of Commons Vote Office and for proceedings in the House.
>
> Numbers preceded by the letters COM or SEC are Commission reference numbers.

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

Abbreviations used in the headnotes and footnotes

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

Euros

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

Further information

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

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

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1 Fisheries: catch quotas and effort limitation 2009

(30161) 15578/08 + ADDs 1–3 COM(08) 709	Draft Council Regulation fixing for 2009 the fishing opportunities and associated conditions for certain fish stocks and groups of fish vessels, applicable in Community waters and, for Community vessels, in waters where catch limitations are required

Legal base	Article 37 EC; QMV
Department	Environment, Food and Rural Affairs
Basis of consideration	Minister's letter of 11 January 2009
Previous Committee Report	HC 19–i (2008–09), chapter 1 (10 December 2008)
Discussed in Council	17– 19 December 2008
Committee's assessment	Politically important
Committee's decision	For debate in European Committee (decision reported on 10 December 2008)

Background

1.1 The Total Allowable Catches (TACs) are based on scientific advice. In those cases where particular fisheries are managed jointly with third countries, the Community share then has to be negotiated with the countries concerned, and the relevant TACs for the Community as a whole agreed by the Fisheries Council (and allocated between Member States according to a predetermined key) on the basis of a proposal put forward by the Commission. Since these proposals have to be agreed before the start of the calendar year to which they apply, they have habitually presented scrutiny difficulties, in that the need to take into account the scientific advice means that official texts are often available too late for them to be considered properly beforehand. Although the current document, proposing the TACs in 2009, was deposited in Parliament rather earlier than usual, the fact that it had to be agreed at the meeting of the Council on 17–19 December 2008 meant that it would again not have been possible for it to be debated before then. In view of this, the Government (as in recent years) arranged on its own initiative a debate[1] on fisheries on the Floor of the House on 20 November 2008, in order to enable Members to raise points on the proposals in advance of the Council.

1.2 As we noted in our Report of 10 December 2008, the main element in the proposal concerned the TACs and national quota allocations for fish stocks in Community waters, but it dealt as well with quotas for Community vessels in third country waters, and in international waters regulated by regional fisheries organisations; quotas for third country vessels in EU waters; the licensing and other conditions (including control and enforcement of catch limits and effort restriction) which apply to the fishing of these opportunities; and technical measures, such as closed areas. Also, since TACs have in many cases been ineffective in controlling fishing mortality, effort management in the form of controls over days at sea has been in place to protect cod in the North Sea, the West of

1 *HC Deb*, 20 November 2008, Cols 392–459.

Scotland and Irish Sea, with the regime in the cod recovery zones now being subject to the revised cod recovery plan.[2]

1.3 In the case of the allocations in Community waters, the Commission's general aim was to limit changes in the TACs to 15% in either direction, in order to stabilise fishing opportunities, though exceptions were proposed where the scientific prognosis is so poor as to require more robust action. Increases were proposed in only a few cases, and our Report identified the most significant changes so far as the UK was concerned, including 25% cuts for cod in the Irish Sea and West of Scotland; a 52% cut in the West of Scotland herring quota (which is significantly more than that envisaged in the corresponding herring management plan);[3] and reductions in the TACs for nephrops in all areas, despite ICES advice that fishing is sustainable. Annex I to our Report showed, for the major stocks of interest to the UK, the Community TACs proposed for 2009, and the UK's quota. It also set out, by way of comparison, the equivalent Community figures in 2007 and 2008, and the percentage changes as between 2008 and 2009. However, it did not include information on those stocks still subject to separate agreement with Norway.

1.4 In his Explanatory Memorandum of 28 November 2008, the Minister for the Natural and Marine Environment, Wildlife and Rural Affairs at the Department for Environment, Food and Rural Affairs (Mr Huw Irranca-Davies) said that the proposed Regulation reflected the serious state of many fish stocks, and he pointed out that the Commission was also proposing cuts in many associated stocks or in those which otherwise showed a declining trend. However, he added that, although there was a need to take into account scientific advice, it was at the same time important to maximise fishing opportunities, and to protect the viability of vulnerable sectors of the UK fleet and the interests of communities dependent on fisheries. Against this background, he said that the UK was likely in the majority of cases to be able to accept the proposed TACs, but that it had identified a number of priorities to address in the negotiations.

1.5 In drawing these proposals to the attention of the House, we commented that, although they had on this occasion been deposited rather earlier than had been the case in recent years, it was nevertheless unrealistic to expect them to be debated before decisions had been taken at the Council. We were also conscious that the proposals were incomplete, in that they did not take account of the outcome of the Commission's negotiations with Norway. In view of this, we decided that, notwithstanding the earlier debate on the Floor of the House, it would be right for the proposals to be debated in European Committee in the New Year, alongside the revised cod recovery plan, when the outcome of the Council was known. We said that we would report further to the House at that stage, and we asked the Minister to write to us as soon as possible after Christmas to let us know what was eventually agreed.

2 (29591) 7676/08: see HC 16–xxi (2007–08), chapter 2 (14 May 2008) and HC 16–xxxvi (2007–08), chapter 2 (26 November 2008).

3 (29678) 9342/08: see chapter 12 of this Report

Minister's letter of 11 January 2009

1.6 We have now received from him a letter of 11 January 2009 outlining the package agreed by the Council, and identifying in an Annex the various TACs agreed, and the extent to which these reflect the UK negotiating objectives He says that the negotiations this year were particularly intense, but that some significant gains were secured for the UK in line with the priorities outlined in his earlier Explanatory Memorandum. In particular, the three top level priorities were achieved, in that in relation to the West of Scotland, the UK secured a "viable, though challenging" set of conservation measures for the whitefish fleet which avoided proposed closure of this fishery; it was able to limit the substantial cuts proposed to the nephrops TACs in the North Sea and West of Scotland; and it also secured a "rollover" in other key areas where the Commission had proposed a cut purely on the basis of previous lack of quota uptake.

1.7 The Minister recalls that, in the agreement reached in November on the new cod recovery plan, the UK's objective had been to deliver a plan which acknowledged the significant contribution which it (and other Member States) had already made to effort reduction, and which rewarded future action to cut mortality significantly. He observes that the negotiations had been partly successful, in that they excluded the Celtic Sea and incorporated a more appropriate reference period for calculating effort, but that it is clear that, in relation to other aspects of the plan, 2009 will be a particularly challenging year for the cod fisheries in the Irish Sea, North Sea, eastern English Channel and West of Scotland, where it will be necessary to deliver 25% cuts in the amount of fish being killed. He also says that the measures will require the UK fleet to make significant cuts in the scale of its cod discards, in order to improve the chances of stock recovery, and that the Government will be working closely with the industry to find the best way of achieving this.

1.8 More generally, the Minister points out that:

- the 30% increases in the North Sea and eastern English Channel cod TACs secured as part of the negotiations with Norway were extremely welcome, but were combined with associated measures to ensure that, whilst more cod can be landed, less is discarded;
- 25% cuts were agreed in the West of Scotland and Irish Sea TACs for cod, as required under the new recovery plan;
- it proved possible to minimise a significant cut in the UK's quota share for North Sea whiting by invoking the Hague Preference;[4] and
- a reasonable package of TACs was achieved for pelagic species, involving a smaller than anticipated cut for West of Scotland herring (from 52% to 20%), with a number of increases, such as that for western mackerel, reflecting improved management by the fishermen themselves.

1.9 The Minister adds that, in some areas, such as spurdog, porbeagle, skates and rays, the results were not what had been hoped, but nevertheless concludes that this was overall a

4 This maintains a relatively higher share of the TAC for the coastal state in certain circumstances.

successful Council, during which the UK was able to make gains in a number of important areas. He believes that the package offers a fair deal, in which our fishermen gain vital quota increases, whilst enabling action to protect stocks and cut waste, and he now looks forward to working with the fishing industry on their implementation.

Conclusion

1.10 **We are grateful to the Minister for this very full and clear account of the outcome of the Council. The debate which we recommended is to be held in European Committee on 26 January, and we are therefore drawing his latest comments to the attention of the House, so that they can be taken into account then. In doing so, we have amended the figures attached to our earlier Report, with the TACs actually agreed being set out in Annex I.**

Annex 1: Comparative Tables of Community TACs 2007, 2008 and 2009 (tonnes)

	2007	2008	2009	% ch 2009/08	UK share	UK quota
Herring						
IVa, b	204,638	116,210	97,843	-15	26%	25,275
Vb, VIaN, VIb	33,340	26,540	21,100	-20	60%	12,749
VIa (Clyde)	800	800	800	0	100%	800
VIIa	4,800	4,800	4,800	0	74%	3,550
VIIe,f	1,000	1,000	1,000	0	50%	500
Cod						
IIa, IV	16,563	18,306	23,902	+30	47%	11,216
Vb, VI, XII, XIV	490	402	240	-40	60%	144
VIIa	1,462	1,199	899	-25	29%	259
VIIb-k, VIII, IX, X	4,743	4,316	4,023	+3.6	8%	295
Megrim						
IIa, IV	1,479	1,597	1,597	0	96%	1,537
Vb, VI, XII, XIV	2,880	2,592	2,799	+8	31%	878
VII	18,300	18,300	18,300	0	14%	2,624

Anglerfish						
IIa, IV	11,345	11,345	11,345	0	81%	9,223
Vb, VI, XII, XIV	5,155	5,155	5,567	8	31%	1,710
VII	28,080	28,080	28,080	0	18%	5,050
Haddock						
IIa, IV	46,983	37,626	32,679	-13.1	84%	27,507
Vb, VIa,	7,200	6,120	3,516	-42.5	78%	2,737
VIb, XII, XIV	4,615	6,916	5,879	-15	80%	4,738
VII, VIII, IX, X	11,520	11,579	11,579	0	10%	1,158
Whiting						
IIa, IV	21,420	15,012	12,593	-15	67%	8,426
Vb, VI, XII, XIV	1,020	765	574	-25	57%	329
VIIa	371	278	209	-24.8	38%	81
VIIb-k	19,940	19,940	16,949	-15	11%	1,788
Hake						
IIa, IV	1,850	1,896	1,808	-4.7	18%	325
Vb, VI, VII, XII, XIV	29,541	30,281	28,879	-4.7	18%	5,190
Blue whiting						
I-XIV	279,058	175,466	74,058	-57.8	20%	14,670
Lemon sole						
IIa, IV	6,175	6,793	6,793	0	61%	4,181
Nephrops						
IIa, IV	26,144	26,144	24,037	-5	87%	21,513
Vb, VI	19,885	19,885	18,891	-5	98%	18,445
VII	25,153	25,153	24,650	-2	33%	8,086
Northern prawn						
IIa, IV	3,984	3,984	4,980	+25	22%	1,096
Plaice						
IIa, IV	49,143	47,875	52,615	+10	28%	14,975
Vb, VI, XII, XIV	786	786	786	0	61%	477

VIIa	1,849	1,849	1,430	-22.7	30%	432
VIId,e	5,050	5,050	4,646	-8	29%	1,352
VIIf,g	417	491	422	-14.1	15%	56
VIIh-k	337	303	256	-15	13%	16
Pollack						
Vb, VI, XII, XIV	450	450	450	0	37%	165
VII	15,300	15,300	15,300	0	17%	2,668
Saithe						
IIa, IIIb-d, IV	59,160	65,232	60,448	-7.3	17%	10,110
Vb, VI, XII, XIV	12,787	14,100	13,066	-7.3	26%	3,617
VII, VIII, IX, X	3,790	3,790	3,790	0	15%	481
Mackerel						
IIa, IIIa-d, IV	19,677	18,149	23,459	+32.7	3.7%	1,463
IIa, Vb, VI, VII, VIIIa,b,d,e,, XII, XIV	256,363	234,082	311,537	+41.7	58%	181,694
Sole						
II, IV	14,920	12,710	13,910	+9.4	6%	896
Vb, VI, XII, XIV	68	68	68	0	20%	14
VIIa	816	669	502	-25	22%	107
VIId	6,220	6,593	5,274	-20	19%	1,014
VIIe	900	765	650	-15	59%	382
VIIfg	893	964	993	+3	28%	279
VIIh,j,k	650	650	553	-14.9	17%	92
Sprat						
IIa, IV	147,028	175,777	150,777	-14.2	4%	5,705
VIId,e	6,144	6,144	6,144	0	53%	3,226

TACs are defined in terms of areas designated by ICES. Those of most immediate relevance to the UK correspond roughly to the following geographical regions:

Area II	North Sea N of 62E
Area IV	North Sea S of 62E
Area Vb	Faroes
Area VI	West of Scotland
Area VIIa	Irish Sea
Area VIIb,c,h,j,k	Western approaches
Area VII d, e	English Channel
Area VIIfg	Celtic Sea

2 EU Special Representatives

(30336) — —	Council Joint Action extending the mandate of the European Union's Special Representative in Kosovo
(30351) — —	Council Joint Action extending the mandate of the European Union Special Representative in Bosnia and Herzegovina
(30352) — —	Council Joint Action extending the mandate of the European Union Special Representative in the former Yugoslav Republic of Macedonia (FRYOM)
(30353) — —	Council Joint Action extending the mandate of the European Union Special Representative for the African Great Lakes Region
(30354) — —	Council Joint Action extending the mandate of the European Union Special Representative for Sudan

Legal base	Articles 14, 18.5, and 23.2; QMV
Department	Foreign and Commonwealth Office
Basis of consideration	EM of 14 January 2009
Previous Committee Report	None; but see (29379) and (29380): HC 16–x (2007–08) chapter 10, (30 January 2008) and (28387–29395) —: HC16–xi (2007–08), chapter 11 (6 February 2008)
To be discussed in Council	26–27 January 2009 General Affairs and External Relations Council
Committee's assessment	Politically important
Committee's decision	Not cleared; for debate in European Committee B

Background

2.1 EU Special Representatives (EUSRs) are appointed to represent Common Foreign and Security Policy where the Council agrees that an additional EU presence on the ground is needed to deliver the political objectives of the Union. They were established under Article 18 of the 1997 Amsterdam Treaty and are appointed by the Council. The aim of the EUSRs is to represent the EU in troubled regions and countries and to play an active part in promoting the interests and the policies of the EU.

2.2 An EUSR is appointed by the Council through the legal act of a Joint Action. The substance of his or her mandate depends on the political context of the deployment. Some provide, *inter alia*, a political backing to an ESDP operation, others focus on carrying out or contributing to developing an EU policy. All EUSRs carry out their duties under the authority and operational direction of the High Representative (Javier Solana). Each is

financed out of the CFSP budget implemented by the Commission. Member states contribute regularly for example by seconding some of the EUSR's staff members.

2.3 In June 2005 the Political and Security Committee decided that EUSR mandates should in principle be extended for 12 months rather than the previous arrangement of 6 months. This was put into effect in February 2006. The UK supported this proposal, as it enables extensions to be based on a more thorough reporting cycle. The renewed mandates now also ask EUSRs to prepare progress reports in mid-June and mandate implementation reports in mid-November.

2.4 The eleven EUSRs currently in office cover the following regions: Afghanistan, the African Great Lakes Region, the African Union, Bosnia and Herzegovina, Central Asia, Kosovo, the former Yugoslav Republic of Macedonia, the Middle East, Moldova, the South Caucasus and Sudan. Some EUSRs are resident in their country or region of activity, while others work on a travelling basis from Brussels.[5]

The Council Decisions

2.5 These draft Council Decisions extend the mandate of five of these eleven EUSR's — Kosovo, Bosnia and Herzegovina, the former Yugoslav Republic of Macedonia, the African Great Lakes Region and Sudan. The Council is being asked to approve a twelve-month extension of the mandates unchanged (with the exception of the EUSR for the FRYOM, where the proposed mandate extension is six months). The comments of the Minister for Europe at the Foreign and Commonwealth Office (Caroline Flint) in her 14 January 2009 Explanatory Memorandum on each one are in italics beneath the summary.

Kosovo

2.6 In November 2005, a process to determine the future status of Kosovo, pursuant to UNSCR 1244, was launched with the appointment of the UN Status Envoy, former President of Finland Martti Ahtisaari; though the United Nations would remain fully engaged in Kosovo until the end of UNSCR 1244, it indicated that "it will no longer take the lead in a post-Status presence."

2.7 In June 2005, the European Council "stressed that Kosovo would, in the medium term, continue to need a civilian and military presence to ensure security and in particular protection for minorities, to help with the continuing implementation of standards and to exercise appropriate supervision of compliance with the provisions contained in the status agreement." In this respect, the European Council underlined the EU's willingness to play a full part, in close cooperation with the relevant partners and international organisations.

2.8 This led to a process, set out in our Report of 30 January 2008, which culminated in arrangements to underpin the implementation of the Special Envoy's proposals. Kosovo declared independence on 17 February 2008. Looking ahead to that eventuality, the then Minister at the Foreign and Commonwealth Office (Mr Jim Murphy) said that these

5 See http://consilium.europa.eu/cms3_fo/showPage.asp?id=263&lang=EN for full information on the EU Special Representatives

arrangements "provide for independence for Kosovo, supervised by the international community". They comprise:

— an International Civilian Office, responsible for ensuring settlement implementation and headed up by an International Civilian Representative, double-hatted as the EU Special Representative;

— a European Security and Defence Policy (ESDP) mission responsible for policing and rule of law;

— an OSCE mission to support Kosovo's democratic transition; and

— an international military presence provided by NATO's 16,000-strong Kosovo Force (KFOR).

2.9 On 30 January 2008, the Committee cleared two related Joint Actions. The first was to establish a ESDP rule of law mission in Kosovo. In his accompanying Explanatory Memorandum of 28 January 2008, the then Minister for Europe said that the role of this civilian mission would be "to assist the Kosovo authorities, judiciary and law enforcement agencies as they develop and strengthen a multi-ethnic rule of law sector that is free from political interference and adhering to international standards and European best practices."

2.10 The second Joint Action (which was adopted as Joint Action 2008/123/CFSP on 4 February 2008) appointed Mr Pieter Feith as the EUSR in Kosovo and set out his mandate. In a separate accompanying Explanatory Memorandum, the then Minister for Europe said that this mandate was "based on the objective of securing a stable, viable, peaceful and multi-ethnic Kosovo, which will contribute to regional stability", and that his tasks "will include being the channel for the EU's advice and support to the political process, promoting EU political coordination in Kosovo, ensuring a coherent public message, and contributing to the consolidation of human rights and fundamental freedoms in Kosovo." [6]

2.11 In her Explanatory Memorandum, the Minister explains that:

> *"The EUSR is combined with the International Civilian Representative (ICR) who is appointed by an International Steering Group (ISG, of which the UK is a member) and is the ultimate supervisory authority over the implementation of the UN Special Envoy's Comprehensive Settlement Proposal (Kosovo committed itself to that proposal as part of its declaration of independence). The ICR does not have a direct role in the administration of Kosovo, but retains strong corrective powers to ensure the successful implementation of the Settlement. The ICR's mandate will continue until the ISG determines that Kosovo has implemented the terms of the settlement."*

2.12 The Minister continues to welcome the appointment of Pieter Feith and his mandate:

> *"Pieter Feith has a long track record of crisis management in both NATO and the European Union and has been closely involved with Kosovo since he was a senior policy official in the NATO International Secretariat in the late 90s. He headed the successful EU-led Aceh Monitoring Mission in 2005 and 2006. In 2007 he was*

6 See headnote: (29379) and (27940): HC 16–x (2007–08) chapter 10 (30 January 2008).

appointed Director of the EU's Civilian Planning and Conduct Capability and is the Civilian Operation Commander for the civilian ESDP missions. He is very well placed to provide strategic policy leadership to the international community effort in Kosovo and to work closely with the NATO and EU missions there. UN Special Envoy, Ahtisaari's proposals envisage the EUSR role and that of the ICR being held by the same person, post a resolution of Kosovo's status."

Bosnia and Herzegovina

2.13 The EU first appointed a Special Representative for Bosnia and Herzegovina in 2002. Previous EUSRs have included Lord Ashdown of Norton-sub-Hamdon and Christian Schwarz-Schilling. The mandate is to assist in the creation of a stable, viable, peaceful and multi-ethnic Bosnia and Herzegovina (BiH), co-operating peacefully with its neighbours and irreversibly on track towards EU membership. To this end, the EUSR offers advice and facilitation in the local political progress, co-ordinates the activities of EU actors in Bosnia and Herzegovina and provides them and EU Heads of Mission with regular reporting on the local political situation.

2.14 The EUSR is double-hatted with the (International Community's) High Representative in Bosnia and Herzegovina. The Office of the High Representative was created in 1995 to supervise implementation of the civilian aspects of the Dayton Peace Agreement (including the holding of elections and police reform). The UN High Representative is appointed and overseen by the Peace Implementation Council (PIC). The PIC comprises some 40 nations and several international organisations including the UN, NATO, and the Organisation for Security and Co-operation in Europe (OSCE).

2.15 Closure of the Office of the High Representative was provisionally planned for June 2008. However, it was decided that this decision would be reviewed by the PIC Steering Board in February 2008, and closure would occur only when the political situation in Bosnia and Herzegovina was judged to be sufficiently stable. Following closure, the EU Special Representative would become the primary representative of the international community in Bosnia and Herzegovina.

2.16 Mr Miroslav Lajcak was appointed as EUSR in BiH on 18 June 2007 through Council Decision 2007/427/CFSP. The Minister says:

"The UK fully supports moves to maintain the Office of the EUSR. The last year has seen continued challenges in Bosnia and Herzegovina with slow reform progress, continuing ethnic nationalist rhetoric and challenges to state level competences. Against that backdrop, the EUSR has continued to play a key role in easing political tensions and encouraging Bosnia and Herzegovina's political leaders to focus on the reforms necessary for further European integration.

Due to the continuing challenges in Bosnia and Herzegovina, the Peace Implementation Council (PIC) meeting in February 2008 established that closure of the Office of the High Representative (OHR) should be based on BiH meeting 5 objectives and 2 conditions set by the PIC. The PIC will continue to review progress against those objectives and conditions at its forthcoming meetings, including its next meeting in March. It is worth noting that, as and when the PIC makes a decision on

Office of the High Representative (OHR) closure, the EU Special Representative will become the primary representative of the international community in BiH. This may necessitate a strengthening of the EUSR's mandate so that it is adequately equipped to deal with ongoing challenges in Bosnia and Herzegovina. This EUSR renewal does not prejudge a future PIC decision regarding closure of the Office of the High Representative."

Macedonia

2.17 The EUSR for Macedonia, Erwan Fouéré, was initially appointed under a Joint Action adopted on 17 October 2005. His mandate, which runs until 29 February 2009, is to contribute to the consolidation of the peaceful political process and the full implementation of the NATO-brokered 2001 Ohrid Framework Agreement, which it was hoped would facilitate further progress towards EU accession through the Stabilisation and Association Process.[7] The position is double-hatted with the post of Head of the European Commission Delegation in Skopje. This Joint Action extends the appointment Mr Fouéré for six months, under his existing mandate.

2.18 The Minister says:

"The continued presence of an EUSR provides an essential contribution to the consolidation of peace, stability and the rule of law in Macedonia. The EUSR plays a key role in ensuring that the necessary efforts and reforms take place for the full implementation of the 2001 Ohrid Framework Agreement, which ended fighting between the ethnic Albanian National Liberation Army and Macedonian security forces. These reforms are key for improving rights of ethnic Albanians through respect for minority languages, an increased role in the national parliament and an agenda for decentralization. The EUSR also offers advice and facilitates political progress, working to foster a climate of trust and dialogue conducive to implementing reforms necessary to progress towards the EU.

"These remain essential goals, in line with the latest European Commission progress assessment, which underlined in particular the need for more constructive and inclusive political dialogue focused on delivering reform progress.

"We judge that the political and security situation in Macedonia has been moving forward positively overall, but that there remain challenges particularly in the light of the recent and forthcoming elections. Parliamentary elections in 2008 were marred by violence and intimidation as well as electoral malpractice, a key problem picked out by the Commission's annual assessment of progress. There will need to be an improvement in conduct of forthcoming Presidential and local elections which will take place in March 2009. If elections are conducted well, we will review the need for a continuing EUSR presence.

"A distinct reporting chain is in place for Mr Fouéré's two roles. The EUSR acts under the authority and operational direction of the High Representative for the Common

7 The strategic framework for the EU's policy towards the Western Balkan region.

Foreign and Security Policy, Javier Solana, as far as his tasks as EUSR are concerned, and under the authority and operational direction of the European Commission as far as his tasks as Head of the Commission Delegation are concerned. This double-hatting arrangement has led to increased EU internal coherence and co-ordination in the field, thus enhancing the impact and cost-effectiveness of EU action. The Government therefore supports the retention of double-hatting in Macedonia. The mandate is being extended for a further 6 months, rather than a full year, to coincide with the period of Mr Fouérés appointment."

African Great Lakes Region

2.19 The incumbent EUSR, Roeland van de Geer, was appointed on 15 February 2007. Before his appointment, the EUSR was Aldo Ajello, who served from March 1996. He represented the EU during a time marked by major developments in the region, including the conflict in the Democratic Republic of Congo (DRC) from 1998 to 2003, the DRC's transition to democracy and the successful presidential elections in 2006 (to which the EU provided significant support) and Rwanda's recovery from genocide.

2.20 The current mandate requires the Special Representative to work towards delivering an effective EU policy in the region, contributing to stability and promoting democracy, good governance, human rights and the rule of law, specifically to:

— establish and maintain close contact with the countries of the Great Lakes Region, the United Nations, the African Union, key African countries and main partners of the DRC and the European Union, as well as regional and sub-regional African organisations, other relevant third countries and other key regional leaders;

— advise and report on the possibilities for the European Union supporting the stabilisation and consolidation process and on how best to pursue European Union initiatives;

— provide advice and assistance for security sector reform (SSR) in the DRC;

— contribute to the follow-up to the International Conference of the Great Lakes Region, in particular by supporting policies defined in the region and pursuing the objectives of non-violence and mutual defence in the resolution of conflicts as well as, regarding the regional cooperation, by promoting human rights and democratisation, good governance, combating impunity, judicial cooperation, and the fight against the illegal exploitation of natural resources;

— contribute to a better understanding of the European Union's role among opinion leaders in the region;

— contribute, where requested, to the negotiation and implementation of peace and cease-fire agreements between the parties and engage with them diplomatically in the event of non-compliance with the terms of these agreements; in the context of the ongoing LRA negotiations, in close coordination with the EUSR for Sudan; and

— contribute to the implementation of the European Union human rights policy and European Union Guidelines on human rights, in particular the European Union

Guidelines on Children and Armed Conflict, and the European Union policy regarding UN Security Council Resolution 1325 (2000) on Women, Peace and Security, including by monitoring and reporting on developments in this regard.

2.21 The Minister says:

> *"We welcome the extension of Roeland van de Geer's appointment as the EUSR for the Great Lakes. We are satisfied with the way he has implemented his mandate and the UK has been able to work well with him. He can continue to make a valuable contribution to bringing peace and stability to the region.*
>
> *"Mr van de Geer was influential in taking forward the EU's policies in the two areas of instability in the African Great Lakes region: eastern Democratic Republic of Congo and Burundi. He has been a part of the Great Lakes negotiations from the beginning of political reconciliation and is a trusted voice in the region."*

Sudan

2.22 First established in 2005, the mandate of the EUSR for Sudan (Mr Torben Brylle) is to assist the Sudanese parties, the African Union (AU) and the UN to achieve a political settlement of the conflict in Darfur, including through:

— the implementation of the Darfur Peace Agreement (DPA);

— facilitating the implementation of the Comprehensive Peace Agreement (CPA) and promoting North-South dialogue; and

— facilitating the implementation of the Eastern Sudan Peace Agreement (ESPA).

2.23 The mandate is also based on Council Joint Action 2007/677/CFSP on the EU military operation in the Republic of Chad and in the Central African Republic (EUFOR Tchad/RCA), which deployed from February 2008. It includes, without prejudice to the military chain of command, providing the EU Force Commander of Operation EUFOR Tchad/RCA with political guidance in particular on issues with a regional political dimension and consulting with the EU Force Commander on political issues with a security dimension.

2.24 With regard to human rights, including the rights of children and women, and the fight against impunity in Sudan, the EUSR is tasked to follow the situation and maintain regular contacts with the Sudanese authorities, the AU and the UN, in particular with the Office of the High Commissioner for Human Rights, the human rights observers active in the region and the Office of the Prosecutor of the International Criminal Court.

2.25 The Minister says:

> *"We welcome the extension of Torbyn Brylle's appointment as the EUSR for Sudan. The EUSR covers the whole of Sudan and has been working on and towards a number of areas: supporting and expanding the Darfur political process; implementing the Comprehensive Peace Agreement; developing a peace process for the East of Sudan.*

"The EUSR is also an important channel of contact with the African Union. His work has led to a strengthening of the EU's political role in the Darfur crisis and has helped ensure consistency between the EU's support for the crisis management operation in Darfur and its overall political relations with Sudan.

"We have a close and helpful relationship with the EUSR and are in regular contact with him and his office. His balanced approach to Sudan is closely aligned with our own policy of treating Darfur and the implementation of the Comprehensive Peace Agreement as interrelated issues. This approach will be particularly important in the coming year as national elections are due to be held."

Financial Implications

2.26 The costs of EU Special Representatives are met from the CFSP budget, to which the UK currently contributes approximately 17%. Information provided by the Minister on budget allocations for 1 March 2009 — 28 February 2010 for these five EUSRs (which is less consistent, one with the other, than we would have liked), is as follows:

EUSR	Budget Allocation	Anticipated UK Contribution (€)	Anticipated UK Contribution (£)
Kosovo	€380,000	€65,000	£48,000[8]
Bosnia and Herzegovina	£715,000	—	£89,950[9]
Former Yugoslav Republic of Macedonia	€305,000	€60,000	£45,000
African Great Lakes Region	€1,440,000	€245,000	£220,000
Sudan	€1,880,000	—	—

Timetable

2.27 The Minister expects these Council Joint Actions to be agreed at the 26–27 January 2009 General Affairs and External Relations Council.

Conclusion

2.28 **As the Minister makes clear, two of the EUSRs are involved in deep-seated crises far from Europe, while those in the Balkans are, in two instances, taking over complex and challenging responsibilities hitherto exercised by the wider international community. All in all, the EUSRs' mandates are a vivid illustration of the ways in which the breadth and depth of the EU's Common Foreign and Security Policy has developed in the decade since its inception. Conscious of the wide interest in this issue in the House, we accordingly recommend that these documents be debated in European Committee B.**

8 The Minister says that the UK also plans to contribute up to five people to the International Civilian Representative's Office. The Funding for these positions comes from the Whitehall Peacekeeping Budget, which is a call on the Treasury's central contingency reserve.

9 The Minister says that the budget allocation for the duration of the mandate is yet to be agreed, but will be in line with last years figure of £715,000 (of which the UK contributed approximately £89,950)

3 Standards for the reception of asylum seekers

(30254) 16913/08 COM(08) 815	Draft Directive laying down minimum standards for the reception of asylum seekers
+ ADD 1	Annex to the draft Directive: detailed explanation of the proposal
+ ADDs 2 and 3	Commission staff working document: impact assessment and summary of assessment

Legal base	Article 63(1)(b) EC; co-decision; QMV
Document originated	3 December 2008
Deposited in Parliament	10 December 2008
Department	Home Office
Basis of consideration	EM of 23 December 2008
Previous Committee Report	None
To be discussed in Council	No date fixed
Committee's assessment	Politically important
Committee's decision	For debate in the European Committee on the same occasion that it debates the draft Regulation on determining the Member State responsible for examining an application for international protection ((30267) 16929/08)

Background

3.1 In 1999, the European Council adopted a five-year programme of action on justice and home affairs (the Tampere Programme). It agreed to work towards establishing a Common European Asylum System, based on the full application of the Geneva Convention.[10]

3.2 The Council of Ministers subsequently adopted the following four Directives ("the first phase legislation"):

- the Procedures Directive on minimum standards for Member States' procedures for granting and withdrawing refugee status;[11]
- the Qualification Directive on common minimum standards for the qualification and status of third country nationals or stateless people as refugees or as persons otherwise in need of international protection;[12]

10 Tampere European Council, 15–16 October 1999, Presidency Conclusions, Annex A, paragraphs 14 and 15.

11 Council Directive 2005/85/EC: OJ No. L 326, 13.12.05, p.13.

12 Council Directive 2004/83/EC: OJ No. L 304, 30.9.04, p.12.

- the Reception Conditions Directive on minimum standards for the reception of asylum seekers;[13] and
- the Temporary Protection Directive on minimum standards for giving temporary protection in the event of a mass influx of displaced people and measures to promote a balance of effort between Member States in receiving such an influx.[14]

3.3 In addition, the Council adopted two Regulations to determine which State should examine an application for asylum (the Dublin Regulation);[15] and a Regulation on the creation and operation of a database of the fingerprints of asylum seekers (EURODAC).[16]

3.4 In 2004, the European Council adopted a further five-year programme of action on justice and home affairs (the Hague Programme). It says that:

> "The aims of the Common European Asylum System in its second phase will be the establishment of a common asylum procedure and a uniform status for those who are granted asylum or subsidiary protection."[17]

The Hague Programme invites the Commission, in the period up to 2010, to evaluate the first phase legislation and propose legislation to give effect to the second phase.

3.5 Recitals 7 and 8 to the Reception Conditions Directive of 2003 say that:

- minimum standards should be set for the reception of asylum seekers to ensure that they have comparable living conditions in all Member States and that the conditions are normally sufficient to ensure asylum seekers a dignified standard of living; and
- the harmonisation of the reception conditions should help to reduce the secondary movement of asylum seekers.

3.6 In 2007, the Commission published a report on the implementation of the Reception Conditions Directive.[18] It concluded that the Directive has been transposed satisfactorily in the majority of Member States. The Commission said that:

> "Contrary to what was predicted following adoption of the Directive, it appears that Member States have not lowered their previous standards of assistance to asylum seekers. However, the present report has clearly shown that the wide discretion allowed by the Directive in a number of areas, notably in regard to access to employment, health care, level and form of material reception conditions, free movement rights and needs of vulnerable persons, undermines the objective of creating a level playing field in the area of reception conditions."[19]

13 Council Directive 2003/9/EC: OJ No. L 31, 6.2.03, p.18.

14 Council Directive 2001/55/EC: OJ No. L 212, 7.8.01, p.12.

15 Council Regulations(EC) No. 1560/2003: OJ No. L 222, 5.9.03, p.3; and Council Regulation (EC) No. 343/2003: OJ No. L 50, 25.2.03, p.1.

16 Council Regulation (EC) No. 407/2002: OJ No. L 62, 5.3.02, p.1.

17 European Council 4–5 November 2004, Presidency Conclusions, Annex I, page 17, final paragraph.

18 (29216) 15802/07: see HC 16–vii (2007–08), chapter 9 (9 January 2008).

19 .Commission report, page 10, final paragraph.

3.7 In June 2008, the Commission published its Policy Plan on Asylum.[20] It set out what the Commission saw as the essential components of a Common European Asylum System and outlined the amendments to the Reception Conditions Directive, and the Asylum Procedures and the Qualification Directives which it intended to propose in order to remove what it regarded as the distortions caused by the present differences in Member States' practices.

3.8 Article 63(1)(b) of the EC Treaty requires the Council to adopt measures on minimum standards for the reception of asylum seekers.

3.9 The fourth Protocol to the EC Treaty provides that the United Kingdom is not bound by a measure adopted by the Council under Title IV of the Treaty (visas, asylum, immigration and other policies related to the free movement of persons) unless the Government opts into it. The UK Government opted into the Reception Conditions Directive 2003 and the UK is bound by it.

The document

3.10 In the light of the findings of the 2007 report on the implementation of the Directive and the Commission's subsequent consultations with Member States, MEPs, the UNHCR, academic experts and others, the Commission believes that many changes are needed to the Reception Conditions Directive 2003 (the 2003 Directive). Because there are so many, the Commission proposes this measure to repeal and replace the 2003 Directive.

3.11 The proposed new Directive would apply to applicants for "international protection" . The 2003 Directive applies only to third country nationals and stateless people who apply for "refugee status". The proposed Directive would apply not only to them but also to third country nationals and stateless people who apply for "subsidiary protection status". The Commission proposes that, for the purposes of the draft Directive, the definition of "application for international protection" should be the same as the definition in the Qualifications Directive.[21]

3.12 Article 7 of the 2003 Directive established the general principle that asylum seekers should be able to move freely within the area of the host Member State. But it authorised Member States:

- to decide on the residence of asylum seekers for reasons of public interest or public order or for the swift processing of their applications; or

20 (29766) 11022/08: HC 16– xxix (2007–08), chapter 16 (10 September 2008).

21 Council Directive 2004/83/EC: OJ No. L 304, 30.9.04, p.12.

Article 2(g) of the Qualifications Directive says that "application for international protection" means a request by a third country national or a stateless person for protection from a Member State where the person can be understood to be seeking refugee status or subsidiary protection status.

Article 2(c) defines "refugee" as a third country national who, because of a well-founded fear of being persecuted on grounds of race, religion, nationality, political opinion or membership of a particular social group, is outside the country of nationality and is unable, or owing to such fear, is unwilling to avail himself or herself of the protection of that country, or a stateless person, who, being outside the country of former habitual residence, for the same reasons, is unable or unwilling to return to it.

Article 2(e) of the Qualifications Directive defines "person eligible for subsidiary protection" as a third country national or stateless person who does not qualify as a refugee but in respect of whom substantial grounds have been shown for believing that the person, if returned to his or her country or former country, would face a real risk of suffering serious harm and is unable or unwilling to avail himself or herself of the protection of that country.

- to confine an applicant to a particular place for legal reasons or reasons of public order.

Otherwise, the 2003 Directive makes no provision on the detention of asylum seekers.

3.13 Articles 8 to 11of the draft Directive propose new provisions on detention, safeguards for detained applicants, the conditions of applicants held in detention, and the detention of vulnerable people and people with special needs. The new Articles provide, for example, that:

- Member States must not hold people in detention for the sole reason that they have applied for international protection;
- applicants may be detained only if less coercive measures would not be effective and only then in order to establish their identity or nationality; to determine elements of their applications which might otherwise be lost; decide on their right to enter the Member State; or when national security and public order require detention;
- detention must be for the shortest possible period reasonably required to process the application and obtain the information necessary for the determination of it;
- detention should normally be ordered only by judicial authorities but in urgent cases may be ordered by administrative authorities for no more that 72 hours unless confirmed by judicial authorities;
- applicants who are detained should receive free legal advice and representation if they cannot afford to pay for it themselves;
- Member States must not detain asylum seekers in prison accommodation;
- unaccompanied minors must never be detained;
- detained families must be provided with separate accommodation which provides adequate privacy; and
- people with special needs should not be detained unless a suitably qualified person certifies that their health and well-being will not deteriorate significantly as a result of detention.

3.14 Article 11 of the 2003 Directive provides that Member States should decide the length of time during which an applicant for asylum may not have access to the labour market. If the application has not been decided within a year of being made, the Member State should decide the conditions for giving the applicant access.

3.15 Article 15 of the draft Directive replaces this with a requirement on Member States to give applicants access to the labour market no later than six months after they make their applications.

3.16 Article 17(5) of the draft Directive proposes a new requirement about the "material receptions conditions" of applicants.[22] It provides that, in calculating the amount of assistance to be given to an applicant, Member States should ensure that the total value of the material reception conditions is equivalent to the amount of social assistance granted to nationals of the Member State who require assistance.

3.17 Articles 21 to 24 of the draft Directive contain provisions on the reception conditions of people with special needs, including minors, disabled people, old people, pregnant women, victims of trafficking in human beings, people with mental health problems and people who have been subjected to torture, rape and other serious forms of violence. Article 21(2) requires Member States to establish procedures for identifying any special needs as soon as an application for international protection is made and to ensure that people with special needs receive support throughout the asylum procedure. Articles 22, 23 and 24 contain requirements specific to the treatment of minors, unaccompanied minors, and victims of torture and violence.

The Government's view

3.18 In his Explanatory Memorandum of 23 December 2008, the Minister of State at the Home Office (Mr Phil Woolas) tells us that the Government is still considering whether to opt into the draft Directive. In making the decision, it will have particular regard to:

- the extent to which the provisions — and especially those on detention, employment rights and support levels — would help the Government achieve its objectives of safeguarding the UK's borders and operating an asylum system that makes fast and fair decisions, protecting people who need protection and removing those who do not; and
- the implications for the UK's broader relationships with the EU and Member States.

3.19 The Minister says that the Government welcomes the proposal that the new Directive should include applicants for subsidiary protection as well as applicants for refugee status. In the UK, applicants for subsidiary protection are already given the benefit of the provisions of the 2003 Directive.

3.20 Commenting on the proposed Articles on detention (Articles 8 to 11), the Minister says:

> "In the UK third country nationals are only detained when they meet specific detention criteria, such as for the purposes of removal or where there is a risk of absconding. Our detained fast track system was introduced to deal with asylum seekers whose claims appear straightforward and capable of being decided quickly."[23]

22 Article 2(h) of the draft Directive defines "material reception conditions" as including housing, food, clothing and a daily expenses allowance.

23 Minister's Explanatory Memorandum of 23 December 2008, paragraph 16.

Applicants may challenge the lawfulness of their detention before the courts and may also apply for bail. In the light of the safeguards which exist in the UK, the Government is not convinced that Articles 8 to 11 are necessary.

3.21 The Government is concerned that the proposal in Article 15 of the draft Directive to require Member States to give applicants access to the labour market not later than six months after they make their applications might encourage fraudulent applications by people seeking to use the asylum system as a cover for economic migration. The Government considers that the approach taken in Article 11 of the 2003 Directive is more appropriate because integration into society should be reserved for people who have a long-term future in the UK.

3.22 As to the provisions on material reception conditions (Articles 17 to 20 of the draft Directive), the Minister says that the Government considers that the support provided in the UK is already sufficient to meet the essential living needs of asylum seekers during the short time before they are either granted protection or refused it and removed. So the Government is not persuaded that the proposed changes are necessary.

3.23 Commenting on Articles 21 to 24 of the draft Directive (provisions for persons with special needs), the Minister says that the UK already has high standards:

> "All applicants are asked if they have any special needs at asylum screening units and again when completing their asylum support applications. We recognise that some asylum seekers have special needs and we ensure that these are taken into account when dealing with their claim. In addition they are informed of the numerous organisations within the UK who can also provide assistance.
>
> "Applicants' needs are assessed individually when allocating accommodation and are subject to regular review. In the UK local authorities provide accommodation and welfare support where an asylum seeker is in need of care and attention because of age, illness or disability affecting their ability to live independently. We place no restrictions on access to health care for asylum seekers generally or education of minors though some restrictions may apply to those aged 16 and over in line with national practices for school leaving age.
>
> "Provisions have been included in the UK Borders Act to establish a Code of Practice to Keep Children Safe from Harm and place our responsibilities towards children on a statutory basis.
>
> "We consider that the procedures in place in the UK more than meet our obligations and suggest that greater emphasis should be placed on sharing best practice to assist our EU partners who are struggling to meet the existing minimum standards."[24]

Conclusion

3.24 **We are grateful to the Minister for his clear and thorough exposition of the Government's view. We are particularly grateful to him for telling us the considerations**

24 Minister' Explanatory Memorandum of 23 December 2008, paragraphs 24 to 27.

to which the Government will have regard in deciding whether to opt into the draft Directive.

3.25 **Because of the importance of the arrangements for the reception of asylum seekers and so that the Government is able to take the views of the House into account in reaching its Decision over whether to opt into the measure, we recommend the draft Directive for debate in the European Committee. Because this proposal raises some issues similar to those which arise on the draft Regulation on determining the Member State responsible for examining an application for international protection,[25] we recommend that the two documents should be debated on the same occasion.**

4 EURODAC

(30256) 16934/08 COM(08) 825	Draft Regulation on the establishment of "EURODAC" for the comparison of fingerprints for the effective application of the Regulation establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection
+ ADD 1	Annex to the draft Regulation: detailed explanation of the proposal
+ ADDs 2 and 3	Commission staff working documents: impact assessment and summary of assessment

Legal base	Article 63(1)(a) EC; co-decision; QMV
Document originated	3 December 2008
Deposited in Parliament	10 December 2008
Department	Home Office
Basis of consideration	EM of 23 December 2008
Previous Committee Report	None
To be discussed in Council	No date set
Committee's assessment	Politically important
Committee's decision	For debate in the European Committee on the same occasion that it debates the draft Regulation on determining the Member State responsible for examining an application for international protection (30267) (16929/08)

25 (30267) 16929/08.

Background

4.1 People from third countries and stateless people sometimes seek asylum in more than one Member State. This can cause confusion and waste. In 1997, Member States made an intergovernmental agreement (the Dublin Convention) on the criteria and mechanisms for deciding which Member State should examine an application for asylum. In December 2000, the Council adopted a Regulation to set up EURODAC to support the operation of the Convention.[26] In 2003, the Convention was replaced by EC legislation (the Dublin Regulation).[27]

4.2 EURODAC is a computerised database of the fingerprints of applicants for asylum who are aged at least 14, third country nationals and stateless people aged at least 14 who have been apprehended in connection with an illegal crossing of a Member State's land, sea or air borders and people aged at least 14 who have been found illegally present in a Member State. The Member State collects the fingerprints and transmits them electronically to the EURODAC Central Unit with a request to be told if there is a match (a "hit") between the fingerprints and those stored in the database. If there is a hit — because, for example, the data subject had made an earlier application to another Member State — the information can be used to help establish which Member State is responsible for examining the application for asylum.

4.3 In 2007, the Commission published a report on its evaluation of the operation of the Dublin and EURODAC Regulations.[28] It said that, in general, all Member States were applying the EURODAC Regulation in a satisfactory way but that the Commission believed there was potential to improve EURODAC's efficiency and extend its scope.

4.4 Article 63(1)(a) of the EC Treaty requires the Council to adopt measures on the criteria and mechanisms for determining which Member State is responsible for considering an application for asylum made by a national of a third country in a Member State. The Article provides the legal base for the EURODAC Regulations.

4.5 The fourth Protocol to the EC Treaty provides that the United Kingdom is not bound by a measure adopted by the Council under Title IV of the Treaty (visas, asylum, immigration and other policies related to the free movement of persons) unless the Government opts into it. The UK Government opted into the EURODAC Regulations and the UK is bound by them.

The document

4.6 The Commission proposes the repeal of the EURODAC Regulation of December 2000 and the supplementary Regulation of 2002 and their replacement by this new Regulation. While the draft Regulation contains some new provisions, most of its Articles re-enact, with amendments, the substance of the current EURODAC legislation. For example, the draft Regulation:

26 Council Regulation (EC) No. 2725/2000: OJ No. L 316, 15.12.2000, p.1. Regulation (EC) No. 407/2002 (OJ No. L 62, 5.3.02) contains detailed supplementary provision on, for example, the format for the transmission of data to the Central Unit.

27 Council Regulation (EC) No. 343/2003: OJ No. L 50, 25.2.03, p.1.

28 (28695) 10517/07.

- widens the purpose of EURODAC to include the provision of assistance in determining which Member State should examine applications for subsidiary protection (at present, it is confined to assisting in the determination of responsibility for applications for refugee status);

- provides that a Management Authority, funded from the EU budget, should be responsible for the operational management of EURODAC (it would also be the Management Authority for the next generation on the Schengen Information System and the Visa Information System);

- gives Member States up to 48 hours to transmit to EURODAC the fingerprints of applicants for asylum and third country nationals and stateless people apprehended in connection with an irregular crossing of a Member State's borders (at present, no time limit is specified);

- provides that, within a year of the collection of the fingerprints of people apprehended in connection with an irregular crossing, the data must be erased from the EURODAC database (at present, it is deleted after two years);

- enables Member States to search the EURODAC data on people who have been granted international protection;

- requires a Member State to inform EURODAC if it decides for humanitarian or compassionate reasons to examine an application for international protection which has been lodged with it even if it is not responsible for doing the examination according to the criteria in the Dublin Regulation; and

- provides additional safeguards for data subjects and makes provision to reflect the responsibilities of the European Data Protection Supervisor for oversight of EURODAC.

The Government's view

4.7 In his Explanatory Memorandum of 23 December 2008, the Minister of State at the Home Office (Mr Phil Woolas) tells us that the Government welcomes some of the Commission's proposals, including those for the extension of EURODAC to people applying for subsidiary protection, the additional safeguards for data subjects, and to enable Member States to search data on people who have been granted asylum.

4.8 The Government is also content with the proposed requirement to transmit fingerprints within 48 hours but thinks that further consideration is required about how to deal with delays beyond the time-limit caused because the data subject's skin quality is too poor (for whatever reason) to provide fingerprints of acceptable quality.

4.9 The Government will ask the Commission for further information about the proposed Management Authority.

4.10 The Government would prefer to retain the present provision for EURODAC to store for two years data on people apprehended in connection with an irregular crossing of a Member State's borders and does not support, therefore, the proposal to reduce the period

of storage to one year. The Minister explains that the UK's experience of hits given in the second year is that they provide information which has been significant in addressing the credibility of claims for asylum.

4.11 The Minister also tells us that the Government has not yet decided whether to opt into the draft Directive. In making the decision, it will have particular regard to:

- whether participation in the proposed Regulation would support the achievement of the Government's objectives for asylum;
- the extent to which the draft Regulation can be improved in the negotiations on it; and
- the implications for the UK's broader relationships with the EU and Member States.

Conclusion

4.12 **There appears to be no doubt about the practical value of EURODAC and we welcome the Commission's aim of making it yet more useful and efficient. Most of the proposed changes appear to be minor and desirable but we can understand the Government's practical reservations about some of them.**

4.13 **We are grateful to the Minister for telling us the factors to which the Government will have particular regard in deciding whether to opt into the draft Directive. No doubt it will also be influenced by the decision whether to opt into the draft Regulation on the determination of the Member State responsible for examining an application from a third country national or stateless person for international protection. Because of the close link between that proposal and the draft EURODAC Regulation, we recommend that the two documents be debated by the European Committee on the same occasion.**

5 Rules to determine which Member State is responsible for examining an application for international protection

(30267) 16929/08 COM((08) 820	Draft Regulation establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one Member State by a third country national or a stateless person
+ ADD 1	Annex to the draft Regulation: detailed explanation of the proposed modifications to the current Regulation
+ ADDs 2–3	Commission staff working documents: impact assessment and summary of assessment

Legal base	Article 63(1)(a) EC; co-decision; QMV
Document originated	3 December 2008
Deposited in Parliament	15 December 2008
Department	Home Office
Basis of consideration	EM of 23 December 2008
Previous Committee Report	None
To be discussed in Council	No date fixed
Committee's assessment	Politically important
Committee's decision	For debate in European Committee on the same occasion that it debates the draft Directive on minimum standards for the reception of asylum seekers ((30254) 16913/08) and the draft Regulation on the establishment of EURODAC ((30256) 16934/08)

Background

5.1 People from third countries who seek asylum sometimes apply to several Member States.[29] So, in 1997, Member States made an inter-governmental agreement ("the Dublin Convention") on the criteria for deciding which Member State should decide an application.[30] In 2003, the Convention was replaced by EC legislation, known as the Dublin Regulation.[31]

5.2 The Council has also adopted Directives on other important aspects of asylum: the Qualifications Directive, the Asylum Procedures Directive and the Reception Conditions

29 For example, 16% of asylum applicants in 2005 made applications to more than one Member State.

30 OJ No. C 254, 19.8.97, p.1.

31 Council Regulation (EC) No. 343/2003: OJ No. L 50, 25.2.03, p.1.

Directive. These Directives together with the Dublin Regulation were conceived as constituting the first stage of a Common European Asylum System.

5.3 The Council also adopted the EURODAC Regulation.[32] EURODAC is a central database which stores asylum seekers' fingerprints and is used to help Member States apply the Dublin Regulation.

5.4 In 2007, the Commission published a report on its evaluation of the operation of the Dublin Regulation.[33] It said that, in general, the Regulation was working satisfactorily but that the Commission would be making proposals for amendments to clarify and improve it.

5.5 In October 2008, the European Council adopted the European Pact on Immigration and Asylum.[34] Among other things, the Pact invites the Commission to make proposals for the second stage of the Common European Asylum System, including the revision of the Dublin Regulation.

5.6 On 3 December 2008, the Commission proposed draft Regulations to replace the Dublin Regulation and EURODAC Regulation and a draft Directive to replace the Reception Conditions Directive.

5.7 Article 63(1)(a) of the EC Treaty requires the Council to adopt measures on the criteria and mechanisms for determining which Member State is responsible for considering an application for asylum made by a national of a third country in a Member State.

5.8 The fourth Protocol to the EC Treaty provides that the United Kingdom is not bound by a measure adopted by the Council under Title IV of the Treaty (visas, asylum, immigration and other policies related to the free movement of persons) unless the Government opts into it. The UK Government opted into the Dublin Regulation and the UK is bound by it.

The document

5.9 The Commission proposes the adoption of the draft Regulation (and the consequential repeal of the Dublin Regulation) for three main reasons:

- to improve the efficiency of the system for determining which Member State is responsible for examining an application for international protection;
- to ensure that the needs of applicants are properly taken into account; and
- to introduce arrangements for the temporary suspension of the transfer of applicants to a Member State which is faced with urgent situations that are making exceptionally heavy demands on its capacity to meet the EC's minimum standards for the reception of applicants for protection.

32 Council Regulation (EC) No. 2725/2000: OJ No. L 316, 15.12.00, p.1.

33 (28695) 10517/07.

34 European Council meeting on 15–16 October 2008, Presidency Conclusions, paragraphs 19 and 20. See also (29937)12626/08: HC 16–xxix (2007–08), chapter 17 (10 September 2008).

5.10 The proposed new Regulation would apply to applicants for "international protection" . The Dublin Regulation applies only to third country nationals who apply for refugee status. The proposed Regulation would apply not only to them but also to stateless people who apply for refugee status and to third country nationals and stateless people who apply for subsidiary protection status. The draft proposes that "application for international protection" should have the same meaning as it is given in the Qualifications Directive.[35]

5.11 The draft Regulation re-enacts, with amendments, some of the Articles of the Dublin Regulation and makes new provisions. It has nine Chapters:

- Chapter I — subject matter and definitions;
- Chapter II — general principles and safeguards;
- Chapter III — criteria for determining the Member State responsible for examining an application;
- Chapter IV — discretionary clauses;
- Chapter V — obligations of the responsible Member State;
- Chapter VI — procedures for taking charge and taking back;[36]
- Chapter VII — administrative cooperation;
- Chapter VIII — conciliation; and
- Chapter IX — transitional provisions and final provisions.

The Annex (ADD 1) provides an explanation of each of the Articles of the draft Regulation.

The Government's view

5.12 In his Explanatory Memorandum of 23 December 2008, the Minister of State at the Home Office (Mr Phil Woolas) tells us that the Government has not yet decided whether to opt into the proposed Regulation. In making the decision, it will have particular regard to:

35 Council Directive 2004/83/EC: OJ No. L 304, 30.9.04, p.12.

Article 2(g) of the Qualifications Directive says that "application for international protection" means a request by a third country national or a stateless person for protection from a Member State where the person can be understood to be seeking refugee status or subsidiary protection status.

Article 2(c) defines "refugee" as a third country national who, because of a well-founded fear of being persecuted on grounds of race, religion, nationality, political opinion or membership of a particular social group, is outside the country of nationality and is unable, or, owing to such fear, is unwilling to avail himself or herself of the protection of that country, or a stateless person, who, being outside the country of former habitual residence, for the same reasons, is unable or unwilling to return to it.

Article 2(e) of the Qualifications Directive defines "person eligible for subsidiary protection" as a third country national or stateless person who does not qualify as a refugee but in respect of whom substantial grounds have been shown for believing that the person, if returned to his or her country or former country, would face a real risk of suffering serious harm and is unable or unwilling to avail himself or herself of the protection of that country.

36 The Member State with responsibility for examining an application is required to "take charge" of an applicant who has lodged an application in a different Member State and to "take back" a third country national whose application it has rejected and who is in the territory of another Member State without permission.

- whether participation in the measure would support the achievement of the UK's national objectives for asylum and, in particular, removing or deterring "asylum shoppers";
- the extent to which the proposals can be improved in the negotiations; and
- the implications for the UK's broader relationships with the EU and Member States.

5.13 The Minister says that the Government welcomes some of the provisions of the draft Regulation but has concerns about others. For example, the Government welcomes the proposal to bring the scope of the Regulation into line with that of the Qualifications Directive so that it applies to stateless people as well as third country nationals and to applicants for subsidiary protection as well as applicants for refugee status.

5.14 Article 4 of the draft Regulation specifies the information that the Member State must give applicants for international protection and provides for the production of a leaflet which all Member States could use to provide the required information. The Government supports the proposal for a common leaflet and thinks that it would reduce the present differences in the information applicants are given.

5.15 Articles 7 to 12 of the draft Regulation set out the criteria for determining the Member State responsible for examining an application if the applicant is an unaccompanied minor; if the applicant has a family member who has been allowed to reside in a Member State as a person granted international protection; if the applicant is dependent on the assistance of a relative because of pregnancy, a new born child, serious illness, severe handicap or old age or if the relative is dependent on the applicant for one or more of those reasons; and if several members of a family make applications at the same time. The Minister tells us that the Government is concerned by the proposal to include "dependent relatives" in the criteria for deciding which Member State should decide an application. He says that:

> "We are concerned that this proposal could allow an applicant for international protection to seek to remain in the State applying Dublin on the basis of a claim that he or she has, for example, a dependent uncle or distant cousin in that state overriding other potential responsibility criteria.
>
> "In the experience of the UK Border Agency it is often very difficult to determine whether alleged family members are related as claimed, because of the absence or poor quality of documentation or a lack of consistency in verbal statements… .
>
> "Claimed distant relationships can be more difficult and time consuming to establish, particularly outside the nuclear family. There is also a risk of states unwittingly endorsing the trafficking of children or vulnerable adults to join claimed 'relatives', which raises obvious concerns about the individuals' safety.
>
> "We are therefore not convinced that the addition of the provisions as drafted will enhance the operation of the Regulation."[37]

37 Paragraphs 17 to 20 of the Minister's Explanatory Memorandum.

5.16 Commenting on Article 26 of the draft Regulation (right of appeal against or review of a transfer decision) the Minister says that the Government is concerned that the availability of additional remedies should not unduly reduce the efficiency of the proposed Regulation. The Government believes that the UK's current safeguards for applicants are sufficient.

5.17 The Dublin Regulation contains no provision on the detention of applicants. Article 27(2) of the draft Regulation introduces a new prohibition on Member States keeping a person who is the subject of a transfer decision in detention unless there is a significant risk of the applicant absconding. The proposed Article also makes provision on the duration of detention, who may order detention, the regular judicial review of continued detention, and the rights of detained people to information and legal assistance. The Minister says that the Government believes that the legal safeguards which already exist in the UK are sufficient and is not convinced, therefore, that Article 27 is necessary to provide protection.

5.18 Article 31 of the draft Regulation makes provision for the temporary suspension of the transfer of applicants to a Member State when it is faced with a particularly urgent situation which imposes an exceptionally heavy burden on its reception capacities, asylum system or infrastructure, and when the transfer of applicants could add to that burden. The Minister tells us that:

> "We are not convinced that particular pressures faced by Member States should be addressed within the Dublin System. We are concerned that such a provision could be seen to endorse, rather than tackle, asylum shopping as part of a 'numbers game' and that this approach also poses risks in terms of pull factors and adverse influences on the behaviour of traffickers and facilitators."[38]

5.19 Finally, the Minister tells us that for a variety of reasons, including the European elections in June 2009 and the subsequent appointment of a new Commission in the autumn, it is unlikely that the draft Regulation will be presented to the Council for adoption until 2010 at the earliest.

Conclusion

5.20 **The Dublin Regulation has worked well and we are sympathetic to the Commission's aim of clarifying its meaning and improving the way it works.**

5.21 **We are grateful to the Minister for his helpful Explanatory Memorandum and his explanation of the reasons why the Government has reservations about some aspects of the draft Regulation, although we do not understand the reasons for its concerns about Article 31 (temporary suspension of transfers).**

5.22 **The key question is whether the Government will opt into the proposed Regulation. We are grateful to the Minister for telling us the factors the Government will take into account in reaching its decision. We are surprised, however, that the Minister told us nothing about the likely consequences for the UK if the Government does not opt into the Regulation. We ask him to send us his assessment of the probable effects as soon as possible.**

38 Paragraph 36 of the Minister's Explanatory Memorandum.

5.23 **Because of the importance of the subject and so that the Government is able to take account of the views of the House in reaching its decision over whether to opt in to the draft Regulation, we recommend the document for debate in the European Committee. We recommend that it is debated on the same occasion that the European Committee debates the draft Directive on minimum standards for the reception of asylum seekers and the draft EURODAC Regulation.**

6 Energy performance of buildings

(30196) 15929/08 + ADDs 1–2 COM(08) 780	Draft Directive on the energy performance of buildings (recast)

Legal base	Article 175(1)EC; co-decision; QMV
Document originated	13 November 2008
Deposited in Parliament	24 November 2008
Department	Communities and Local Government
Basis of consideration	EM of 9 January 2009
Previous Committee Report	None
To be discussed in Council	No date set
Committee's assessment	Politically important
Committee's decision	Not cleared; further information requested

Background

6.1 Directive 2002/91/EC aims to promote the cost-effective improvement of the energy performance of new and existing residential and non-residential buildings, covering energy needs for space and hot water heating, cooling, ventilation and lighting. Most of its provisions apply to all buildings, but some apply only to specific building types, and the Directive combines different regulatory and information-based instruments. Thus, it requires Member States to set minimum energy performance requirements, and to ensure that these are met by new buildings, and by existing buildings with a floor area above $1000m^2$ when these undergo major renovation, and it also requires them to establish arrangements for the issue and display of energy performance certificates, and for the inspection of boilers and air conditioning systems of a specified output. It does not, however fix Community-wide standards, allowing factors such as outdoor climate and individual building traditions to be taken into account by Member States.

6.2 The Commission notes that the comprehensive climate and energy package it put forward in January 2007, including a 20–20–20 reduction in energy consumption, greenhouse gas emissions and increased share of renewables by 2020, was endorsed by the European Council in March 2007, and it points out that the buildings sector — which it

says is the largest user of energy and carbon dioxide emitter in the Community, responsible for 40% of consumption and emissions — has a significant untapped potential for cost-effective savings. It suggests that, if realised, these would result in the Community consuming 11% less final energy by 2020, leading to reduced energy bills and import dependency, and a positive impact on climate.

The current proposal

6.3 The current proposal, which has been put forward as part of the Second Strategic Energy Review,[39] is a re-cast of Directive 2002/91/EC. As such, it would retain many of the existing provisions, but it would also extend the scope of the Directive, and clarify and strengthen a number of its provisions. Thus, it would:

- extend to all new buildings, irrespective of floor area, the requirement that the feasibility of alternative systems (such as cogeneration and district heating) should be considered before construction starts;
- likewise, extend to all existing buildings, irrespective of floor area, the need to meet specified minimum energy performance requirements when they undergo a major renovation;
- introduce minimum energy performance requirements for systems, such as boilers, water heaters and air conditioning installed in buildings;
- require Member States to draw up national plans for increasing the number of new and refurbished buildings for which carbon dioxide emissions and primary energy consumption are low or equal to zero, setting targets for the minimum percentage (in terms of the number of buildings and floor area) to be achieved by 2020, with separate targets for residential, non-residential and public buildings, and intermediate targets for 2015;
- introduce more specific requirements relating to the content of energy performance certificates, coupled with new requirements governing their issue when buildings are constructed, sold or rented, and where over $250m^2$ is occupied by a public authority;
- reduce from $1000m^2$ to $250m^2$ the area above which such a certificate has to be prominently displayed if a building is occupied by a public authority, and introduce a similar requirement for any building above $250m^2$ which is frequently visited by the public;
- extend the requirement on Member States to establish regular inspections of the boiler heating systems (which currently applies to those with an output between 20kW and 100kW and fired by non-renewable liquid or solid fuel) to include all boilers with an output greater than 20kW;

39 (30198) 15944/08: see HC 19–iii (2008–09), chapter 2 (14 January 2009).

- require reports to be provided regularly to owners or tenants of buildings on inspections of boilers and air conditioning systems, and oblige Member States to ensure that these are carried out independently by accredited experts, and subject to verification;

- require Member States to establish penalties for infringements.

These changes would have to come into force by the end of 2010 for buildings occupied by public authorities, and by the end of January 2012 for all others.

6.4 The main change, however, would relate to the setting of minimum energy performance requirements by Member States. At present, these vary considerably, and the Commission says they are in many cases set at "far from cost-optimal levels",[40] resulting in a reduced opportunity for improving energy performance in an economic way. It has therefore proposed that the minimum requirements set by Member States should be gradually aligned with cost-optimal levels calculated in accordance with a methodology to be developed by the Commission by the end of 2010. This will include the variables shown in the footnote below, but Member States would be free to fix these. Initially, the aim would be to move actual requirements towards these cost-optimal levels, but Member States would be required to achieve those levels by 30 June 2017, and, as from 30 June 2014, they would no longer be able to provide incentives for the construction or renovation of buildings which did not meet them.

The Government's view

6.5 In his Explanatory Memorandum of 9 January 2009, the Parliamentary Under-Secretary of State at the Department for Communities and Local Government (Iain Wright) says that the majority of the proposals are in line with, or replicate, the measures which the UK has already adopted.[41] However, he points out that some — notably the establishment of a comparative methodology for calculating cost-optimal minimum energy performance, and the more extensive requirements for the display of energy performance certificates — would go much further, and he describes as "extremely challenging" the need for measures applying to buildings occupied by the public to be in place by the end of 2010. He also says that some of the definitions[42] in the proposal need to be clarified; that the financial implications, though not yet quantified, are likely to be significant, not least the need to provide an independent control system for energy performance certificates and inspections of heating and air conditioning systems; and that the Government will be able to produce an Impact Assessment once the proposals have been agreed.

Conclusion

6.6 **The Minister has provided a extensive description of the provisions in the proposal, as well as of the ways in which the UK has implemented Directive 2002/91/EC, and we**

40 Described as the lowest level of costs during the life-cycle of the building, taking into account investment costs, maintenance and operating costs (including energy) and disposal costs.

41 Such as the Carbon Emissions Reduction Target and the Community Energy Savings Programme, announced by the Prime Minister in September 2008 as part of the Home Energy Savings Programme.

42 Such as what constitutes "a building", "energy performance", "life cycle" and "frequently visited".

have noted that many of the additional, or amended, provisions now proposed are in line with what is already in place. Having said that, we also note that there are a number of uncertainties, partly in terms of specific definitions, but more particularly as regards the introduction of cost-optimal energy performance levels, and the provision of control systems for energy performance certificates and inspections of heating and air conditioning systems. We recognise that these uncertainties make it difficult at present to quantify the financial implications or to produce an Impact Assessment, but we are nevertheless concerned at the suggestion that such an Assessment should only be provided *after* the measure is adopted. In our view, a proper assessment is required *before* any such agreement is reached, and it is certainly something we should wish to see before we can consider clearing the proposal. In addition, we think it sensible to defer any such consideration until we have received more information on the progress of negotiations in Brussels.

6.7 **Consequently, whilst we are drawing the proposal to the attention of the House, we intend to hold it under scrutiny, pending receipt of this further information.**

7 Minimum stocks of crude oil and/or petroleum products

(30192) 15910/08 + ADDs 1–2 COM(08) 775	Draft Council Directive imposing an obligation on Member States to maintain minimum stocks of crude oil and/or petroleum products

Legal base	Article 100EC; QMV
Document originated	13 November 2008
Deposited in Parliament	24 November 2008
Department	Energy and Climate Change
Basis of consideration	EM of 9 December 2008
Previous Committee Report	None, but see footnotes 43 and 44
To be discussed in Council	No date set
Committee's assessment	Politically important
Committee's decision	Not cleared; further information awaited

Background

7.1 In 2002, a Commission Communication[43] noted that the Community's undue reliance on imports made it vulnerable to external factors. It also pointed out that, although rules for the maintenance of stocks of crude oil and petroleum products were laid down by both

43 (23825) 12228/02: see in particular HC 63–i (2002–03), chapter 1 (20 November 2002).

the International Energy Agency (IEA) and the Community itself, these were no longer suited to present circumstances, and it highlighted the lack of any Community decision-making power to dispose of oil stocks on the market. It therefore suggested that a more coordinated approach was required, based upon predefined mechanisms.

7.2 The Communication was accompanied by two specific legislative proposals, one of which addressed the organisation and coordinated use of oil stocks. It proposed that all Member States should set up a public body to hold such stocks; that the Commission itself, assisted by a committee made up of Member States' representatives, should adopt the measures needed to respond to any actual or expected disruption of supplies; and that the minimum volume of stocks to be held by Member States should be increased from 90 to 120 days consumption.

7.3 As our predecessors noted, most notably in their Report of 20 November 2002, the UK opposed the proposal, on the grounds that existing IEA and Community arrangements for holding stocks already provided sufficient cover for supply disruptions; that emergency plans were needed to cover key world players, which only the IEA was in a position to do; and that individual countries, acting as members of the IEA, were best placed to respond to an international oil emergency. They therefore concluded that these were potentially highly significant proposals, not least in terms of the fundamental difference between the UK and the Commission over the extent to which action of this kind should be taken by the Community as opposed to individual Member States. In view of this, and the Government's reservations over the legal base proposed, they recommended the document for debate in European Standing Committee C. That debate took place on 8 April 2003.

The current document

7.4 The Commission has now put forward this new proposal as part of the Second Strategic Energy Review.[44] In doing so, it points out that the European Council in March 2007 underlined the need to enhance the security of supply for the Community as a whole (and for each Member State) by developing more effective crisis response mechanisms, and that it had also highlighted the need to review Community oil stocks mechanisms, particularly in the event of a crisis. The Commission says that this confirms its own view that the weaknesses of the present system need to be addressed, adding that oil is the most important energy source within the Community, and that its economy is crucially dependent on a continuous, reliable and affordable supply at a time when the risk of disruption has grown for a number of reasons. It adds that experience has shown that the release of emergency stocks is the easiest and fastest way of making large volumes of additional supplies available, and that the overall aim of this proposal is to strengthen the present system in relation both to the arrangements within the Community and to those applying internationally through the IEA.

7.5 Having considered various options, the Commission says that its preferred approach would be to create dedicated Community emergency stocks, but that, since it recognises this would not be acceptable at present, it is instead proposing the establishment of a

44 (30198) 15944/08: see HC 19–iii (2008–09), chapter 2 (14 January 2009).

centralised Community system with mandatory state/public ownership of emergency stocks. More specifically, this would:

- require Member States to establish emergency stocks equivalent at all times to at least 90 days of net imports or 70 days of consumption,[45] whichever is the greater;
- enable them to undertake to maintain a minimum level of "dedicated" stocks in terms of days' consumption, though it would be for any Member State choosing to do so to specify what that level would be; and
- enable them to set up a non-profit making central stockholding entity (which would become an obligation if they place stockholding obligations on economic operators), with the task of acquiring, maintaining and selling oil stocks within the Member State in question, it being the only body able to operate in this way so far as dedicated stocks are concerned.

Member States would have take any measures necessary to enable their competent authorities to release some or all of their emergency stocks and dedicated stocks in the event of a major supply disruption. They would also have to impose restrictions on consumption in line with the estimated shortages (including the allocation of petroleum products to priority users), and they would need to have in place contingency plans. In the event of an effective international decision to release stocks, Member States may use their emergency or dedicated stocks to fulfil their obligations, and the Commission may, after due consultation, require Member States to release some or all of these stocks

7.6 In addition, Member States would have to ensure that the emergency and dedicated stocks held within their own national territory are accessible, and can be verified, at any time; and, insofar as these form part of stocks held by economic operators, they would have to be accounted for separately and not encumbered by any financial or legal charges. Member States would also have to keep (and send to the Commission) registers of all emergency and dedicated stocks, containing the information needed to establish their location, the quantities involved, their ownership and exact nature: the Directive would also set out a number of provisions governing the terms on which the tasks in question may be delegated by a central stockholding entity to commercial operators, and on which they may in turn delegate these obligations to others.

7.7 Other provisions include an obligation on Member States to provide information to the Commission each month on the levels of emergency and dedicated stocks, and each week on the levels of commercial stocks held on their territory; the establishment of a Coordination Group for oil and petroleum products, made up of Member States' representatives, and tasked with analysing the security of supply situation within the Community and coordinating and implementing the necessary measures; and a power for the Commission to carry out checks on the levels of emergency and dedicated stocks in the Member States.

7.8 The proposal also provides for the Commission to review the implementation of the Directive within three years of it coming into force, looking in particular at whether

45 These would be calculated in accordance with the methodologies set out in Annexes to the draft Directive.

Member States should be required to hold a compulsory minimum level of dedicated stocks.

The Government's view

7.9 In his Explanatory Memorandum of 9 December 2008, the Minister of State at the Department of Energy and Climate Change (Mr Mike O'Brien) accepts the Commission's view that Community level coordination is necessary to maintain a high level of security of oil supply through reliable and transparent mechanisms based upon solidarity between Member States, but adds that the subsidiarity principle should apply in relation to how they choose to fulfil their oil stocking obligations. He also points out that the UK has consistently complied with its existing Community obligation, and that, by imposing obligations on economic operators, ensures turnover of product and closeness to consumers.

7.10 He notes that this proposal would harmonise standards, increase transparency, clarify and simplify measures and procedures, and increase coherence with the arrangements operated by the IEA, but says that the UK would be concerned at the potential impact of any compulsion for a central stockholding entity, adding that further work is needed on this, and on delegation for economic operators. Other potentially significant issues would be the review clause with its emphasis on minimum dedicated stocks, and the proposal that the Community should publish weekly the aggregated level of emergency and commercial stocks held by oil companies, which the Government would wish to see subjected to a thorough impact assessment before any such decision were taken. It has not, however, produced an Impact Assessment itself, and simply says that "if legislation is adopted which prescribes a compulsorily owned system of Government-owned oil stocks, there would be significant implications for the public purse".

Conclusion

7.11 **This is clearly a proposal of some potential importance, which we are drawing to the attention of the House. Whilst we have noted the Minister's comments on it, there are a number of aspects on which we would welcome further information.**

7.12 **It is not clear to us the distinction to be drawn between emergency and dedicated stocks; it would be helpful to have an indication of the synergies between what is proposed and the arrangements operated under the International Energy Agency; and, to the extent that this proposal is more acceptable to the UK than the one put forward in 2002, we would be interested to know which changes make this so, particularly in relation to subsidiarity. In addition, we note that there could well be significant implications for the public purse, and, before considering the document further, we would like to have both a clearer indication of what these might be, and an Impact Assessment.**

7.13 **In the meantime, we are holding the document under scrutiny.**

8 Vehicle type approval

(29713) 10099/08 + ADDs 1–2 COM(08) 316	Draft Regulation concerning type-approval requirements for the general safety of motor vehicles

Legal base	Article 95 EC; co-decision; QMV
Department	Transport
Basis of consideration	SEM of 6 January 2009
Previous Committee Report	HC 16–xxv (2007–08), chapter 4 (25 June 2008)
To be discussed in Council	Not known
Committee's assessment	Politically important
Committee's decision	Not cleared; further information awaited

Background

8.1 Design and construction standards for motor vehicles in the Community are governed by a framework Directive, at present 70/156/EEC and from 29 April 2009, 2007/46/EC, which updates and repeals the 1970 Directive. The objective is to achieve a single market through harmonised safety and environmental standards, using the concept of type approval. Type approval involves testing prototypes and it ensures that manufacturers are able to produce products in conformity with the type approval. Various aspects of type approval are implemented in Regulations made under the framework Directive.

8.2 A Commission initiative, CARS 21 (Competitive Automotive Regulatory System for the 21st Century), focused on simplification and eliminating unnecessary burdens on industry and recommended in 2006, in its final report,[46] that to simplify the regulatory system 38 Directives should be replaced by equivalent UN-ECE (United Nations Economic Commission for Europe) Regulations.[47]

8.3 This draft Regulation addresses some of the CARS 21 issues through the repeal and consolidation of approximately 50 Directives. It concerns type approval requirements for the general safety of motor vehicles and environmental impacts of tyres, seeking to simplify the existing Community regulatory structure and introduce certain advanced vehicle safety features and new measures for tyres. And it sets timetables for implementation of the various requirements.

8.4 When we considered this proposal, in June 2008, we said that any simplification of the vehicle type approval process would be useful and to that extent the draft Regulation was welcome. But we noted both various preliminary reservations the Government had outlined to us and the Government's intentions as to further consideration of the policy implications, a public consultation and an impact assessment. So we asked, before

46 See http://ec.europa.eu/enterprise/automotive/pagesbackground/competitiveness/cars21finalreport.pdf.

47 (28368) 5746/07 + ADDs 1–2: see HC 41–xviii (2006–07), chapter 13 (25 April 2007).

considering the proposal further, to hear, separately if more convenient, the outcome of the further consideration, the consultation and the assessment. Meanwhile the document remained under scrutiny.[48]

The Government's further view

8.5 In his Supplementary Explanatory Memorandum of 6 January 2009, the Minister of State, Department for Transport (Lord Adonis), in introducing the Government's present view of the draft Regulation, says, in relation to regulatory simplification, that "the Government supports this proposal, and will continue to work with the Commission and industry to ensure that the Regulation does provide the expected simplification". However, we recall that when we first considered the document we were told that the Government welcomed the principle of simplification, but:

- making a precise assessment of the impact of the proposal was difficult without some further details of the technical standards and the proposed simplification process, so the Government would be seeking clarification from the Commission in these areas;
- the Government was not convinced that the proposal would achieve the simplification it set out to deliver; and
- it had particular concerns regarding the scope and application of the implementing measures and the underlying process for updating type approvals once the repealed Directives were replaced by UN-ECE Regulations.

8.6 The Minister then continues, in relation to tyre noise, that the Government supports the proposed noise limits and implementation dates and that:

- in view of the overall cost-benefit, it could even consider accepting slightly more stringent limits;
- there has been much support from Member States for amending implementation requirements so that the standards apply only to tyres manufactured from the specified dates;
- this is intended to reduce difficulties with running down stocks of existing tyres prior to the proposed implementation dates;
- the Government can accept this proposal provided that it is qualified by a time limit, possibly 12 months — after which non-compliant tyres may no longer be sold; and
- it believes that it would be appropriate to limit such a concession to tyre stocks already in the European Economic Area.

8.7 On wet grip limits for tyres the Minister tells us that the Government supports the proposed values, with the same flexibility over implementation dates as for tyre noise.

48 See headnote.

However, we recall that previously the Government commented that the benchmark for wet grip tyre performance is the existing UN-ECE Regulation 117 and therefore there would be no increased safety benefit from the introduction of the requirement in the draft Regulation.

8.8 Turning to rolling resistance of tyres the Minister says that the Government supports the proposed limit values, with the same flexibility over implementation dates as for tyre noise. He continues that:

- some Member States wish to accept only the first stage of rolling resistance limits for heavy commercial vehicle tyres in Class C3 (tyres for vehicles over 3.5 tonnes gross weight); and
- given the high proportion of C3 tyres which already meet these limits and the importance of reducing fuel consumption in the heavy commercial vehicle sector, the Government is opposed to any such relaxation.

8.9 Next the Minister comments briefly on tyre pressure monitoring, saying that the Government supports the proposal on such monitoring and will work through the UN-ECE to seek higher accuracy systems which will deliver greater carbon dioxide reductions.

8.10 The Minister then tells us of an addition to the draft Regulation, suggested by the French Presidency, which would require the fitting of gear shift indicators on cars from the same dates as for tyre pressure monitoring systems. He comments that:

- gear shift indicators have the potential to deliver carbon dioxide savings by improving driving style at minimal cost;
- the Government supports the proposal to require their fitment on all new cars; and
- it will press the Commission to publish a technical standard as soon as possible.

8.11 In relation to electronic stability control the Minister says the Government supports the proposal for working to an implementation timetable as defined in the UN-ECE Regulations.

8.12 As for advanced emergency braking systems the Minister says, whilst noting that the Government supports in principle the proposal requiring these — subject to appropriate technical and performance standards being agreed through UN-ECE, that:

- such a system may not be suitable for all types of heavy commercial vehicles, for example, those engaged in slow moving stop-start operations such as dust carts and inner-city buses; and
- the Government believes, therefore, that the Commission should be given powers to adopt by comitology[49] derogations for specific vehicle applications where a cost-benefit analysis does not support mandatory fitment.

49 Comitology is the system of committees which oversees the exercise by the Commission of powers delegated to it by the Council and the European Parliament. Comitology committees are made up of representatives of the Member States and chaired by the Commission. There are three types of procedure (advisory, management and regulatory),

8.13 Similarly, on lane departure warning systems the Minister says the Government supports the proposal requiring these, subject to a robust cost-benefit analysis and appropriate technical and performance standards being agreed, together with comitology derogations for specific vehicle applications where a cost-benefit analysis does not support mandatory fitment.

8.14 However, we recall that previously we heard that:

- there were concerns about the Commissions cost-benefit case for requiring lane departure warning systems and advanced emergency braking systems;
- whilst the Government recognised the benefits of developing a framework to introduce vehicle safety features, it believed that the Commission had more work to do to specify the assessment criteria and performance standards;
- it wished to see clearer evidence that systems designed for heavy vehicle applications could be transferred to light duty vehicles in the way proposed by the Commission; and
- normally the Government would expect systems to evolve from one category to the next according to technological development and it recognises the potential delay in the wider application of these technologies by establishing mandatory requirements too soon.

8.15 The Minister attaches to his Supplementary Explanatory Memorandum his department's initial impact assessment, which will be amended as necessary as a result of the public consultation on the draft Regulation which he tells us is beginning this month. The initial impact assessment shows a projected average annual benefit from the draft Regulation in a range from £316 million to £1,230 million, as against an annual average cost in a range from £267 million to £641 million.

Conclusion

8.16 **We are grateful to the Minister for his account of where matters stand on this proposal. However, before considering the document further we should like to hear the outcome of the public consultation and to see any resultant revised impact assessment.**

8.17 **We should also like a clarification of the apparent discrepancies between:**

- **the Government's present general support for the draft Regulation and its earlier wish for details on technical standards and the process of simplification and its doubt that the proposal would achieve the simplification it is intended to deliver;**
- **the present comment on wet grip limits and its previous observation that there would be no increased safety benefit from the introduction in the draft Regulation of the proposed requirement about these limits; and**

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an important difference between which is the degree of involvement and power of Member States' representatives. So-called "regulatory procedure with scrutiny", introduced in July 2006, gives a scrutiny role to the European Parliament in most applications of comitology.

- **its present views on lane departure warning systems and advanced emergency braking systems and the different reservations the Government expressed previously.**

8.18 **We recall two further points that were drawn to our attention when we first considered this proposal:**

- **given that the definition of categories of tyres had omitted a category of vehicle, N1 — goods vehicles of less than 3.5 tonnes gross mass, covered by the existing legislation, the Government would be seeking to have this omission addressed; and**

- **as reference in the draft Regulation to the design of vehicles intended for the carriage of dangerous goods might not be appropriate because comparable measures for these vehicles already existed in other Community law, the Government would be seeking clarification from the Commission regarding this issue.**

We should like to hear also how matters stand on these two points.

8.19 **Meanwhile the document remains under scrutiny.**

9 Enlargement Strategy and Main Challenges 2008–09

(30149) 15455/08 COM(08) 674	Commission Communication: *Enlargement Strategy and Main Challenges 2008–2009*

Legal base	—
Document originated	5 November 2008
Deposited in Parliament	14 November 2008
Department	Foreign and Commonwealth Office
Basis of consideration	Minister's letters of 14 January 2009
Previous Committee Report	HC 19–i (2008–09), chapter 3 (10 December 2008)
To be discussed in Council	8 December 2008 General Affairs and External Relations Council
Committee's assessment	Politically important
Committee's decision	Not cleared. Recommended for debate in European Committee B on 10 December 2008. Further information now provided.

Background

9.1 The Commission Communication: "Enlargement Strategy and Main Challenges 2008–2009" includes an Annex 1, which consists of "A road map for reaching the final stage of accession negotiations with Croatia", whilst Annex 2 consists of the key points (styled "Conclusions") in the latest Progress Reports on Albania, Bosnia and Herzegovina, Croatia, Macedonia, Montenegro, Serbia, Kosovo and Turkey.

9.2 *Croatia* is the only Western Balkan country to have been given a tentative date for the conclusion of its accession negotiations: the end of 2009. But the Commission notes problems with Slovenia, which is blocking the opening of four chapters over a border delimitation dispute. The "road map" laid down by the Commission is also very challenging; as Enlargement Commissioner Rehn put it, the ball is now in Croatia's court.

9.3 The *rest of the Western Balkans* is judged to have moved closer to the EU over the past year, but progress has been uneven. On the positive side, the region is said to have remained "generally calm" following the unilateral declaration of independence by Kosovo, while the regionally-owned successor to the Stability Pact for South Eastern Europe, the Regional Cooperation Council, has become operational, with its headquarters in Sarajevo. On the negative side, reform and reconciliation are "yet to become entrenched" and in many of the countries, state-building and better governance continue to falter. Compromise is still insufficient on inter-ethnic issues. Corruption and organised crime remain major concerns. Candidate country *Macedonia* appears to have made a step backwards, since violence over the early elections held last June prompted the Commission to press the country to comply with the Copenhagen political criteria for EU accession. *Bosnia and Herzegovina* also appears to have regressed, mainly due to increasingly heated nationalist rhetoric from former, pre-Dayton peace agreements, enemies and wide disagreement on the scope of the future constitutional reform. *Serbia*'s progress, the Commission said, is conditional on its "full cooperation" with the ICTY; the country is also encouraged to take a constructive approach towards Kosovo's participation in regional cooperation and the EU-led mission EULEX. *Albania* is requested to ensure that its 2009 parliamentary elections are properly prepared and conducted. *Montenegro* is asked to intensify its judicial reform.

9.4 The documents are fully summarised in our previous Report, on the basis of an excellent Explanatory Memorandum from the Minister for Europe at the Foreign and Commonwealth Office (Caroline Flint), who described the Communication as "a fair and balanced assessment of progress and the main challenges" and "a credible and useful strategy for enlargement policy over the coming year." Annex 1 of our previous Report contains the Conclusions and Recommendations of the Commission.

9.5 On 16 December 2008, the latest Commission Reports on the most recent new Member States — on the management of EU funds in Bulgaria and the Commission Reports on progress in Bulgaria and Romania under the Cooperation and Verification Mechanism — were to debated in European Committee B, on the basis of the report of our meeting of 10 September 2008.[50] As we noted there, in the introduction to both the latter reports, the

50 See HC 16–xxix (2007–08), chapters 1 and 2 (10 September 2008)

Commission referred to "principles which are at the heart of the EU — respect for the rule of law, mutual recognition and cooperating on the basis of a fundamental bargain of trust", which, it said, could only be put into practice if the problems identified were tackled at source. The view that the Committee expressed there was that those problems were fully known before Romanian or Bulgarian accession; that the lack of progress since then — which it examined in earlier Reports and which was debated in the Spring of 2008 with regard to Balkan aspiring Member States[51] — demonstrated that the best way of ensuring the integrity of EU enlargement policy was to ensure that candidate countries were fully able to take on the responsibilities of EU membership, and fulfil the values that underpin the EU, before accession took place; and that this lesson should be learned with regard to planned future accessions.

9.6 The Committee concluded that, though appropriate to clear the individual country progress reports, the prospect of applications for membership from Albania — where the problems that continue to bedevil Bulgaria and Romania are clearly identified — and for candidate status for Serbia, and of pressure for the conclusion of negotiations on Croatia's membership application by the end of 2009 — even though the Commission judges that the country still needs to pursue reform efforts in particular in the areas of the judiciary and public administration, the fight against corruption and organised crime, the promotion of minority rights, including refugee return, the pursuit of war crime trials, and access for ICTY[52] to documents — made it again timely that the overarching Commission Communication be debated, which it recommended should take place along with the reports on Bulgaria and Romania already scheduled for debate.[53]

The Minister's letter of 11 December 2008

9.7 In her letter of 11 December 2008 the Minister for Europe explained that her preference was to debate the Commission Communication on Enlargement Strategy at a later stage. She said that she regarded the areas it covered as distinct from those covered by the other documents scheduled for debate: it was "a substantial policy document in its own right, setting out policy directions and challenges on Enlargement which will be of considerable interest to Members", which was "a subject that I take very seriously". She wished therefore to lead the debate. But, as the Minister explained, she would be travelling on the day in question, when her Foreign and Commonwealth Office colleague (Mr Bill Rammell) would be leading the debate. Moreover, she said, a separate debate on the enlargement strategy document in the New Year would "link in well with the Czech Presidency's proposed summit on enlargement, and would give Parliament the best opportunity to debate and scrutinise this important area of policy."

9.8 In its response of 17 December 2008, the Committee acknowledged the Minister's preference. But pointed out that the Minister appeared to have overlooked the reason why the Committee recommended an all-in-one debate — its long-expressed and burgeoning concern over the integrity of the Conditionality component of the enlargement strategy,

51 See http://www.publications.parliament.uk/pa/cm200708/cmgeneral/euro/080429/80429s01.htm for the Official Record of this debate.

52 International Criminal Tribunal for the former Yugoslavia.

53 See headnote: HC 19–i (2008–09), chapter 3 (10 December 2008)

which had been brought into question by the handling of the first Balkan accessions. The Committee again noted that the Commission's remarks, and the Committee's stated view on the lesson to be learned with regard to planned future accessions (paragraph 9.6 above). Referring also to what the Commission Communication revealed concerning the major reform efforts that continue to be needed in the all-too-familiar areas of the judiciary and public administration, the fight against corruption and organised crime, notwithstanding which Croatia has been given a tentative date for the conclusion of its accession negotiations of the end of 2009, the Committee said that the question in its mind, which links all four documents, was — will that lesson be learned, or will political considerations again override the avowed commitment to Conditionality? As the Committee had noted in its Reports thereon, the experience thus far with both Serbia and Bosnia and Herzegovina, and the Conditionality attaching to signature and implementation of their pre-accession Stabilisation and Association Agreements, was not reassuring. Now that there were to be two European Committee debates, the Committee hoped that discussion in the debate on 16 December 2008 of the implications for "Conditionality" identified in the Commission Reports would inform the further debate on the future accession process.

The Minister's letter of 14 January 2009

9.9 The Minister for Europe expresses her gratitude to the Committee for "agreeing to debate these important documents separately." She continues as follows:

> "As you rightly point out they cover the very important question of enlargement conditionality and how this has evolved since the accession of Bulgaria and Romania. I share the Committee's concerns in this area, and look forward to the opportunity to discuss these issues in detail with the Committee.
>
> "Lessons have been learned since the accession of Bulgaria and Romania. The criteria for membership remain the same but we have strengthened the negotiation process and our support for reform. The accession negotiations now include a new chapter covering judicial reform, fundamental rights and anti-corruption. We focus on these and other JHA issues like tackling organised crime early and vigorously in the process. The Commission has increased the targeting of financial support for these reforms. We now set rigorous but fair benchmarks for opening and closing of chapters. These clarify the reforms the candidates need to introduce. In key areas we insist on seeing a track record of implementation of reforms, rather than ticking boxes when the necessary laws are passed. Perhaps most importantly we will no longer set target dates for entry. Candidates are only able to join when they have demonstrably met EU criteria.
>
> "I am conscious that the countries that aspire to EU membership face many and varied challenges as they deepen their engagement in the reforms that are necessary for membership of the EU. We believe that it is important for them to build strong democracies that ensure respect for European values and human rights and provide a strong foundation for economic growth and social justice. As part of this it will be important for them to build strong and effective judicial systems and public administrations. We can encourage and support these reforms but there is little EU

> law in these areas and each European country has to build a system that works, taking into account its own history and culture."

Conclusion

9.10 **The Minister reiterates some of the key points made by her FCO colleague during the earlier debate, particularly regarding the substitution of target dates for entry by a conditions-based approach. As her colleague said when asked about the Committee's view that the best way of ensuring the integrity of EU enlargement policy was to ensure that candidate countries are fully able to take on the responsibilities of EU membership, and fulfil the values that underpin the EU, before accession takes place:**

> **"If one looks at the historical development of the accession process within the European Union, one sees that we used to work collectively on the basis of target dates for countries to come into membership, whereas the approach is now very much conditions-based; there is a will in this regard. Although there is cross-party consensus on the merit of further enlargement of the EU, we are now rightly saying that the conditions for entry must be met before countries can come into membership, however strong the relevant principles."**[54]

9.11 **We also note that the Minister says that "in key areas we insist on seeing a track record of implementation of reforms, rather than ticking boxes when the necessary laws are passed". The debate will provide her with the opportunity of clarifying whether the "key areas" are those that concern us most, particularly an effective and independent judiciary and public administration that has demonstrated that it can and will tackle corruption and organised crime before accession takes place, not at some point thereafter, depending on "its own history and culture."**

9.12 **That debate is now to take place on 2 February 2009: hence this further Report to the House.**

54 The full record of that debate can be found at http://www.publications.parliament.uk/pa/cm200809/cmgeneral/euro/081216/81216s01.htm

10 Value added taxation

(a) (30239) 16774/08 COM(08) 805	Draft Directive amending Directive 2006/112/EC on the common system of value added tax as regards tax evasion linked to import and other cross-border transactions
(b) (30240) 16776/08 COM(08) 807	Commission Communication on a coordinated strategy to improve the fight against VAT fraud in the European Union

Legal base	(a) Article 93 EC; consultation; unanimity (b) —
Documents originated	1 December 2008
Deposited in Parliament	8 December 2008
Department	HM Treasury
Basis of consideration	EM of 16 December 2008
Previous Committee Report	None
To be discussed in Council	Not known
Committee's assessment	Politically important
Committee's decision	(a) — not cleared; further information awaited (b) — cleared

Background

10.1 In May 2006 the Commission adopted a Communication concerning the need to develop a coordinated strategy to improve the fight against fiscal fraud.[55] In November 2007 this was followed by a further Communication, which built on a Commission staff working document of May 2007 reporting progress on the preparation of an anti-fraud strategy and which discussed some key elements contributing to establishing the VAT anti-fraud strategy within the Community.[56] In December 2007, the ECOFIN Council took note of the concerns raised in the second Communication, provided a series of guidelines for further anti-fraud work and called on the Commission to present its findings on measures to strengthen the existing VAT system against fraud in the first half of 2008.[57] The Commission reported orally to the Council in May 2008 to discharge this obligation.[58]

The documents

10.2 In the Communication, document (b), the Commission sets out its short-term action plan for the fight against VAT fraud. It consists of a number of measures for most of the

55 (27562) 10054/06: see HC 34–xxxiii (2005–06), chapter 20 (28 June 2006).

56 (29200) 15672/07 + ADD1 (29249) 10052/07: see HC 16–viii (2007–08), chapter 24 (16 January 2008).

57 See http://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressData/en/ecofin/97420.pdf.

58 See http://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressData/en/ecofin/100339.pdf.

legislative proposals which will be forthcoming. The measures are based on those suggested in the Commission's May 2008 oral report and are designed to contribute to achieving one of three objectives — prevention of VAT fraud, detection of VAT fraud or enhancing the capacity to collect or recover taxes. The legislative proposals are to cover nine issues (together with one already issued)[59] as summarised in the annex to the Communication.

10.3 The Commission also outlines its willingness to explore, as part of a much longer-term strategy to be taken forward through working groups involving tax administrations and business representatives, how developments in technology could shape the future of VAT compliance.

10.4 The draft Directive, document (a), is the first of the proposals foreshadowed in the Communication. It is to amend the VAT Directive, Directive 2006/112/EC, in order to implement two separate changes. The first change concerns the exemption from VAT at importation for goods from third countries, whose final destination in the Community is not the Member State of importation, using a procedure known in the UK as Onward Supply Relief. Relief is available at initial importation on condition that the VAT is declared, and paid, in the Member State of destination.

10.5 The Commission proposes the change because fraudsters have abused the relief. They import goods without paying the VAT and disappear with them before the two tax administrations involved realise that the VAT has not been declared at the final destination. This presents a serious revenue risk to both the Member State of importation and the rest of the Community as the goods could be moved to any Member State for consumption VAT-free or for use in other fraud. The proposed change would clarify that exemption on importation is only available if the importer:

- supplies the Member State of importation with the VAT numbers of those involved (which in the UK is already required); and
- submits proof that the goods will be transported to another Member State (at present claimants in the UK only have to certify that they will produce commercial evidence that the goods have been transported to another Member State, if requested).

10.6 The second change proposed concerns joint and several liability and would modify the provision in the VAT Directive, which is the basis for holding a person other than the supplier jointly and severally liable for the payment of VAT due. This provision is the basis for the UK's more limited domestic joint and several liability provisions, enacted in 2003 as Section 77A of the VAT Act 1994, to help tackle "missing trader intra-Community" fraud. The Commission proposes the change to ensure that businesses making intra-Community supplies of goods comply with their obligation to report the supplies in a recapitulative statement (which is known in the UK as an EC Sales List and which is one of the matters covered in the previously tabled proposal mentioned in the annex to the Communication, document(b)).[60] The recapitulative statement alerts the tax authorities in the Member State

59 (29570) 7688/08: see HC 16–xx (2007–08), chapter 5 (30 April 2008), HC 16–xxviii (2007–08), chapter 5 (22 July 2008) and HC 16–xxxi (2007–08), chapter 11 (15 October 2008).

60 Ibid.

of destination (acquisition) that goods have been supplied to a taxable person in that Member State and that tax should be accounted for by the recipient. Under the new provision:

- if a business makes a zero-rated intra-Community supply of goods and fails to submit a recapitulative statement which accurately details the supply, it could be held liable for the tax its customer should have accounted for (the acquisition tax) if the customer does not declare the acquisition correctly on its VAT return; and

- the supplier would avoid being held jointly and severally liable for the acquisition tax if it could justify its shortcomings to the satisfaction of the competent authorities in the Member State of acquisition.

The Government's view

10.7 In his Explanatory Memorandum of 16 December 2008, the Financial Secretary to the Treasury (Mr Stephen Timms) says that the Government strongly supports, in principle, the Commission's commitment to combating VAT fraud, as demonstrated by the extent of the short-term legislative plan outlined in the Communication, document (b). He comments further that:

- the Government will evaluate each of the Commission's proposals according to the principles applied to previous anti-fraud proposals — that any acceptable measure must be effective at tackling fraud, without creating a new risk of fraud, that the tax must continue to accrue to the Member State of consumption and that it must not place any unreasonable additional burdens on business;

- the Government agrees with the Commission and the majority of other Member States that the focus should be on conventional measures to tackle fraud rather than fundamental substantive changes to the system;

- conventional measures offer the prospect of quicker agreement and have the capacity to bring significant anti-fraud benefits and there is currently little appetite within the Council or the Commission for any fundamental changes;

- in the Communication the Commission notes that efficient anti-fraud action may require a common approach to both legislation and to operational management, the latter of which has traditionally been the concern of the Member States. Thus a balance would need to be achieved; and

- similarly, in the Communication the Commission points out that the longer-term suggestion of exploring how developments in technology could shape the future of VAT compliance could have an impact on operational management of the VAT system.

10.8 On the draft Directive, document (a), the Minister first comments in relation to exemption from VAT at importation, saying that the Government agrees with the Commission's recognition that the existing rules are inadequate and also agrees that Community action is necessary to tackle abuse of this business facilitation mechanism. However, he adds that the Government's view at this stage is that the proposed change may

be helpful but of limited impact, whilst imposing some additional burden on business, in the form of having to submit proof that the goods will be transported to another Member State.

10.9 Turning to joint and several liability the Minister says that the UK is one of a minority of Member States to have implemented domestic joint and several liability provisions and that the Government has supported work at Community level on exploring how such provisions could be applied across borders. But he continues that the proposed amendment to the existing legislation raises a number of concerns:

- the Government has significant doubts over whether the proposal would have much, if any, anti-fraud benefit;
- it aims to ensure that suppliers comply with their obligation to report their intra-Community supplies of goods on their recapitulative statements, the Commission taking the view that an accurate statement is the essential first step to enable Member States to control cross border supplies of goods properly;
- the Government is not convinced that this will have much effect, as in the vast majority of cases suppliers involved in cross border fraud already ensure that their paperwork is accurate and that they comply with their reporting obligations;
- the fraud can work without a recapitulative statement and failure to submit one would needlessly attract unwelcome attention from the tax authorities and, additionally, in many cases suppliers are also requesting a VAT repayment — so it is therefore in their interests to present themselves as a legitimate and compliant business;
- the Government doubts the proportionality of the proposal — as drafted, a supplier would become liable for the tax obligations of the customer if it failed to submit a recapitulative statement properly — there would be no need even to identify a tax loss;
- moreover, there is no requirement for the tax authorities to show the supplier deliberately contrived to facilitate the fraud or was negligent in allowing the fraud to take place. The UK's domestic joint and several liability provisions were evaluated by the European Court of Justice in the "Federation of Technological Industries" case, which concluded that joint and several liability could only be applied if a trader could be proven to have "knowledge or means of knowledge" of fraud;[61]
- the Commission's intention appears to be to establish an automatic system that overrides proportionality to make it easier for Member States to take action against perceived fraudsters;
- the proposal does not involve a requirement to prove involvement in fraud and an assumption that the supplier was involved in fraud where both the recapitulative statement and VAT return are not completed properly does not appear to be

61 2006/C 165/12: see http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2006:165:0007:0008:EN:PDF.

rebuttable — the European Court of Justice held that it was crucial that businesses had the opportunity to rebut any presumption that they had knowledge or means of knowledge of the fraud;

- although the proposal contains a rule whereby suppliers that have triggered joint and several liability proceedings can avoid being subjected to any action if they can satisfactorily justify their failure to submit recapitulative statement or any inaccuracies in it, the Government is concerned that the rules for the application of the measure, or appeal against the authority's imposition of joint and several liability, are not clear and that innocent traders could be affected;

- unlike under the UK's domestic joint and several liability provisions, the Government would not be able to determine the approach taken by other Member States in respect of its application of joint and several liability to UK suppliers;

- the Government is concerned about the lack of discretion that Member States would appear to have — the current drafting could be interpreted as placing a requirement on a Member State to pursue the supplier, even in cases where it does not feel that this would be worthwhile or where it would prefer to pursue another player in the fraud. This would restrict the flexibility of Member States to tackle fraud effectively;

- there is a valid argument that the existing provisions of the VAT Directive already provide a basis for applying joint and several liability across Community borders; and

- the change proposed, with an additional specification of the circumstances in which joint and several liability could be applied could have the unhelpful effect of limiting the existing legislation.

The Minister concludes that the Government will work in Council discussions to avoid a text which has the effect of limiting the existing legislation, and, if possible, to clarify that the existing joint and several liability provision does already apply across borders.

Conclusion

10.10 **Clearly efforts to limit the opportunities for VAT fraud are important. But we note that, whilst the Government recognises a need to improve the rules relating to both exemption from VAT at importation and joint and several liability, it doubts the usefulness of the draft Directive, document (a), in relation to the former and has considerable concerns in relation to the effect of the proposal for the latter. So before considering the document further we should like to hear how Council negotiations are mitigating the concerns that we report here. Meanwhile the document remains under scrutiny.**

10.11 **As for the Commission Communication, document (b), we clear it but note that we will in due course be scrutinising the legislative proposals it foreshadows which are still to come to us.**

11 Collective redress for consumers

(30234) 16658/08 COM(08) 794	Commission Green Paper on Consumer Collective Redress

Legal base	—
Document originated	27 November 2008
Deposited in Parliament	4 December 2008
Department	Business, Enterprise and Regulatory Reform
Basis of consideration	EM of 8 January 2009
Previous Committee Report	None
To be discussed in Council	No date set
Committee's assessment	Politically important
Committee's decision	Cleared

Background

11.1 Article 153 of the EC Treaty provides the legal base for the Community to adopt measures to promote and protect the interests of consumers. The EC has had consumer protection policies since the 1980s.

In 2007, the Commission published a Communication proposing an EU consumer policy strategy for 2007–13 with three broad aims:[62]

- empower consumers;
- ensure a fair deal for consumers on price, quality and safety; and
- protect consumers from risks that they cannot tackle as individuals.

11.2 In May 2007, the Council adopted a Resolution welcoming the Policy Strategy and calling on the Commission, among other things, "to carefully consider collective redress mechanisms and come forward with the results of the ongoing relevant studies … ".[63] The European Parliament has made similar requests to the Commission.

The document

11.3 The principal focus of the Green Paper is on redress for groups of consumers, either within one Member State or in several, all of whom are affected by the same infringement by a supplier of goods or services. The Commission's aim is to provide an assessment of the current arrangements for consumers collectively to obtain redress and, in the light of that analysis, invite views on what action, if any, should be taken by the EC.

62 (28471) 7503/07: see HC 41–xviii (2006–07), chapter14 (25 April 2007).

63 Employment, Social Policy, Health and Consumer Affairs Council, 30–31 May 2007, Resolution on the Consumer Protection Strategy of the EU, page 3, sub-paragraph 10.

11.4 The Commission says that, as mass markets develop and cross-border transactions increase, large numbers of consumers can be harmed by the same practice of a trader and, if the malpractice is widespread, it may distort competition. At present, individuals and groups of consumers who have been wronged face difficulties in gaining access to redress which is effective and affordable. Malpractice often costs the individual consumer an amount which is utterly dwarfed by the costs of litigation and the complexity and uncertainty of seeking a remedy from the courts. Alternative redress mechanisms, such as Ombudsmen schemes, are cheaper and less daunting. But they do not exist in all the Member States or in all sectors.

11.5 Thirteen Member States (including the UK) have systems for seeking collective redress from the courts. The systems differ greatly and their effectiveness tends to be patchy. Factors which can hinder access to collective redress mechanisms include insufficient funding, the complexity of the procedure, the risk to representative consumer organisations of paying high fees and costs for litigation on behalf of a group of claimants and the difficulties which can arise in distributing compensation between consumers.

11.6 In the Commission's view, the current EC and national arrangements for collective redress are unsatisfactory. The Commission suggests that there are four options:

i) "no EC action" — continued reliance on existing national and EC measures and no new action by the Community;

ii) "cooperation between Member States" — Member States which already have collective redress systems for dealing with claims against traders operating within their borders would open their systems to consumers from other Member States and Member States currently without a collective redress mechanism would establish one — cross-border cases might be brought by groups of consumers, consumer organisations or Member States;

iii) "mix of policy instruments" — this option would involve improving the availability and functioning of alternative dispute resolution mechanisms, extending the jurisdiction of small claims procedures to include mass claims, extending the scope of the EC's Consumer Protection Cooperation Regulation, encouraging businesses to improve their complaints schemes and raising consumers' awareness of the means to seek redress; and

iv) "judicial collective redress procedure" —this option entails a binding or non-binding EC measure to ensure that collective redress is available from the courts in every Member State.

11.7 The Green Paper concludes with a request for views on the following seven questions:

- What are your views on the role of the EU in relation to consumer collective redress?
- Which of the four options do you prefer?
- Are there specific elements of the options with which you agree/disagree?
- Are there other elements which should form part of your preferred option?

- If you prefer a combination of options, which options would you want to combine and what would be its features?
- For options 2, 3 or 4, would you see a need for binding instruments or would you prefer non-binding instruments?
- Do you think that there are other ways to address the problem?

The Commission invites responses to the Green Paper by 1 March 2009.

The Government's view

11.8 In his Explanatory Memorandum of 8 January 2009, the Minister for Trade, Investment and Consumer Affairs at the Department for Business, Enterprise and Regulatory Reform (Mr Gareth Thomas) tells us that the Government welcomes the Green Paper.

11.9 In 2006, the Government published its own Green Paper on the case for introducing representative actions for breaches of consumer law.[64] The Government subsequently concluded that further work was needed to examine the evidence base for representative actions and to consider the case for alternatives, such as restorative justice and compensation orders. Both the UK Consumer Law Review and the Civil Justice Council are currently considering collective redress.

11.10 The Minister says that the Government will respond to the Commission's Green Paper and will take account of the views of interested UK bodies in drafting the response.

Conclusion

11.11 **We draw the Green Paper to the attention of the House because of the political importance of the subject.**

11.12 **We should be grateful if the Minister would send us a copy of the Government's response.**

11.13 **Any proposals for EC action arising from the Green Paper will come to us for scrutiny. There is no need, therefore, for us to keep it under scrutiny. Accordingly, we clear the Green Paper.**

64 See www.berr.gov.uk/file31886.pdf. The responses were published in March 2008 and are accessible at www.berr.gov.uk/file45051.pdf.

12 West of Scotland herring conservation plan

(29678) 9342/08 COM(08) 240	Draft Council Regulation establishing a multi-annual plan for the stock of herring distributed to the West of Scotland and the fisheries exploiting that stock

Legal base	Article 37EC; consultation; QMV
Department	Environment, Food and Rural Affairs
Basis of consideration	Minister's letter of 11 January 2009
Previous Committee Report	HC 19–i (2008–09), chapter 8 (10 December 2008)
Discussed in Council	17–19 December 2008
Committee's assessment	Politically important
Committee's decision	Cleared, but relevant to the debate recommended on the total allowable catches for 2009

Background

12.1 Whilst the general state of the fish stocks in Community waters since the introduction of the conservation elements of the Common Fisheries Policy (CFP) in 1983 has given rise to concern, particular problems have been identified in respect of certain stocks. These include cod, where we have reported on (and recommended for debate in European Committee) further recovery measures agreed by the Council at its meeting on 18–20 November 2008,[65] and herring, where the stocks in the North Sea have been subject to a multi-annual management arrangement with Norway since 1997.

12.2 Since the Commission believes that the arrangements for North Sea herring have generally been satisfactory, and that the herring stock to the West of Scotland could be managed so as to achieve a high and sustainable yield, it put forward in May 2008 this draft Regulation. The measures would introduce a multi-annual plan for that stock, based upon establishing given rates of fishing mortality according the size of the stock. Thus, total allowable catches (TACs) would be set each year in order to achieve a fishing mortality rate of 0.25 when the spawning stock is above 75,000 tonnes, and a rate no more than 0.2 when it is below 75,000 tonnes, but above 50,000 tonnes. This is subject to the proviso that the TAC would not vary from year to year by more than 15% when the spawning stock biomass exceeds 75,000 tonnes, and that the fishery should be closed where the spawning stock falls below 50,000 tonnes.

12.3 As we noted in our Report of 10 December 2008, the UK was fully supportive of the establishment of a management plan for this stock, but considered that the Commission had chosen to ignore concerns which had been expressed. In particular, there was the abrupt change in the mortality target from 0.25 to 0.2 when the spawning stock falls below 75,000 tonnes (where the UK believed that it would be preferable to establish a linear relationship between the two). However, we were told that it was due to propose a

65 (29591) 7676/08: see HC 16–xxi (2007–08), chapter 2 (14 May 2008) and HC 16–xxxvi (2007–08), chapter 2 (26 November 2008).

compromise text shortly, which it was believed should address these concerns, in particular by introducing a TAC constraint when the stock is between 50,000 and 75,000 tonnes. On that basis, the Government expected that ultimately the UK would be able to reach agreement at the Council on 17–19 December.

12.4 We commented that, although we recognised that the timing of further progress was very much in the hands of the Commission, it was clearly unsatisfactory that we had been able to consider this proposal only one week before its likely adoption by the Council. Moreover, as the terms of any compromise text were not yet known, we were unable to assess the proposal, and hence to clear it. We therefore decided simply to report it to the House, and we asked the Government to let us know the extent to which the UK's earlier concerns had been met at the Council. We added that we would at that point take a decision on what further action to take.

Minister's letter of 11 January 2009

12.5 We have now received a letter of 11 January 2009 from the Minister for the Natural and Marine Environment, Wildlife and Rural Affairs at the Department for Environment, Food and Rural Affairs (Mr Huw Irranca-Davies), confirming that agreement was reached on a 20% TAC constraint when the stock is between 50,000 and 75,000 tonnes, in line with the view taken by the Government and the Pelagic Regional Advisory Council. He therefore believes that this was a satisfactory outcome.

Conclusion

12.6 **In the light of this confirmation from the Minister that the main outstanding point so far as the UK is concerned has now been dealt with satisfactorily, and that he regards the outcome as satisfactory, we are content to clear this document. However, we regard it as relevant to the debate which we have recommended in European Committee on the Commission's proposals[66] for total allowable catches in 2009 (and which is to be held on 26 January).**

66 (30161) 15578/08: see HC 19–i (2008–09), chapter 1 (10 December 2008), and chapter 1 of this Report.

13 Freight transport

(a) (30276) 17295/08 C(08) 7713	Commission Communication providing guidance on state aid complementary to Community funding for the launching of the motorways of the sea
(b) (30281) 17294/08 + ADDs 1–7 COM(08) 847	Draft Regulation (EC) No. …/2008 amending Regulation (EC) No. 1692/2006 establishing the second "Marc Polo" programme for the granting of Community financial assistance to improve the environmental performance of the freight transport system

Legal base	(a) — (b) Articles 71(1) and 80(2) EC; co-decision; QMV
Documents originated	(a) 11 December 2009 (b) 10 December 2009
Deposited in Parliament	(a) 16 December 2009 (b) 18 December 2009
Department	Transport
Basis of consideration	Two EMs of 15 January 2009
Previous Committee Report	None
To be discussed in Council	(a) None planned (b) March 2009
Committee's assessment	Politically important
Committee's decision	Cleared

Background

13.1 In 1997 a five-year programme, Pilot Actions for Combined Transport (PACT), to assist the start-up of new intermodal services shifting freight off the road to other modes of transport, was established. In the light of experience gained through PACT a broader grant programme to support modal shift, called Marco Polo, was established in July 2003 to run from 2003 to 2006. The programme was renewed, as Marco Polo II, for the period 2007–2013, in October 2006. It has a budget of €400 million (£380 million) and is expected to shift more than 140 billion tonne-kilometres[67] of freight from the road reducing carbon dioxide emissions by 8,400 million kilogrammes.

13.2 The objectives of the Marco Polo programme are to:

- reduce road congestion;
- improve the environmental performance of the freight transport system within the Community; and

67 "Tonne-kilometre" is a unit of measure which represents the transport of one tonne over one kilometre.

- enhance intermodality.

It does this by facilitating the shift of transport of international freight from road to rail or waterway. It provides financial assistance for:

- Modal Shift Actions — support for non-road freight services;
- Catalyst Actions — support for actions to overcome structural (that is, non-regulatory) barriers to the efficient functioning of non-road freight services;
- Common Learning Actions — promoting Cooperation in the freight logistics market;
- schemes linked with use of so-called "Motorways of the Sea" — that is, intra-Community sea routes promoted as alternatives to land routes; and
- Traffic Avoidance Actions — innovative projects that reduce the need for transport through design of the supply chain.

13.3 An external evaluation of the 2003–06 Marco Polo programme made a number of suggestions for the continuing programme, including:

- allow projects with a longer duration;
- lower the threshold for inland waterways modal shift projects;
- publicise the scheme more effectively;
- take more account of congestion reduction in project evaluation;
- make understanding the application evaluation process easier ; and
- a commission analysis of the existing programme to identify strengths and weaknesses and to suggest enhancements to make the programme more effective.[68]

The acceptability of these suggestions was tested by the Executive Agency for Competitiveness and Innovation, which manages the Marco Polo II programme, with a short stakeholder consultation. 1,500 organisations across the Community were sent detailed questionnaires and replies were received from 97, from 20 Member States (including six from the UK), Norway and Serbia. Those who responded were broadly in favour of the suggested actions.

13.4 Motorways of the sea projects can be eligible for funding from a number of Community and national sources. Depending on the type of project, bidders may seek funding from the Marco Polo II or the Trans-European Transport Network programmes, as well as from the European Regional Development Fund and the Cohesion Fund. Motorways of the sea projects may also be topped up using state aid — subject to the Commission's "Community guidelines on State aid to maritime transport",[69] issued in

68 See http://ec.europa.eu/dgs/energy_transport/evaluation/activites/doc/reports/transports/2007_no65_ex_post_evaluation_marco_polo1_en.pdf.

69 See http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2004:013:0003:0012:EN:PDF.

2004, which apply to state aid to encourage short sea shipping and which limit aid for operational costs to 30% for up to 36 months and for investment costs to 10% for the same period. The complex funding framework is confusing for potential bidders and has resulted in differing advice on eligibility being offered by different Member States.

The documents

13.5 The Commission Communication, document (a), is intended to clarify the eligibility rules for motorways of the sea project funding under the Marco Polo II and Trans-European Transport Network programmes and to explain how the various funding streams interact. Under Regulation (EC) No. 1692/2006, which governs Marco Polo II, motorways of the sea projects are, in prescribed circumstances, eligible for funding of up to 35% for a maximum period of 60 months. The Regulation also allows state aid to be paid to the projects, subject to absolute financial and time limits and the relevant state aid rules on State aid. The Commission now makes clear that:

- if the Marco Polo II programme has to limit funding levels, due to over-subscription, Member States can top up the funding to the prescribed limits;
- the same eligible costs cannot receive funding from more than one Community scheme; and
- in relation to the confusion between the short sea shipping state aid guidelines and the Marco Polo II limits, if a motorways of the sea project is submitted in response to a Marco Polo II programme call for bids for funding, Marco Polo II rules apply. That is the funding limit is 35% for up to 60 months, irrespective of whether the funding is ultimately derived from the Marco Polo II programme, the European Regional Development Fund or the Cohesion Fund.

13.6 Under Decision No 1692/96/EC, which governs the Trans-European Transport Network programme, motorways of the sea projects are eligible for funding of up to 35% for up to 24 months for "duly justified start up" costs. The Commission now makes clear that:

- motorways of the sea projects submitted in response to a Trans-European Transport Network programme call for bids for funding are eligible for a maximum state aid of 30% over 24 months, provided the appropriate conditions are met;
- this aid can be a top up to Community funding if this funding is not the maximum allowable; and
- this permission is irrespective of the Community funding source, be it the Trans-European Transport Network programme, the European Regional Development Fund or the Cohesion Fund, as long as the motorways of the sea application is made under the Trans-European Transport Network guidelines and is successful under the tender evaluation process.

13.7 Following the external evaluation of the Marco Polo Programme and the Executive Agency for Competitiveness and Innovation's consultation the Commission presents this

draft Regulation, document (b), to amend four aspects of Regulation (EC) No. 1692/2006 to improve the Marco Polo II programme. The four matters addressed are:

- encouraging the participation of SMEs;
- lowering the tonne-kilometre thresholds for project eligibility;
- increasing the funding values; and
- simplifying programme administration.

13.8 The detailed amendments to achieve these aims are:

- allowing single organisation applications — at present an application can be made only by a minimum of two organisations, at least one of which must be based in a Member State. This is to benefit SMEs who may not have the necessary contacts to put together bids involving organisations from other Member States;
- doubling the funding value from €1 (£0.95) per 500 tonne-kilometres to €2 (£1.90) per 500 tonne-kilometres and refining the calculation of modal shift tonne-kilometres currently only the weight of freight shifted is used, for the future tare weight, the freight plus the container in which it is carried and the vehicle by which it is drawn, will be used. These two measures are to make the scheme more attractive to potential bidders and will also ameliorate the effects of higher costs precipitated by the current global economic downtown;
- calculating project thresholds over the whole life of the project in tonne-kilometres only (with the exception of Common Learning Actions, where the present threshold will remain, and Traffic Avoidance), rather than, as at present, using tonne-kilometres and the equivalent in euros and vehicle-kilometres.[70] This is to make the scheme's rules easier to understand;
- making the modal shift project threshold 80 million tonne-kilometres of shift annually over the life of the project for all shifts except to inland waterways, where the shift is to be 17 million tonne-kilometres annually. This replaces the current threshold of 250 million tonne-kilometres over the life of the project, together with a subsidy need of at least €500,000 (£476,000). The additional change for inland waterways is because such have been under-represented in the programme, largely due to the fragmented structure of the sector;
- making the project threshold for Catalyst Actions 30 million tonne-kilometres of traffic avoidance or modal shift annually rather than the present subsidy request of €2 million (£1.90 million). This, in effect, lowers the threshold to €360,000 (£343,00) over the life of the project;
- making the project threshold for motorways of the sea 250 million tonne-kilometres of modal shift annually, equivalent to 750 million tonne-kilometres over the project lifetime, rather than the present threshold of 1.25 billion tonne-

70 "Vehicle-kilometre" is a unit of measurement which represents the movement of a vehicle over one kilometre.

kilometres over the life of the project and €2.50 million (£2.38 million) subsidy requested. This is to encourage more and smaller motorways of the sea projects, which are under-represented currently in successful bids;

- making the project threshold for Traffic Avoidance 80 million tonne-kilometres or 4 million vehicle-kilometres of avoidance annually. This replaces the present two, alternative, thresholds — 500 million tonne-kilometres shifted and €2.50 million (£2.38 million) subsidy requested or a conditional traffic avoidance amount of at least 10% of freight volume measured in either tonne-kilometres or vehicle-kilometrs;
- imposing a minimum project duration of three years and allowing the possibility of a six month extension. At present only Common Learning Action projects are subject to a minimum duration and there is no possibility of extension for any project. As projects are not allowed to show profits, consortia have been artificially tailoring the length of the project to coincide with profit forecasts and some projects have start-up problems which mean that the modal shift comes towards the end of the project and beyond the eligible funding period;
- considerably simplifying the rules to allow spending on ancillary infrastructure for all projects (with the exception of Common Learning Actions) in the same way as any other necessary expenditure. At present there is a complex set of conditions that apply to infrastructure funding which varies across action types — different time and financial limits and different eligible costs, as well as environmental and other legislative conditions could apply. This has led to a situation where only the amortisation of movable assets has been financed through Marco Polo. However infrastructure costs cannot be funded if they represent more than 10% of the eligible costs;
- providing for a three year work plan to be agreed by comitology, instead of, as at present an annual agreement; and
- expanding the current project evaluation criterion “environmental merits” to include wider external cost savings to bring it into line with “Greening Transport” policy.[71]

13.9 The Commission’s impact assessment for the draft Regulation says that the proposed changes will “bring added value” to the Marco Polo II programme. Specifically it suggests that the changes will:

- be more effective in securing increased tonne-kilometre traffic avoidance and modal shift;
- bring about a better balance between modal shift and traffic avoidance actions and between different modes and project types;

71 (29850) 11851/08 + ADD1: see HC 16 –xxx (2007–08), chapter 15 (8 October 2008).

- enable reductions in administrative costs and burdens to encourage a greater diversity of enterprises to apply by simplifying the legal base and management of the programme; and
- increase the amount of external benefits.

The Government's view

13.10 In his Explanatory Memorandum on the Commission Communication, document (a), the Parliamentary Under-Secretary of State at the Department for Transport (Paul Clark) says that the Government supports the broad objectives of motorways of the sea and recognises the environmental and sustainability benefits for the Community as a whole. He then comments that the Communication provides helpful clarification for potential UK bidders and administrators alike as it defines the levels to which funding is available, for what parts of a project, and from which Community funding stream. It might therefore encourage more high quality bids for motorways of the sea projects.

13.11 In his Explanatory Memorandum on the draft Regulation, document (b), the Minister says that the modal shift of freight transport from road to water or rail is consistent with the Government's aims to reduce the environmental impact of road freight transport and it supports the proposed revisions to the Marco Polo II Regulation, as it envisages that these will help to maximise the benefits from the programme.

13.12 The Minister comments further that:

- UK companies have been successful in applying for project funding under the programme and the Government believes that the revisions could encourage more bids from UK companies, in particular SMEs, due to the lowering of minimum thresholds for the overall costs of projects;
- the Government will be seeking to ensure that the criteria for evaluation of successful project proposals continue to be in line with UK transport policy and represent Community-wide value for money. However it does not anticipate that the changes to the thresholds and administration of the scheme will have any adverse impacts;
- all projects are assessed and evaluated on the basis of objective criteria by three independent expert panels, subject to scrutiny under the comitology procedures. This system has worked well to ensure that project funding is a sensible use of resources and that there is no unacceptable market distortion;
- although changes intended to the comitology procedure will mean that there is no formal vote on the projects selected for funding, voting is already a formality;
- Member States will retain the ability to formally query and/or object to a project if they feel that there are good grounds to do this during the life of the project — this safeguard is important if, for example, the Government felt that a project might lead to unwelcome impacts on an existing market or service and wanted the Commission to investigate;

- as with the current situation, the Government will continue to make potential UK bidders aware of the programme through the appropriate industry bodies; and
- the overall costs of the programme will remain at €400 million over the period 2007–2013, so there are no financial implications arising from the proposed revision.

Conclusion

13.13 **The clarifications in the Commission Communication and the changes proposed in the draft Regulation appear to improve the incentives for a modal shift of freight transport. This is useful, so whilst clearing both documents, we draw them to the attention of the House.**

14 Joint programming of research

(29864) 11935/08 COM(08) 468	Commission Communication: *Towards joint programming of research — working together to tackle common challenges more effectively*
+ ADD 1	Commission staff working document: impact assessment
+ ADD 2	Commission staff working document: summary of impact assessment

Legal base	—
Department	Innovation, Universities and Skills
Basis of consideration	Letter of 14 January 2009 from the Chairman of the Innovation, Universities, Science and Skills Committee
Previous Committee Report	HC 16–xxxiii (2007–08), chapter 2 (29 October 2008)
Discussed in Council	2 December 2008
Committee's assessment	Politically important
Committee's decision	Cleared

Previous scrutiny of the Communication

14.1 When we considered the Commission's Communication on 29 October 2008,[72] we noted that, in 2007, the Competitiveness Council invited Member States to:

72 See headnote.

> "encourage Research Councils and National Funding Agencies in Member States, as well as intergovernmental European Research Organisations, to expand their collaboration and to devise innovative forms of pooling together their expertise and resources on a mutual voluntary basis for joint objectives."[73]

In March 2008, the European Council concluded that:

> "particular attention should be given to further initiatives for joint programming of research".[74]

14.2 We also noted that Article 165(1) of the EC Treaty requires the Community and Member States to coordinate their research and development activities so as to ensure that national policies and Community policy are mutually consistent; it also requires the Commission, in close cooperation with Member States, to "take any useful initiative" to promote coordination.

14.3 Article 166 of the EC Treaty requires the Council to adopt a multiannual Framework Programme for Research and Development funded from the EU budget. The 7th EC Framework Programme runs from 2007 to 2013 and has a total budget of €50.5 billion.

14.4 The Communication observes that 85% of public R&D in the EC is programmed and funded by Member States. In the Commission's view, the fragmented way in which this research is currently programmed leads to sub-optimal returns. National programmes sometimes unnecessarily duplicate each other. The differences between Member States' grant rules discourage researchers from seeking funds for cross-border projects. And the lack of joint programming complicates the pooling of data, scatters expertise, hinders the training and mobility of researchers and slows down the international dissemination of research results.

14.5 The Commission advocates joint programming. Each Member State would be free to decide whether and to what extent it should take part. Joint programming would entail the definition, development and implementation of common strategic research agendas based on a common vision of how to address major societal challenges. It would include both collaboration between existing national programmes and the joint planning and creation of new ones.

14.6 The Commission suggests that joint programming might have three stages: development and political endorsement of a common vision of the programme and definition of its long-term objectives; translation of the vision into a Strategic Research Agenda, with specific, measurable, achievable, realistic and time-based objectives; and implementation.

14.7 The Commission emphasises that Member States would own the process and be responsible for it. The Commission would be a facilitator and would keep the Council of Ministers informed of developments.

73 Meeting of the Competitiveness Council on 22–23 November 2007.

74 European Council of 13–14 March 2008, Presidency Conclusions, page 5, fifth bullet-point.

14.8 The then Minister of State for Science and Innovation at the Department for Innovation, Universities and Skills (Ian Pearson) told us that the Government supports the principles underlying the Communication and would work with the Commission, Member States and the UK research funding community on the development of the mechanisms proposed in the Communication.

14.9 We concluded that the Communication appeared to be consistent with the requirements of Article 165 EC. Because the Communication raised questions about the desirability and practicability of the Commission's proposals, we decided, in exercise of the power given to us by paragraph 12 of Standing Order No. 143, to ask the Innovation, Universities, Science and Skills Committee for its Opinion on the Communication.

The Competitiveness Council on 2 December2008

14.10 At its meeting on 2 December 2008, the Competitiveness Council agreed that there should be a pilot study to learn more about joint programming by applying it to research on neurodegenerative diseases and to Alzheimer's Disease in particular.

The Opinion of the Innovation, Universities, Science and Skills Committee

14.11 In response to our request, the Chairman of the Innovation, Universities, Science and Skills Committee (Mr Phil Willis) wrote to us on 14 January to set out his Committee's Opinion on the Communication. His letter says that his Committee believes that:

> "the introduction of Joint Programming represents a logical extension of current initiatives designed to support the development of a common European research agenda. For example, with a focus on the pooling of Member States' public research funds, future Joint Programming actions will complement Joint Technology Initiatives (programmes of industry relevant research conducted by long-term public-private partnerships that combine national, EU and private financial resources within one legal framework). The focus on the co-ordination of national research programmes, however, makes widespread political commitment an imperative if the initiative is to succeed. The need for collective political support is only increased by the fact that a Member State's participation in any programming activity will be voluntary.
>
> "To generate commitment to the establishment of Joint Programming a 'bottom-up' approach is to be taken, with Member States being asked to propose research areas for co-ordinated action. In adopting the Commission's communication, the [Competitiveness Council] … recommended that a pilot scheme be launched with a focus on combating neurodegenerative diseases, in particular Alzheimer's. We would advocate that a watching brief be kept as to the progress of this scheme in order to ascertain the level of engagement with this initiative by Member States, and to assess the potential impact of this initiative in changing the structure of the European research landscape.
>
> "The UK has a world-class science base and many researchers already benefit from funds awarded under EU Framework Programme 7. Like the Framework

Programme, funds available under Joint Programming initiatives will be awarded on the basis of excellence, and there is every reason to believe that UK researchers will benefit from this new source of financial support. However, as research funding available under Joint Programming activities will constitute the co-ordination and pooling of finance that might otherwise have been allocated via national research funding mechanisms, we are not convinced that the amount of financial resource ultimately available to support UK research will increase as a result of Joint Programming.

"Overall, we believe Joint Programming represents a valuable step in efforts to reinvigorate the European Research Area, and maximise the strategic impact of European research, and that the UK should be supportive of this initiative."

Conclusion

14.12 **We are grateful to the Innovation, Universities, Science and Skills Committee for its clear and cogent Opinion on the Communication. We draw it to the attention of the House. In the light of the Opinion, we are now content to clear the document from scrutiny.**

15 EU- Russia relations and Georgia

(30270) — —	Council Decision on the independent enquiry into the conflict in Georgia

Legal base	Article 13(3) and 23(1); unanimity
Department	Foreign and Commonwealth Office
Basis of consideration	Minister's letter of 16 January 2009
Previous Committee Report	HC16–iii (2008–09), chapter 16 (14 January 2009); also see (29944) —: HC 16–xxx (2007–08), chapter 18 (8 October 2008)
Discussed in Council	2 December 2008 Economic and Finance Council
Committee's assessment	Politically important
Committee's decision	Cleared (decision reported on 14 January 2009). Further information now provided

Background

15.1 The background to this Council Decision is set out in our previous Report on this topic.[75] As the then Minister for Europe at the Foreign and Commonwealth Office (Mr Jim Murphy) put it in his 12 September 2008 Explanatory Memorandum:

> "On 7 August Georgian Armed Forces attacked Tshskinvali [sic], the de facto 'capital' of South Ossetia. Russian armed forces reacted with massive force, widely condemned as disproportionate, including by the EU, NATO and G7 Foreign Ministers. Fighting continued between 8 and 12 August, when the EU and Organisation for Security and Co-operation in Europe (OSCE) brokered a ceasefire."

The Council Decision

15.2 This Council Decision deals with the establishment and funding for an independent inquiry into the conflict in Georgia. The decision to establish it was agreed at the General Affairs and External Relations Council on 15–16 September 2008.

15.3 As the Minister for Europe at the Foreign and Commonwealth Office (Caroline Flint) noted in her Explanatory Memorandum of 15 December 2008, the terms of reference for the inquiry include consideration of "the origins and course of the conflict in Georgia while having regard to international law, including the Helsinki Final Act, humanitarian and human rights law and accusations made in this context including allegations of war crimes".

15.4 The Minister said that a Swiss diplomat, Mme Heidi Tagliavini, who had served as the UN Secretary General's Special Representative in Georgia from 2002 to 2006, had been asked to head the inquiry. The Minister fully supported the inquiry and the appointment of Mme Tagliavini. The Minister said that there was still confusion over how the conflict between Georgia and Russia started and that both sides continued to accuse the other of human rights abuses and war crimes; this investigation would help establish the origins and course of the conflict and also identify those who should be brought to account for their part in the conflict.

15.5 The Minister noted that Ms Tagliavini would have "complete discretion over the inquiry's procedures and methods of working as well as the contents of its final report", which would be delivered to the parties to the conflict, the EU Council, the Organisation for Security and Co-operation in Europe (OSCE) and the United Nations. The terms of reference would, the Minister said, be sufficiently wide to permit it to examine events that occurred after the initial outbreak of fighting — "(such as ethnic cleansing and accusations of war crimes)" — but without the inquiry taking on a judicial or quasi-judicial character; it should "rather focus on findings of fact in order to provide information should there be a need subsequently to examine accusations in more depth". The mandate was set to expire on the 31 July 2009, though it would be open to the Council to extend it if necessary.

15.6 The Minister noted that the budget for the period of adoption of the Council Decision to 31 July 2009 would be €1.6 million (£1.2 million), which would be met from the

75 See headnote: (29944) —: HC 16–xxx (2007–08), chapter 18 (8 October 2008).

Common Foreign and Security Policy budget, to which the UK currently contributes approximately 17%.

15.7 Finally, the Minister said that she expected this Council Decision to be agreed at the Economic and Finance Council on 2 December 2008

15.8 The Committee noted that it had:

— already received a letter of 1 December 2008 from the Minister, alerting it to the plan for this Council Decision to be adopted at this Economic and Finance Council and saying that, given the pressing need to launch this investigation, she might need to agree the Council Decision at that Council, before scrutiny had been completed; and

— responded on 10 December, saying that it had no objection *per se* to what was proposed in the circumstances that the Minister described; however, in anticipation of a subsequent Explanatory Memorandum, it asked her to explain, in that Explanatory Memorandum, why, when the decision was taken 10 weeks earlier to set this Inquiry up, it was not possible to have written to the Committee sooner, so that it could have had the opportunity to have cleared the decision in principle ahead of the ECOFIN meeting, rather than be presented with a *fait accompli*.

15.9 The Committee said that it was accordingly puzzled as to why there was now no such explanation, nor mention of her earlier letter, in her Explanatory Memorandum; and also as to why, in an Explanatory Memorandum of 15 December 2008, she should refer to an expectation of a Council Decision being adopted on 2 December 2008. We said we were left with a disturbing impression of muddle and disorder. We therefore asked the Minister for an explanation, encompassing both our earlier request and this latest issue.

15.10 In the meantime, we cleared the Council Decision, on the understanding that the Minister would inform the Committee of the outcome of the inquiry and what further action was proposed at the end of the mandate.

The Minister's letter of 16 January 2009

15.11 The Minister begins her letter by saying that her Explanatory Memorandum was prepared with the intention of submitting it to the Committee at the same time as her letter on 1 December, and regretting "that they became separated and, as a result, the Explanatory Memorandum did not address the points raised in your letter of 10 December." She continues as follows:

> "I understand your concern that it was not possible in this instance for the Committee to have an opportunity to see and discuss its contents before their submission to an EU Council for decision. As you know we only exercise the option of overriding the procedure with great reluctance and when all other options have been exhausted.
>
> "You note that it had been agreed to set up an investigation ten weeks before the Committee received my Explanatory Memorandum. In my letter of 1 December I stated that 'it was decided at the General Affairs and External Relations Council on 15–16 September 2008 to set up an independent inquiry to be funded by the EU'.

That may have given the impression that the decision was more 'cut and dried' at that time than was the case. Had it been so we would certainly have set the procedure in motion to seek comments from the scrutiny committees. In fact, the decision was only taken in principle, with details to be settled by negotiation between member states. This left open the wording of the mandate, terms of reference, composition and exact means of funding of the mission and these, after some informal discussions between certain EU member states and the EU presidency were the subject of intense negotiations between 22 October and 24 November. It was only decided on 24 November that the mandate, terms of reference and funding of the inquiry would be agreed by Council Decision and that it should be funded from the CSFP budget.

"As you will recall from my Explanatory Memorandum, the UK was determined that, if there was to be an inquiry, the accusations of war crimes and violations of international law which have been made by both Georgia and Russia should be considered by it. I understand from my officials that the head of the inquiry, Heidi Tagliavini, is in full agreement with this and that at least a preliminary investigation of the claims will form an important part of the work of her team. The inclusion of this issue in the inquiry's terms of reference was the subject of intense discussion over several weeks in October and November and had our view on this point not prevailed it is possible that the UK might not have been able to endorse the final proposal for the inquiry.

"A key reason why I decided to override the scrutiny procedure was that the Council Decision to establish the inquiry, once agreed at working level, had to be submitted for adoption at Council before the end of this year to enable funds from the 2008 budget to be drawn on to meet some of the inquiry's costs. This led to the decision to put it to the meeting of Economic and Financial Council on 2 December. As you know, we regard the right of Parliament to scrutinise EU decisions as fundamental and fully respect the process in place for doing so. However, had we invoked the process at an earlier stage on this occasion we would have been inviting the Committees to endorse a proposal without a mandate, clear terms of reference or an agreed source of funding. Therefore, because of the nature of the ongoing negotiations and the constraints on timing we were unable to submit this document to scrutiny."

Conclusion

15.12 **The Minister begins and ends her letter by emphasising the importance that she attaches to proper parliamentary scrutiny — exercising the option of overriding it "with great reluctance and when all other options have been exhausted", and stating that she regards "the right of Parliament to scrutinise EU decisions as fundamental and fully respect the process in place for doing so". She then argues that on this occasion, were she to have "invoked the process at an earlier stage", she would have been "inviting the Committees to endorse a proposal without a mandate, clear terms of reference or an agreed source of funding." She also maintains that budgetary constraints obliged this Council Decision to be adopted on 1–2 December. We find this unconvincing.**

15.13 **First, proper parliamentary scrutiny depends on proper process; and the Minister still does not explain how important correspondence between herself and the Committee — the first on an issue of widespread interest and controversy — became separated, nor what she intends to do to ensure that such errors do not recur. We have the impression that a higher priority is given, in terms of approval and other process aspects, to the handling of Parliamentary Questions than to the handling of Explanatory Memoranda and other scrutiny correspondence.**

15.14 **Secondly, we were under the impression that the Government had long ago accepted that proper parliamentary scrutiny of Common Foreign and Security Policy — where legislation is, far more often than not, submitted only in draft form and at the last moment — can only be achieved if the Minister concerned keeps the Committee informed, by letter, ahead of the depositing of what is by then essentially a *fait accompli*.**

15.15 **That only on 24 November was it decided that the mandate, terms of reference and funding of the inquiry would be agreed by Council Decision and that it should be funded from the CSFP budget is, in our view, immaterial. How else would these matters have been agreed and funded? In this instance, there were key aspects of the inquiry mandate — particularly the terms of reference — about which the House should, and could, have been informed during discussion, so that it could have had an opportunity to comment during the formative process in relation to a matter of intense interest.**

15.16 **We also see no reason why this matter could not have been submitted to the General Affairs and External Relations Council on 8–9 December.**

15.17 **We shall have an opportunity for further discussion when the Minister gives evidence on 4 February, at which time we hope she will respond to these points.**

15.18 **In the meantime, we are reporting this to the House both because of the subject matter and because of the issues regarding the scrutiny of CFSP that arise.**

16 Restrictive measures against Zimbabwe

(30343) — —	Common Position amending Common Position 2008/135/CFSP renewing restrictive measures against Zimbabwe

Legal base	Article 15 EU; unanimity
Department	Foreign and Commonwealth Office
Basis of consideration	EM of 15 January 2009
Previous Committee Report	None; but see 29110 HC 16–xxix (2007–08), chapter 12 (10 September 2008)
Discussed in Council	26/27 January 2009 General Affairs and External Relations Council
Committee's assessment	Politically important
Committee's decision	Cleared

Background

16.1 In 2004 the EU adopted Common Position 2004/161/CFSP. This imposed an arms embargo, assets freeze and travel ban, with certain exemptions on Zimbabwe. Council Common Position 2008/135/CFSP, adopted on 18 February 2008, extended Common Position 2004/161/CFSP until 20 February 2009. The new Common Position did not include any amendments or additional measures; the Annex listing the individuals subject to targeted measures was updated (two names were added; the names of two individuals amended; the name of one deceased individual was removed).

16.2 The objective of these restrictive measures is to encourage the targeted persons to reject policies that lead to suppression of human rights, of the freedom of expression and of good governance. The measures are to be monitored and modified as necessary according to whether the objectives have been met in the context of political developments in Zimbabwe.

16.3 In the first part of 2008, the EU and wider international community condemned the events in Zimbabwe surrounding the Presidential elections.

16.4 Most recently, in an Explanatory Memorandum of 26 August 2008, the then Minister for Europe at the Foreign and Commonwealth Office (Mr Jim Murphy) said that a further package of targeted measures was needed "to provide an incentive to the Mugabe regime to engage earnestly on a mediated political process leading to free and fair elections"; the 22 July GAERC had accordingly adopted Common Position 2008/632/CFSP which:

— harmonised the criteria for the asset freeze and travel ban which were different in Common Position 2004/161/CFSP;

— tightened the exemptions to the travel ban to make it more difficult for designated individuals to attend inter-governmental meetings in Europe; and

— listed a further 37 individuals and, for the first time, 4 entities who will be subject to the targeted measures.

16.5 The Minister recalled that, in April 2008, EU partners had agreed to discuss a further package of measures should the situation in Zimbabwe deteriorate. He regarded this further agreement as important, by signalling to the Zimbabwean regime that the EU represented a united front and were prepared to take further measures if no progress on the democratic process was reached; failure to agree this follow-up would have been interpreted by the Zimbabwean regime as a weakening of the EU position and would have been capitalised upon, especially since attempts to get sanctions imposed against Zimbabwe at the UN were vetoed by China and Russia.

16.6 The Minister stated that the UK had pressed for tough new sanctions on Zimbabwe following the "stolen election" in March 2008; discussions in Brussels had not been "straightforward", but the Common Position represented a first step in this process. The Government strongly supported the designation of further individuals associated with the Zimbabwean regime and its campaign of violence during the election campaign; all were specifically targeted because of their involvement in repressive policies or activities in Zimbabwe (which included beatings, torture, corruption and misappropriation of resources); and the new listings showed that the EU was prepared to act against those that actively disrupted the democratic process. The UK had led in discussions at the EU to act for the first time against entities associated with the regime; targeting them would maintain pressure on the regime to engage in serious negotiation.

16.7 At that time, the then Minister felt that it was still too early to gauge the impact of the recently extended travel ban and assets freeze on further individuals and entities; however, he felt that "the fact that Mr Mugabe is even negotiating with the opposition leader does show that he is reacting to international pressure". Stating that the UK had "led the debate in the EU to tighten the restrictions to the travel ban exemptions", and that this debate "was complicated because Member States which host international organisations have obligations to permit access under international law", the then Minister said that while the Government "did not achieve the blanket ban we were seeking … we did succeed in making attendance at future inter-governmental meetings in Europe subject to a consensus decision making procedure."[76] The Government had also, he said, "again pressed hard for the GAERC conclusions[77] to threaten further appropriate measures in September if there is no improvement to the situation on the ground"; the Government favoured "tougher sanctions targeted on the economic interests of the regime" and would "use upcoming Ministerial opportunities to secure support for this approach if there is no progress in the mediation process." The Government was also "considering the feasibility of disrupting the operation of specific regime front companies", which he defined as "parastatals that have direct links to the Government of Mugabe and are engaged in active support for his policies". The then Minister concluded by noting that:

76 In a separate letter to our counterparts in the House of Lords, the Minister explained that Member States may now only justify granting exemptions from the travel ban on the grounds of: urgent and compelling humanitarian need; or, in exceptional circumstances, on the grounds of attending intergovernmental meetings, including those promoted by the EU, where a political dialogue is conducted which will make a direct, immediate and significant contribution to democracy, human rights and the rule of law in Zimbabwe.

77 Available at http://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressData/en/gena/101956.pdf; see pages 11–13.

> "To date, an agreement has yet to be reached in the mediation talks between Robert Mugabe and Morgan Tsvangirai. Should there be no agreement, we believe pursuing further measures in the autumn represents the best realistic option for applying pressure on the regime."

16.8 Following its meeting on 22 July 2008 (on which day the House rose for the summer recess), the Committee wrote to the Minister, acknowledging the need for further targeted measures, having been forewarned by him on 18 July 2008 of the likelihood of such measures being adopted at the 22 July GAERC.

16.9 At its meeting on 10 September 2008, the Committee subsequently cleared 2008/632/CFSP, which it reported to the House because of the widespread interest in the situation in Zimbabwe.

The draft Common Position

16.10 In her Explanatory Memorandum of 15 January 2009, the Minister for Europe at the Foreign and Commonwealth Office (Caroline Flint) recalls the "stolen election" in Zimbabwe in March 2008 and the subsequent Government pressure for further targeted restrictive measures to be imposed on Zimbabwe. The Minister says that:

> "After a proposed power-sharing deal in late Summer 2008, the EU refrained from imposing further measures to permit progress to be made between Robert Mugabe and Morgan Tsvangirai. However little progress has been made, and the social, economic and humanitarian situation in Zimbabwe has deteriorated.
>
> "The draft Common Position extends the restrictive measures (arms embargo, asset freeze and travel ban) for a further year. It also lists a number of individuals and entities associated with the Zimbabwean regime who have contributed to, or are complicit in, activities that seriously undermine democracy, respect for human rights and the rule of law. For all those listed, it has been considered necessary and proportionate to impose financial and travel restrictions — and where entities have been designated, it has been assessed that the restrictions will have minimal economic impact on ordinary Zimbabweans and could not justifiably be portrayed as 'economic sanctions'."

16.11 The Minister concludes by saying that the draft Common Position is due to be considered at the General Affairs and External Relations Council on 26 and 27 January 2009.

Conclusion

16.12 **Although no questions arise, we are reporting this further extension because of the widespread interest in the House in developments in Zimbabwe.**

16.13 **We now clear the document.**

17 ESDP: Piracy off the coast of Somalia

(a) (30341) — —	Council Joint Action 2008/851/CFSP on a European Union military operation to contribute to the deterrence, prevention and repression of acts of piracy and armed robbery off the Somali coast
(b) (30348) — —	Council Decision concerning the conclusion of the Agreement between the European Union and the Somali Republic on the status of the European Union-led naval force in the Somali Republic in the framework of the EU military operation Atalanta
(c) (30349) —	Council Decision concerning the conclusion of the Agreement between the European Union and the Republic of the Djibouti on the status of the European Union-led forces in the Republic of Djibouti in the framework of the EU military operation Atalanta

Legal base	(a) Articles 14, 25(3) and 28(3) EU; unanimity (b) Article 24 EU; unanimity
Department	Foreign and Commonwealth Office
Basis of consideration	Minister's letter of 18 December 2008 and EM of 15 January 2009
Previous Committee Reports	HC 16–xxxvi (2007–08), chapter 17 (26 November 2008) and HC 16–xxxii (2007–08), chapter 10 (22 October 2008); also see (29953) —: HC16–xxx (2007–08), chapter 19 (8 October 2008)
Discussed in Council	8–9 December 2008
Committee's assessment	Politically important
Committee's decision	Cleared, but further information requested

Background

17.1 In response to growing international concern over the problem of piracy off the coast of Somalia, the United Nations Security Council adopted Resolution (UNSCR) 1816 (2008) in June which encouraged "States interested in the use of commercial maritime routes off the coast of Somalia, to increase and coordinate their efforts to deter acts of piracy and armed robbery at sea". Then, on 7 October 2008, the Security Council unanimously adopted UNSCR 1838, which was initiated by France and co-sponsored by 19 countries (Belgium, Croatia, the US, UK, Italy, Panama, Canada, Denmark, Spain, Greece, Japan, Lithuania, Malaysia, Norway, the Netherlands, Portugal, Korea and Singapore).

Earlier consideration by the Committee

17.2 On 8 October 2008, the Committee cleared a Joint Action on Military Coordination Action, to establish a military coordination cell (four military officers working from Brussels) tasked to assist Member States' activities in support of UNSCR 1816. The primary objective of the coordination cell was to co-ordinate ships from EU Member States escorting World Food Programme (WFP) shipping bringing humanitarian aid to Somalia. It was also tasked to liaise with the United Nations, as well as other international organisations and actors in the region, in order to secure and provide information on complementary activity.[78]

17.3 There then followed an exchange of correspondence with the Minister for Europe at the Foreign and Commonwealth Office (Caroline Flint), based on the customary letters prior to and after the 15 September GAERC, concerning the Council approval of "a strategic military option for a possible European Union naval operation in the future", about which the Committee asked the Minister to provide further information.

17.4 The Minister for Europe then responded by explaining the reasons for a further Joint Action, which enabled planning for the operation to proceed to the next stage — the appointment of the Operation Headquarters and the Operation Commander, and the costing ceiling for the planned ESDP mission. The Minister explained that the first draft was in French only, and that there had not yet been any further versions; that to maintain momentum in the planning process and to maintain the possibility of launch of the operation in December, the Presidency wished to agree the Joint Action as soon as possible; that this document therefore outlined the key features; and that an updated version would be forwarded as soon as possible. The Minister said that the UK remained committed to international action to counter piracy effectively in the region, and that in addition to existing and ongoing consultation with maritime organisations, effective prevention measures (for example urging the importance of compliance with notices to mariners) and "our existing contribution to counter-piracy activity by the multinational Combined Task Force 150[79] in the Gulf of Aden", the UK continued its effort to tackle on land the causes of piracy in Somalia, the only long term solution to this problem. However, the Minister said, more needed to be done now; in the light of recent developments in the region, and also in response to UN Security Council Resolutions 1816 and 1838, EU member states had agreed that planning should proceed towards a potential operation on the basis of a mission designed to protect shipping in the region, including World Food Programme shipping to Somalia, other humanitarian shipping to Somalia, European flagged ships in the Area of Operations and other flagged ships, as well as creating an additional presence in the Gulf of Aden for deterrence and surveillance of piracy; the operation would be envisaged to last for one year from launch, starting once EU planning had finished — "possibly as early as December, but subject to final ministerial decisions".

78 See headnote: (29953) —: HC16–xxxiii (2007–08), chapter 19 (8 October 2008)

79 Combined Task Force 150 is described US Naval Forces Central Command as "established near the beginning of Operation Enduring Freedom, conducts Maritime Security Operations (MSO) in the Gulf of Aden, Gulf of Oman, the Arabian Sea, Red Sea and the Indian Ocean. MSO help develop security in the maritime environment, which promotes stability and global prosperity. These operations complement the counterterrorism and security efforts of regional nations and seek to disrupt violent extremists' use of the maritime environment as a venue for attack or to transport personnel, weapons or other material. Since its inception, CTF 150 has been commanded by France, Netherlands, UK and Pakistan and Canada. German Navy Rear Adm. Rainer Brinkmann currently commands CTF 150." See http://www.cusnc.navy.mil/command/ctf150.html for full information.

She further noted that the UK would provide both the Operation Headquarters and Operation Commander, at the multinational facilities alongside PJHQ at Northwood.[80] On the basis of initial consultations, she expected the UK share for this financial year to be less than £1million. In both her letter and Explanatory Memorandum she stressed that no Council Decision to implement the operation would be taken until after the Operation Commander's proposed Operation Plan was agreed and sufficient forces to implement the operation had been generated. The Minister said that she expected the Joint Action to be adopted by written procedure no later than 24 October, and undertook to keep the Committee informed.

17.5 The Committee saw no reason not to clear the Joint Action, which plainly responded to UN attempts to tackle a "clear and present danger" to UK and wider interests and was required for the Council to come to an informed view about what such an operation would involve and cost. We looked forward to receiving the earliest possible agreed version, in English, and a fuller explanation then of what had been agreed at that stage. We asked particularly to know if the offer to provide the Operation Commander and Operation Headquarters at the multinational facilities alongside the Permanent Joint Headquarters (PJHQ) at Northwood had been accepted by the Council and what cost had been agreed for the planned ESDP mission.

17.6 We also asked when the Minister expected the Operational Plan to be agreed, and when she would be able to let us have details and her views of it. We noted that we should particularly like to know precisely what command and control arrangements were proposed, and how they would interact with national command structures as well as those of the CTF 150 and NATO; to know what UK and other military assets are likely to be involved; and what the proposed rules of engagement were, particularly with regard to the pirates' equipment and to the treatment of captured pirates. We encouraged the Minister to let us have the answers to any of these questions, if they could be provided ahead of the depositing of the Council Decision itself.

17.7 We also noted that the French government website referred to France, in conjunction with the United States, "having begun discussions this week in the UNSC aimed at adopting, as quickly as possible, a resolution specifically dedicated to combating piracy", which "first aims to organize, from the high seas, a right of pursuit into territorial waters of signatory states, when caught in the act", and which might include "the possibility of having a dissuasive approach, in the form of patrols through those areas most exposed to piracy",[81] and asked for the Minister's views of these wider issues relating to piracy that this prospective further resolution appeared to be seeking to address.

17.8 Looking ahead, we also said that, the Presidency's desires "to maintain momentum" notwithstanding, we expected the draft Council Decision to be submitted, in English and in good time for proper scrutiny, with a full explanation of what was then proposed and at

80 The Permanent Joint Headquarters (PJHQ) was established in April 1996 to enhance the operational effectiveness and efficiency of UK-led joint, potentially joint and multi-national operations, and to exercise operational command of UK forces assigned to multinational operations led by others. See http://www.mod.uk/DefenceInternet/AboutDefence/WhatWeDo/DoctrineOperationsandDiplomacy/PJHQ/ for full information.

81 See http://www.diplomatie.gouv.fr/en/france-priorities_1/organized-criminality_1935/maritime-piracy_6553/index.html

least firm estimates of the overall cost of the operation and of UK participation. In the meantime we cleared the document.[82]

17.9 The Minister wrote on 9 December with further information and to inform the Committee of a Council Decision to launch the EU military operation. She confirmed that the Joint Action had been adopted by the 10 November 2008 GAERC, and that the Council Secretariat was now drafting the Operations Plan (OPLAN), which would describe the logistics and Rules of Engagement of the proposed operation. As well as providing as much detail as possible about the upcoming mission in this letter, the Minister undertook to update the Committee more fully once the draft OPLAN and Council Decision had been issued; however, the Minister explained, given the pressing need to launch this operation and ensure that there was no gap in escorting World Food Programme shipping, she might need to agree the Council Decision at the GAERC on 8–9 December, before scrutiny had been completed. The Minister went on to confirm that Rear Admiral Phil Jones had been appointed Operation Commander and that the Operation Headquarters would be at Northwood, and to outline what the command and control arrangements would be and what interaction there would be with Combined Task Force 150 and NATO forces. She also explained that the UK had offered a Royal Navy frigate for at least part of the operation, subject to ESDP force generation requirements and UK operational priorities, and that enhanced Rules of Engagement had been issued to Royal Navy units:

— they could deter and disrupt those suspected of pirate activity and also seize and dispose of pirate property, including the sinking of unmanned pirate skiffs (small boats);

— but there was at present a lack in UK law of clear arrest and evidence gathering powers for Royal Navy officers, so if Royal Navy officers were to arrest pirates, there was a real risk that such prosecution would fail on procedural grounds if they were brought back to the UK for prosecution (adding that it was not the Government's intention in this operation to bring pirates back to the UK, and that the Department for Transport planned to address this in a forthcoming Bill); and

— for this operation the plan remained to hand over any detained pirates to a state in the region for prosecution, subject to obtaining suitable assurances from that state with respect to treatment, and work was in hand to enable this.

17.10 The Minister then explained that, under the standard ATHENA mechanism that covers funding of ESDP operations, current estimates were that the UK share of common costs for the entire one year operation would be approximately £1.2million.

17.11 The Minister also observed that, though naval operations to counter piracy directly are important and necessary, there was also a need to focus on tackling the root causes of piracy in this area — instability in Somalia. The operation was thus, she said, part of a wider HMG effort to stabilise the region, with DFID already active with a £25 million programme; the European Commission was also providing significant funding which was being discussed with Member States in the light of this planned operation.

82 See headnote; HC 16–xxvi (2007–08), chapter 10 (22 October 2008)

17.12 We expressed our gratitude to the Minister for her endeavours to keep the Committee abreast of a fast moving and complex situation and, in these very particular circumstances, agreed that, should it be necessary, she could agree the Council Decision at the GAERC on 8–9 December, before scrutiny has been completed. We also asked her to submit a full Explanatory Memorandum as soon as possible thereafter, with as much further information as might then be available in relation to all the questions that we had raised earlier, and including comments on the apparent discussions between the French and US governments, referred to in paragraph 17. 7 above, concerning a possible resolution specifically dedicated to combating piracy, which "first aims to organize, from the high seas, a right of pursuit into territorial waters of signatory states, when caught in the act", and which might include "the possibility of having a dissuasive approach, in the form of patrols through those areas most exposed to piracy".[83] In the meantime, we reported these developments to the House because of the level of interest in both ESDP and the problems this operation was seeking to address, and drew it to the attention of the Foreign Affairs and the Defence Select Committees, so that they might be aware of what the Minister had to say.[84]

The Minister's letter of 18 December 2008

17.13 The Minister then wrote to the Committee on 18 December 2008 concerning plans to adopt three Council Decisions "critical to the success of the EU military operation against acts of piracy and armed robbery off the coast of Somalia" which, at the time of writing, the Presidency was asking to be agreed under Written Procedure on 19 December. Describing the decisions as important operationally and "consistent with the incredibly rapid progress of this operation", the Minister said that she was again forced to ask the Committee's approval for override action, and concluded by saying that that the "full scrutiny process will be carried out on all the relevant EU processes as soon as we are able to do so."

17.14 The Minister went on to explain that the UN Political Office for Somalia (UNPOS) had co-hosted a conference on piracy with the Kenyan Government on 10–11 December 2008, at which Lord West (Parliamentary Under-Secretary for Security and Counter-terrorism at the Home Office) had stressed the need for a co-ordinated and comprehensive international response to the increased levels of piracy. However, recalling its size, the Minister said that it was impossible to monitor the whole region effectively; to reduce this risk the EU was seeking contributions from non-Member States, including those in the region, amongst other things to improve information-gathering and sharing on pirate activity; the International Maritime Organization was also considering the establishment of a regional centre.

17.15 The Minister also reported that Lord West was able to sign a Memorandum of Understanding with the Kenyan Foreign Minister that would enable the UK to transfer captured pirates for prosecution in Kenya (and that, with support from British legal advisers, the EU was also seeking similar arrangements with Kenya). Discussions

83 See http://www.diplomatie.gouv.fr/en/france-priorities_1/organized-criminality_1935/maritime-piracy_6553/index.html

84 See headnote: HC 16–xl (2007–08), chapter 17 (26 November 2008).

continued on potential strengthening of UK legislation in this area, but "with agreements in place with regional countries this is now less of an operational priority."

17.16 The Minister also noted that, on 16 December 2008, the UN Security Council had adopted UNSCR 1851 on piracy, which the US drafted and the UK co-sponsored. This called for the establishment of an International Contact Group to all aspects of counter piracy as well as calling for the establishment of a regional information co-ordination centre. The resolution also authorised land operations against pirates. The Minister said that at all times the UK had pressed for relevant international human rights legislation to be upheld and that this was reflected in the resolution. The Government was, she said, satisfied that the 1982 UN Convention on the Law of the Sea provided an adequate legal framework for counter piracy military operations, and was keen to maintain a distinction between piracy and other criminal or terrorist activity. The ICG would focus on the proposals made by experts at the Nairobi conference specifically attempting to address the cause of piracy to ensure that any response was comprehensive, effective and with a long term impact. The ICG would also need to consider measures to build regional capacity to ensure that those States agreeing to accept and prosecute pirates are able to do so to internationally acceptable standards.

17.17 In its response of 14 January 2009, the Committee said that, on the understanding that the Minister would be providing Explanatory Memoranda not only on these 3 Council Decisions but also on the Joint Action adopted by the 8–9 December GAERC launching Operation Atalanta, it did not object to the Minister's action.

The Joint Action

17.18 In her Explanatory Memorandum of 15 January 2009, the Minister for Europe (Caroline Flint) confirms that on 8 December 2008 the GAERC agreed the Joint Action to launch the EU's Naval Force (EU NAVFOR) Counter-Piracy operation off the coast of Somalia, Operation Atalanta. The Minister says that:

— the mission reached Initial Operation Capacity on 13 December, achieving effective handover with the NATO interim mission which terminated the day before;

— the mission so far includes current or planned military contributions (either warships or Maritime Patrol Aircraft) from 8 EU partners (UK, Belgium, France, Greece, Germany, Netherlands, Spain and Sweden) "with others showing a strong interest in participation";

— "the EU continues to push others to do so, including non EU states";

— the Royal Navy is providing HMS Northumberland for the first period of the operation;

— the mission will last until 13 December 2009.

Status of Force Agreement with Somalia

17.19 The Minister confirms that a Status of Forces Agreement (SOFA) between the EU and Somalia was adopted on 22 December 2008 by Written Procedure. She explains that the final version is not available but attaches a draft copy of the EU text after initial

consultation with partners and undertakes to submit the final version once available. In the meantime, the Minister states that the SOFA "allows the EU to freely enter territory (including territorial waters and airspace) of Somalia and total freedom movement thereof; the right to detain pirates in Somalian waters; immunity of Somalian jurisdiction; immunity from all dues, customs etc."

Status of Force Agreements with Djibouti

17.20 The Minister also confirms that a SOFA between the EU and Djibouti was likewise adopted on 22 December 2008 by Written Procedure. She again explains that the final version is not available but attaches a draft copy of the EU text after initial consultation with partners and undertakes to submit the final version once available. In the meantime, the Minister states that the SOFA "gives the EU immunity from Djiboutian jurisdiction; the right to enter, and freedom of movement within, territory of Djibouti including territorial waters and airspace for the purposes of operation; exemption of customs, dues etc excluding visa purchases (currently 25 EU per person)."

EU Kenya Exchange of letters

17.21 The Minister refers to letters that give the right to enter and freedom of movement within the territory (including territorial waters and airspace) of Kenya "strictly limited to the necessities of the operation." The Minister says that:

> "EUNAVFOR personnel are given immunity from penal jurisdiction, and exemption from all dues, customs, etc. EUNAVFOR personnel will abstain from any activity or action incompatible with the objectives of the operation and will respect Kenyan laws and regulations. Negotiations between the EU and Kenya on an agreement on the handover of pirates for trial are now in their final stages. The UK and Kenya concluded a similar agreement on 11 December."

The Government's view

17.22 In her Explanatory Memorandum of 15 January 2009 the Minister says that the Joint Action raises an issue of fundamental rights, and explains that Article 12(1):

> "provides that persons having committed or suspected of having committed acts of piracy or armed robbery in Somali territorial waters or on high seas shall be transferred to the competent authorities of the flag Member State or to the third State participating in the operation of the vessel which took them captive or, if this State cannot or does not wish to exercise jurisdiction, to a Member State or a third State which does wish to exercise its jurisdiction over them."

and that Under Article 12(2):

> "these persons cannot be transferred to a third State, including Somalia, if the conditions of transfer have not been agreed with the third State in conformity with the applicable international law, notably international human rights law, in order to guarantee that no one is submitted to the death penalty, torture or any other cruel, inhuman or degrading treatment."

17.23 The Minister goes on to note that applicable international and human rights law would include Article 7 of the International Covenant on Civil and Political Rights, which she says provides that "No-one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment." The Minister further notes that the same provision is to be found in the Universal Declaration of Human Rights 1948, Article 5.

17.24 The Minister also refers to the 1984 Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, in which she notes that:

— Article 3 (1) provides "that no State Party shall expel, return or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture";

— Article 6 (1) that "Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life";

— Article 6 (2) that "in countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in force at the time of the commission of the crime and not contrary to the provision of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide"; and

— "this penalty can only be carried out pursuant to a final judgement rendered by a competent court. The death sentence cannot be imposed for crimes committed by persons under eighteen years (Article 6 (5) and anyone sentenced to death shall have the right to seek pardon or commutation of the sentence (Article 6 (4))."

17.25 Turning to Operation Atalanta itself, the Minister then says:

> "The UK remains committed to international action to counter piracy effectively in the region. With the growing number of ships seized off the Gulf of Aden over the last six months the UK is committed not only to support EU actions but to play a leading role in Operation Atalanta. We are doing this by providing the Operation Commander, Operation Headquarters and HMS Northumberland for the first period of the mission.
>
> "In addition to supporting the EU operation, the UK consults with maritime organisations, encouraging effective prevention measures and continues with partners (including the European Commission) in its efforts to tackle on land the root causes of piracy in Somalia, which provide the only long term solution to this problem."

17.26 The Minister argues that it is strongly in the UK's interest to support this mission because piracy off the Horn of Africa is threatening a key global economic artery as well as regional trade, and because the UK remains an important centre of global international shipping. She says that the Government has been working closely with the industry and regional partners "in calibrating the international response", welcomes strongly "the active role being taken by the EU in responding to this challenge, working alongside NATO and the multinational Combined Task Forces 150 and 151," and is "pleased to be able to play

the lead role in this value-added EU operation." As of 13 January, the Minister notes, 11 vessels and 215 seafarers are currently detained. She continues as follows:

> "Without international action, including the now central role played by the EU, this problem will deteriorate further. Although in statistical terms overall the problem remains relatively minor when considering the volume of seafaring traffic in the region (reports from the UK's Maritime Trade Operation based in Dubai indicate that while less than 0.1% of the estimated 16000 ships passing through the region annually are captured), the implications for the whole of the shipping industry are increasingly severe. In addition to increased premiums paid to insurers, ship-owners are facing higher wage demands from seafarer associations for working in danger zones. The total sum of the ransoms paid has reached tens of millions of dollars. There is also the key driver that without escorts, vital humanitarian assistance provided by the World Food Programme would cease, endangering the lives of thousands of Somali people."

17.27 The Minister then notes that since the beginning of the EU operation, no merchant vessels registered with Maritime Security Centre-Horn of Africa (MSC-HOA which is run by the EU OHQ) and operating in the wider Gulf of Aden region have been seized by pirates; that that those vessels which have been pirated in this period were all unregistered and often operating outside the internationally advised "safe transit corridor"; and that the focus for the future of the EU operation to encourage greater registration with the MSC-HOA. She adds that a website (www.mschoa.eu) prepared as part of Operation Atalanta "has been well received".

17.28 Turning to the United Nations context, the Minister says that as well as calling for the establishment of a mechanism for international cooperation to deal with all aspects of combating piracy off Somalia's coast, UN Security Council Resolution UNSCR 1851 also called for the establishment of a Contact Group on Somali Piracy (CGSP) with the participation of 22 countries and five international organisations, and that the inaugural meeting of the CGSP will take place in New York on 15 January.

17.29 With regard to wider naval operations against the pirates, the Minister notes that, in addition to the current UK contribution to Operation Atalanta, the Royal Navy currently provides a frigate to the Combined Task Force 150, and that Combined Task Force 151 was launched on 8 January 2008 with a specific counter-piracy mission:

> "We welcome the establishment of CTF 151, and especially the prospect that increased international military capacity may be dedicated to counter-piracy activity. UK participation in CTF 151 is under review. The UK will seek to ensure that all international action to counter piracy is coordinated fully."

17.30 With regard to *Rules of Engagement*, the Minister says that under the UN Convention on the Law of the Sea all States have a duty to cooperate in the repression of piracy:

> "The Royal Navy can take robust action to come to the aid of a victim vessel under attack by pirates in international waters. This can range from deterring and disrupting the attack to the use of reasonable and proportionate force against the

aggressors. The Royal Navy is also able to provide assistance in resolving an incident that has involved UK ships or citizens should it be required."

17.31 Finally, the Minister says that she expects that the UK share of common costs for the entire one year operation will not exceed £1.2 million.

Conclusion

17.32 **We once again thank the Minister for her comprehensive response, and have no further questions at this stage. We should, however, be grateful if the Minister would either deposit an Explanatory Memorandum, or write with details of and her views upon, the review of Operation Atalanta that will no doubt be conducted at the end of its year of operation. We would like that Explanatory Memorandum or letter to include information about what action the Government and the EU has taken in the year ahead to address the root causes of the immediate problem and what the outcomes are by then.**

17.33 **In the meantime, we now clear the documents, and look forward to receiving as soon as possible the final Council Decision regarding the EU-Kenya agreement on the handover of pirates for trial.**

17.34 **We are also once more drawing our report to the attention of the Foreign Affairs and the Defence Committees.**

18 Financial assistance for Latvia

(30332) 5223/09 COM(09) 4	Recommendation for a Council Decision granting mutual assistance for Latvia Draft Council Decision providing medium-term financial assistance for Latvia

Legal base	Article 119 EC; —; QMV
Document originated	8 January 2009
Deposited in Parliament	13 January 2009
Department	HM Treasury
Basis of consideration	EM and Minister's letter of 15 January 2009
Previous Committee Report	None
Discussed in Council	20 January 2009
Committee's assessment	Politically important
Committee's decision	Cleared

Background

18.1 Article 119 EC allows the Commission to investigate the situation of a Member State experiencing difficulties with its balance of payments, or movement of capital. It can then make recommendations to the Member State to bring the situation to an end. If the actions taken by the Member State or the Commission are insufficient they may make recommendations to the Council to grant mutual assistance. Such assistance may include:

- a concerted approach to international organisations;
- measures needed to avoid deflection of trade (where the Member State has maintained or reintroduced quantitative restrictions against third parties); and
- granting of limited credits by other Member States (subject to their agreement).

18.2 Council Regulation EC 332/2002 established a Community medium-term facility for balance of payments support. Pursuant to Article 119 EC this facility can be activated by the Commission, in agreement with the Member State concerned, or at the direct request of the Member State. The facility can be mobilised when a crisis arises or where there is a "severe threat" that one will arise. The total amount outstanding that can be granted to Member States under this facility is limited to €12.00 billion (£11.43 billion). (A proposal to increase the limit to €25.00 billion (£23.81 billion) is under discussion at the moment.)[85] When agreement has been reached, through a Council Decision, to grant a loan to a Member State, the Commission, through the European Central Bank (ECB), borrows the money on financial markets and lends it on to the Member State, with accompanying economic policy conditions, with a view to stabilising the balance of payments.

18.3 The global financial market turmoil has taken a toll on a number of emerging market economies. Latvia approached the Commission and the International Monetary Fund (IMF) on 14 November 2008 to seek balance of payments support.

The document

18.4 The two draft Decisions in this document would agree mutual assistance for Latvia and provide it with Community medium-term financial assistance. In support of the draft decisions the Commission gives details of:

- Latvia's approach to the Community and the IMF;
- recent macroeconomic developments in Latvia;
- public finances there;
- Latvia's financial markets;
- its balance of payment and external financing requirements;
- its economic stabilisation and growth revival programme; and

85 (30106) 15105/1/08: see HC 16–xxxvi (2007–08), chapter 24 (26 November 2008) and *HC Deb*, 20 January 2009, cols. 654–675.

- Community support under a balance of payments facility, as part of the international effort.

18.5 Thus the Commission says that:

- the Latvian economy has accumulated large imbalances in recent years and this situation has been exacerbated by the global financial market crisis and the general deterioration in sentiment towards emerging markets;
- this prompted the Latvian approach to the Commission and the IMF for financial support;
- on 12 December 2008, following tripartite discussions, the Latvian Parliament adopted a proposal for an "Economic Stabilisation and Growth Revival Programme", aimed at maintaining domestic and international confidence in the financial system and contributing to reversing the deteriorating trend in cost competitiveness and inflation;
- in 2008, following strong growth driven by rapid credit expansion over recent years, Latvia entered into recession — labour market conditions eased and inflation started falling. The Commission expects unemployment to continue increasing and inflation to continue decreasing;
- Latvia pursued a pro-cyclical fiscal policy during the boom years despite improving budgetary outturns. The 2008 deficit appears to be close to 3% of GDP and, in view of the tax collection data in the last months of 2008 and deteriorating prospects for 2009, the outlook for public finances became significantly worse than the Commission's autumn forecasts of a 5.6% deficit in 2009 and 6.2% in 2010;
- Latvia's financial sector is almost exclusively dominated by the banking sector. Foreign-owned banks share around 70% of the market and domestically owned banks rely on syndicated loans and non-residents' deposits;
- problems with Parex, the largest domestically owned bank, led to its full nationalisation in December 2008 and imposition of limits on deposit withdrawals. Despite these measures, domestic banks experienced substantial non-resident withdrawals;
- given constrained public finances, restoring confidence in the financial sector through government intervention would only be credible if accompanied by strong international financial support;
- Latvia's economic boom was characterised by the emergence of large external imbalances. Gross external debt exceeded 135% of GDP at the end of 2007 and preliminary estimates show the current account deficit as around 12.5% of GDP in third quarter of 2008 (down from over 27% in the fourth quarter of 2006);

- foreign currency reserves decreased by around 25% between the beginning of October and early December 2008, jeopardising the viability of Latvia's exchange rate peg;[86]
- external financing is expected to remain under significant pressure for some time and there is a serious threat to the Latvian balance of payments;
- the Commission therefore recommends granting mutual assistance to Latvia, as in the first draft Decision;
- Latvia's external financing needs up to first quarter of 2011 are estimated at €7.50 billion (£7.10 billion);
- on 23 December 2008 the IMF Board approved a 27-month Stand-By Agreement (SBA)[87] worth €1.70 billion (£1.60 billion). The SBA, which amounts to about 1200% of Latvia's quota,[88] aims to control the immediate liquidity crisis and to ensure long-term external stability, while maintaining the country's exchange rate peg;
- the key objectives of the economic stabilisation and growth revival programme include measures to address weaknesses in the financial sector, substantial front-loaded fiscal tightening, consisting of increases in VAT and excise rates, cuts in public sector nominal wages and reduction in current spending, debt restructuring, mainly relating to external debt owed by the private sector, structural measures in the area of incomes policies, fiscal discipline and budget process and management and a number of structural reform measures;
- other international financial assistance consists of €2.20 billion (£2.10 billion) in bilateral loans from the Nordic countries, the Czech Republic, Estonia and Poland and €0.50 billion (£0.48 billion) from the World Bank and the European Bank for Reconstruction and Development;
- as part of the program, foreign parent banks operating in Latvia have affirmed their commitment to providing their subsidiaries with adequate financing;
- to help bring the total external financing up to the required amount of €7.50 billion and help bolster the Latvian economy hit by the ongoing financial market turbulence and loss of investor confidence the Commission suggests that it is appropriate for the Community to provide support to Latvia of up to €3.10 billion (£2.90 billion) from its medium-term facility for balance of payments and proposes the second draft Decision, to that effect; and

86 The Latvian lats has been pegged to the euro since 2005, when Latvia joined ERM II. The Bank of Latvia has been targeting a narrower fluctuation margin against the euro (+/-1%) than the prescribed maximum (+/- 15%).

87 IMF Stand-By Arrangements form the core of the IMF's lending policies, providing assurance to member countries that they can draw up to a specified amount.

88 Each member country of the IMF is assigned a quota, based broadly on its relative size in the world economy. A member's quota determines its maximum financial commitment to the IMF, its voting power, and has a bearing on its access to IMF financing.

- the Community assistance, if agreed by the Council, will be managed by the Commission — the specific economic policy conditions agreed with Latvia are consistent with those in the economic stabilisation and growth revival programme, and will be laid down in a Memorandum of Understanding — assistance would be conditional on policies to restore long-term stability by strengthening the banking sector, correcting fiscal imbalances and adopting domestic policies that will improve competitiveness, while maintaining the narrow-band exchange rate at its existing central rate.

The Government's view

18.6 In his Explanatory Memorandum and letter of 15 January 2009, the Economic Secretary to the Treasury (Ian Pearson) tells us that the Government is in full support of providing assistance to Latvia through the medium-term facility for balance of payments support and believes that in the current economic climate the Community must act in a decisive and coordinated manner to support the needs of all Member States and protect the functioning of the single market. The Minister says that there are no direct financial implications for the UK arising from this proposal. The loans financed by ECB borrowing on capital markets are underwritten by the Community, which would only be called upon in the case of a default in the repayment of the loan.

18.7 The Minister also tells us of the Government's intention to vote in favour of the Council Decisions at the ECOFIN Council of 20 January 2009. He apologises that this means that we have not been given time to scrutinise the proposal but explains that Latvia's application for assistance has been submitted and discussed within a very short time frame, that the Government believes that it is necessary to provide rapid support to Latvia in order for it to be effective and that, given the exceptional circumstances and the urgency of providing rapid and effective support to Member States in crisis to prevent wider ramifications, the Government believes also that it would be inappropriate for the UK to stand in the way of the assistance being granted.

Conclusion

18.8 **In clearing this proposal from scrutiny we draw it to the attention of the House as one of the many present international and national measures undertaken in relation to the financial situation.**

18.9 **We note and accept the Minister's apology and explanation for this breach of the scrutiny reserve resolution, but we stress the importance of us being informed as to any further similar proposals as quickly as possible.**

18.10 **Moreover, we draw the attention of the Treasury Committee to this document in view of the significance of the Community's involvement in this package of assistance to Latvia.**

19 Recovery of the proceeds of crime

(30214) 16123/08 COM(08) 766	Commission Communication on the proceeds of crime. *Ensuring that "crime does not pay"*

Legal base	—
Document originated	20 November 2008
Deposited in Parliament	28 November 2008
Department	Home Office
Basis of consideration	EM of 8 December 2008
Previous Committee Report	None ; but see (27399) 6589/2/06 HC 34–xxvii (2005–06) chapter 7 (10 May 2006)
To be discussed in Council	No date set
Committee's assessment	Legally and politically important
Committee's decision	Cleared

Background

19.1 A number of instruments adopted under the EU Treaty seek to address the issue of tracing and recovering the proceeds of crime and other property related to the commission of crimes. A Council Framework Decision of 22 July 2003 addresses certain aspects of judicial cooperation in criminal matters in relation to the freezing of property or evidence[89] and a further Council Framework Decision of 24 February 2005 provides for the confiscation of crime-related proceeds, instrumentalities and property.

19.2 In 2004, Austria, Belgium, Germany, Ireland, the Netherlands and the United Kingdom agreed to establish the Camden Assets Recovery Inter-Agency Network (CARIN). CARIN, which is based in The Hague, is a network of practitioners and experts in the cross-border identification, freezing, seizure and confiscation of the proceeds of crime and other property related to crime and seeks to enhance knowledge of methods and techniques in this field.

19.3 On 10 and 17 May 2006 we considered a draft Framework Decision which was intended to build on the creation of CARIN by providing for the creation and designation by the Member States of Asset Recovery Offices, which would operate as contact points for the CARIN network. We saw no reason to dissent from the judgment of the then Minister that the proposal might bring some added value to the existing informal arrangements. We therefore cleared the documents from scrutiny. The resulting Framework Decision (2007/845/JHA) was adopted in December 2007.[90]

89 OJ No L 196 of 2.08.03, p.45.

90 OJ No L 332 of 18.12.07, p.103.

The Commission's Communication

19.4 The Commission's Communication "Proceeds of organised crime. Ensuring that crime does not pay" reviews the adoption and state of implementation of the above instruments and considers possible future developments at EU level. The Commission concludes that the existing legal measures are only partly transposed, with some provisions of the Framework Decision being unclear with the result that transposition into national legislation is "patchy". The Commission considers that a recasting of the existing EU legal framework should be considered.

19.5 The Communication also explains that the Commission intends to explore the possibility of extending some of the existing legal concepts and of introducing new rules to increase the possibilities for confiscation. Such measures would include provision for civil confiscation (confiscation which is not made dependent on a prior criminal conviction) in cases where it is shown, on the balance of probabilities, that assets are derived from the proceeds of crime, or where the person suspected of certain serious crimes is either dead, a fugitive or is "otherwise not available for prosecution", or in cases where cash is seized following a breach of Regulation (EC) No.1889/2005 on controls of cash entering or leaving the Community.[91]

19.6 A further possible measure would be the creation of a new criminal offence of owning "unjustified" assets to recover the proceeds of crime where assets are disproportionate to the declared income of the owner and the person in question has habitual contacts with known criminals. The Communication explains that in such a case the matter would be dealt with by a criminal court and "the burden of proof would not be fully reversed".[92]

19.7 The Communication also suggests that the mutual recognition of foreign freezing and confiscation orders could be expanded to include cases where the foreign order is based on a procedure which is not applicable in the executing State, and that the scope of mandatory confiscation could be extended. The Communication also refers to the 2001 Protocol to the EU Convention on Mutual Assistance in Criminal Matters[93] which it describes as not having been ratified by a sufficient number of Member States to allow it to enter into force. The Communication explains that the Protocol requires Member States to provide details of bank accounts and banking operations of identified persons, notwithstanding rules on banking secrecy. The Communication concludes that replacing the Protocol with new provisions "would allow the Commission to accelerate efforts in order to give them full effect".

19.8 The Communication also calls for greater cooperation between asset recovery offices and the more rapid exchange of information between them. The Communication refers to the adoption of Council Decision 2007/845/JHA on cooperation between Asset Recovery Offices of the EU, which requires Member States to establish or designate a national Asset Recovery Office by 18 December 2008. The Communication argues that, once national

91 OJ No L 309 of 25.11.05, p.9.

92 The communication does not explain what is meant by not fully reversing the burden of proof. Neither does the communication further explain the nature of the offence, save to state that this new type of criminal offence has been introduced in France 'and is proving to be very effective'.

93 OJ No. C 326 of 21.11.01, p.1.

Asset Recovery Offices are designated or established in all Member States, consideration should be given to entrusting a coordinating role to Europol and that national authorities should involve Eurojust to a greater extent in order to facilitate the mutual recognition of freezing and confiscation orders.

19.9 With regard to international cooperation, the Communication states that close international cooperation should be developed with third countries but suggests, without further explanation, that "the existing EU legal instruments do not sufficiently address these aspects." The Communication does, however, refer to the UN Convention on Transnational Organized Crime (UNTOC) and the Council of Europe Conventions on Money Laundering and Confiscation.

19.10 After describing a number of "non-legislative flanking measures" (such as providing for access by recovery offices to national registers, minimum training standards for financial investigators and an improvement in the keeping of statistics on frozen or confiscated assets) the Communication concludes by setting out ten strategic priorities. These are (i) a recasting of the existing EU legal framework, (ii) implementation of Council Decision 2007/845/JHA by designation or establishment of Asset Recovery Offices, (iii) removal of practical obstacles to confiscation procedures in the Member States, (iv) regular meetings of Asset Recovery Offices, (v) adoption of systems (such as peer evaluation) of effectiveness of Asset Recovery Offices, (vi) involvement of Eurojust in facilitating cooperation and facilitating mutual recognition in confiscation matters, (vii) a common training programme for financial investigators, (viii) development of improved statistics on assets frozen, confiscated and recovered, (ix) consideration of means of making information available to Asset Recovery Offices in other Member States and in third countries and (x) cooperation between Europol, Eurojust and the Member States to improve the availability of information including the creation of a list of outstanding freezing and confiscation orders in the EU.

The Government's view

19.11 In his Explanatory Memorandum of 8 December 2008 the Parliamentary Under-Secretary of State at the Home Office (Alan Campbell) explains that improving asset recovery is a high priority for the UK and that the UK generally supports the ten strategic priorities set out by the Commission. The Minister comments that careful consideration would need to be given to any proposals to recast the EU legal framework and to some of the further legal provisions suggested in the Communication, although proposals aimed at simplification and better regulation would be supported.

19.12 The Minister adds that the Government welcomes the proposal to explore the concept of confiscation not being dependent on a conviction and points out that provisions for the civil recovery of the proceeds of crime are already contained in the laws of the UK and have been used successfully.

19.13 The Minister notes that the UK has already implemented Council Decision 2007/835/JHA and has designated the Serious Organised Crime Agency (SOCA) as the asset recovery office for England and Wales and Northern Ireland, and the Scottish Crime and Drug Enforcement Agency as the asset recovery office for Scotland. The Minister further notes that the Communication recommends additional powers for asset recovery

offices which are not contained in the existing Council Decision, and a number of which the UK is unlikely to be able to support in their present form.

19.14 In further comments on the ten strategic priorities, the Minister considers that (v) is premature as there needs first to be a common understanding of what an asset recovery office will do before any central review of effectiveness occurs, and that the proposal for a common training programme for financial investigators (vii) is welcome in principle but is likely to give rise to considerable practical difficulties due to the differences in national legislation. Finally, the Minister states that the UK welcomes the suggestion for the involvement of Eurojust and Europol.

Conclusion

19.15 **We agree with the Minister's cautious welcome for the Communication. Whilst a pure consolidation of existing EU measures is unlikely to raise problems, any further new measures will need to be considered in detail. In particular, the scope and effect of any new offence of possessing "unjustified" assets will need close examination to ensure the provision of sufficient safeguards against the risk of injustice.**

19.16 **Since any legislative proposals will need to be deposited and examined in the normal way, we see no reason to hold the present document under scrutiny.**

20 Signature of Council of Europe Convention No 198 (laundering, search, seizure and confiscation of the proceeds of crime and on the financing of terrorism)

(30242) — —	Revised Draft Council Decision concerning the signing, on behalf of the European Community, of Council of Europe Convention No. 198 on laundering, search, seizure and confiscation of the proceeds of crime and on the financing of terrorism

Legal base	Articles 47(2), 95 and 300(2) EC; -; QMV
Deposited in Parliament	9 December 2008
Department	Home Office
Basis of consideration	EM of 17 December 2008
Previous Committee Report	None; but see (26860) HC 34–viii (2005–06) chapter 20 (2 November 2005)
To be discussed in Council	No date set
Committee's assessment	Legally and politically important
Committee's decision	Cleared

Background

20.1 The 1990 Council of Europe Convention on laundering, search, seizure and confiscation of the proceeds of crime was revised and updated to include provisions on terrorist financing, a revised Convention was adopted in Warsaw in 2005.

20.2 On 2 November 2005 we considered, and cleared from scrutiny, a draft Council Decision which would allow the European Community to sign the revised Convention. Although the Commission would act on behalf of the European Community, it would have no power (unlike a Council of Europe Member State) to decide on amendments to the Convention or on the admission of new parties. The Commission was concerned over what it saw as a limitation on the exercise of the Community's external competence, but this concern was not shared by most Member States, because they considered that the principal subject matter of the Convention was outside EC competence, with only elements, such as those relating to the use of financial system for money-laundering, being within EC competence.

20.3 Article 49 of the Convention provides that the European Community may sign and ratify the Convention, but there is no requirement in the Convention that the Community should make any declaration as to the extent of its competence, although it is open to the Community to do so under the Convention. The Commission has not provided such a declaration. However, Article 52(4) provides that members of the European Union shall, in their mutual relations, apply Community and European Union rules in so far as there are Community or European Union rules governing the particular subject concerned and applicable to the specific case, without prejudice to the object and purpose of the Convention and without prejudice to its full application with other Parties.

The revised draft Council Decision

20.4 The revised draft Council Decision contains a new recital (4a) which records that the subject-matter of the Convention falls partly within Community competence and partly within the competence of Member States. The recital notes that Article 47 of the Convention includes provisions on international cooperation in relation to postponing suspicious transactions and that this matter falls within the competence of the Member States. The recital provides that authorisation should be given for the signing of the Convention on behalf of the Community to the extent that the Convention falls within the sphere of Community competence.

20.5 The document also contains a declaration by the Commission for inclusion in the minutes of the Council noting that the voting of amendments and the acceptance of new contracting parties "do not allow the Community to exercise fully its external competence on the same basis as other parties, even though the Community will be subject to all the obligations set out in the Convention".[94] The Commission's declaration states that "it views this choice with great concern given its role as guardian of the Treaties and given the case law of the Court of Justice".

94 This seems, at least, to be an exaggeration of the position since the Community may only be bound to extent of its competence and is not therefore comparable to the States which are party to the Convention.

The Government's view

20.6 In his Explanatory Memorandum of 17 December 2008 the Parliamentary Under-Secretary of State at the Home Office (Alan Campbell) explains that the proposal for the Community to sign the Convention is not of itself contentious, but that it is the matter of Community competence that the UK has questioned for some time. The Minister explains that the UK has asked the Commission to make a declaration as to competence as the Convention states it may. The Minister notes that the Commission has not to date made any such declaration neither has it indicated that it intends to do so.

20.7 The Minister further explains that the UK has specific concerns in relation to Article 47, since the UK's Financial Intelligence Unit (FIU) which is situated within the Serious Organised Crime Agency does not have the power, either in domestic or international cases, to postpone suspicious transactions at the request of a foreign FIU. To address this concern, the Minister explains that the UK will make a reservation in relation to Article 47 on the basis that this is an area within Member State competence, and is so recorded in the recital to the Council Decision.

Conclusion

20.8 **We are grateful to the Minister for his helpful Explanatory Memorandum and for elucidating what may appear to be an arcane subject. It is regrettable that the Commission has not thought it fit to produce a declaration of competence, since this is both a well-established practice and might well have permitted the proposal to have been adopted some time ago.**

20.9 **Given the Minister's detailed explanation, we see no reason to hold the document under scrutiny.**

21 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

(30296) 16090/08 COM(08) 759	Draft Council Regulation imposing a definitive anti-dumping duty on imports of certain welded tubes and pipes of iron or non-alloy steel originating in Belarus, the People's Republic of China and Russia following a proceeding pursuant to Article 5 of Regulation (EC) No.384/96, originating in Thailand following an expiry review pursuant to Article 11(2) of the same Regulation, originating in the Ukraine following an expiry review pursuant to Article 11(2) and interim review pursuant to Article 11(3) of the same Regulation and terminating the proceedings in respect of imports of the same product originating in Bosnia and Herzegovina and in Turkey.
(30328) 17309/08 COM(08) 851	Draft Council Regulation amending Regulation (EC) No.367/2006 imposing a definitive countervailing duty on imports of polyethylene terephthalate (PET) film originating in India and amending Regulation (EC) No.1292/2007 imposing a definitive anti-dumping duty on imports of polyethylene terephthalate (PET) film originating in India.

Foreign and Commonwealth Office

(30342) — —	Council Common Position amending Common Position 2008/369/CFSP concerning restrictive measures against the Democratic Republic of Congo.

Department for Innovation, Universities and Skills

(30247) 16896/08 + ADDs 1-3 COM(08) 801	Draft Directive repealing Council Directives 71/317/EEC, 71/347/EEC, 71/349/EEC, 74/148/EEC, 75/33/EEC, 76/765/EEC, 76/766/EEC, and 86/217/EEC regarding metrology.

Office of National Statistics

(30112) 15186/08 COM(08) 677	Draft Regulation amending Regulation (EC) No. 808/2004 concerning Community statistics on the information society.

Formal minutes

Wednesday 21 January 2009

Members present:

Michael Connarty, in the Chair

Mr William Cash
Mr James Clappison
Jim Dobbin
Mr David Heathcoat-Amory
Kelvin Hopkins
Mr Bob Laxton
Angus Robertson
Mr Anthony Steen
Richard Younger-Ross

1. Scrutiny of Documents

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

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

Paragraphs 1.1 to 1.10 read and agreed to.

Paragraph 2, Headnote read.

Amendment proposed in line 25, to leave out the words "Cleared, but further information requested", and to insert the words "Not cleared; for debate in European Committee B". —*(Mr William Cash.)*

Question put, That the Amendment be made.

The Committee divided.

Ayes, 5	Noes, 3
Mr William Cash	Jim Dobbin
Mr James Clappison	Mr Bob Laxton
Mr David Heathcoat-Amory	Angus Robertson
Kelvin Hopkins	
Richard Younger-Ross	

Headnote, as amended, agreed to.

Paragraphs 2.1 to 2.27 read and agreed to.

Paragraph 2.28, read, amended and agreed to

Paragraphs 3.1 to 5.21 read and agreed to.

Paragraph 5.22 read, amended and agreed to.

Paragraphs 5.23 to 18.8 read and agreed to.

Paragraph 18.9 read, amended and agreed to.

Paragraph 18.10 read, amended and agreed to.

Paragraphs 19.1 to 21 read and agreed to.

Resolved, That the Report as amended be the Fifth Report of the Committee to the House.

Ordered, That the Chairman make the Report to the House

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[Adjourned till Wednesday 28 January at 2.30pm.

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*)