House of Commons

European Scrutiny Committee

Fifteenth Report of Session 2008–09

Documents considered by the Committee on 1 April 2009, including the following recommendation for debate:

The EU Eastern Partnership

HC 19-xiii

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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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Report

1 The EU Eastern Partnership

(a) (30248) 16940/08 COM(08) 823	Commission Communication: *Eastern Partnership*
(b) (30249) 16941/08 SEC(08) 2974	Commission Staff Working Document accompanying the Commission Communication *Eastern Partnership*

Legal base	—
Document originated	3 December 2008
Deposited in Parliament	10 December 2008
Department	Foreign and Commonwealth Office
Basis of consideration	Minister's letter of 30 March
Previous Committee Report	HC19–xi (2008–09), chapter 5 (18 March 2009) and HC19–ii (2008–09), chapter 7 (17 December 2008)
Discussed in Council	11–12 December European Council
Committee's assessment	Politically important
Committee's decision	Not cleared; for debate in European Committee B

Background

1.1 The June 2008 European Council initially discussed the idea of an Eastern Partnership (EaP), based on a Polish/Swedish proposal. It envisaged "enhancing EU policy towards eastern European Neighbourhood Policy (ENP)[1] partners in bilateral and multilateral formats", and agreed on:

> "the need to further promote regional cooperation among the EU's eastern neighbours and between the EU and the region, as well as bilateral cooperation between the EU and each of these countries respectively, on the basis of differentiation and an individual approach, respecting the character of the ENP as a single and coherent policy framework."

1.2 It said that such cooperation "should bring added value and be complementary to the already existing and planned multilateral cooperation under and related to the ENP, in particular the Black Sea Synergy and the Northern Dimension", and invited the Commission to take the work forward and present to the Council in Spring 2009 "a proposal for modalities of the "Eastern Partnership", on the basis of relevant initiatives."[2]

1 According to its website, the ENP was developed in 2004 "with the objective of avoiding the emergence of new dividing lines between the enlarged EU and our neighbours and instead strengthening the prosperity, stability and security of all concerned." See http://ec.europa.eu/world/enp/index_en.htm for full information.

2 Paragraphs 68–70; see http://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressData/en/ec/101346.pdf for the full Council Conclusions.

1.3 The Extraordinary Council on 1 September, which met to discuss the crisis in Georgia, noted with concern the impact of the crisis on the whole of the region, and considered that it was "more necessary than ever to support regional cooperation and step up its relations with its eastern neighbours, in particular through its neighbourhood policy, the development of the "Black Sea Synergy" initiative and an "Eastern Partnership". The Council indicated that it now wished to adopt this partnership in March 2009 and, to this end, invited the Commission to submit its proposals sooner, in December 2008.[3]

The Commission Communication

1.4 The Committee considered this Commission Communication (with the Commission Staff Working Document) last December. It outlines proposals for a "step change" within the European Neighbourhood Policy (ENP) in relations with the six Eastern neighbours — Ukraine, Moldova, Belarus, Georgia, Armenia and Azerbaijan — "without prejudice to individual countries' aspirations for their future relationship with the EU." The Eastern Partnership (EaP) "should bring a lasting political message of EU solidarity, alongside additional, tangible support for their democratic and market-oriented reforms and the consolidation of their statehood and territorial integrity". The EaP will serve "the stability, security and prosperity of the EU, partners and indeed the entire continent", and "will be pursued in parallel with the EU's strategic partnership with Russia". The main proposals are set out in our previous Reports; in sum they are:

— new Association Agreements (AAs) between the EU and each partner country, to encourage these countries to adopt EU norms and standards, both in terms of democracy and governance as well as technical standards for trade, energy and other sectors, and advance cooperation on CFSP and ESDP;

— a Comprehensive Institution Building programme (CIB) to help build partners' administrative capacity to meet commitments and conditions arising from the AAs;

— a deep and comprehensive free trade agreement between each EaP country, with a longer term vision of creating a neighbourhood economic community;

— individual country mobility and security pacts: encompassing both labour mobility and cooperation on tackling illegal migration, border management aligned to EU standards, and enhanced efforts to fight organised crime and corruption;

— talks on visa facilitation with partners: improved consular coverage; roadmaps to waiving visa fees from Schengen countries and increased EU support for national strategies to tackle organised crime, trafficking etc (with non-Schengen countries such as the UK invited to take parallel steps);

— policies to promote energy security;

3 See http://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressData/en/ec/102545.pdf for the full Council Conclusions

— a new multilateral forum to allow EU member states to share information with the Eastern Partners to help these countries to modernise, with an annual meeting of Foreign Ministers and a biennial meeting of Heads of State and Government; and

— third countries (eg other Black Sea Synergy partners like Russia and Turkey) could be involved in various projects if all the partners agreed.

1.5 The proposal was strongly supported by the Minister for Europe at the Foreign and Commonwealth Office (Caroline Flint). But, as the Commission itself pointed out, significant additional resources would be needed. With "significant pressures on the ENP Instrument due to reallocation of funding for the Georgia crisis and on-going support to the Palestinian Territories", the Commission estimated it would need €600 million extra in this budget to support the implementation of the EaP; €250 million had been found from the existing ENPI envelope (2010–2013), mainly through re-prioritisation of funds from the Regional East Programme; but an additional €350 million of new money would be required. Detailed Commission proposals were awaited: "further re-prioritisation in the framework of the budget mid-term review [would] need to be carefully balanced with the needs, expectations and current initiatives (such as the Union for the Mediterranean) for the Southern neighbours."

1.6 The Committee recognised that the EaP "business case" was well made. But in addition to the immediate challenge of adequate funding, the Committee noted that success would require the sort of commitment by all concerned that has so far eluded the most well-established precursor, the moribund Barcelona Process, which the Union is in the process of endeavouring to reinvigorate: could the Union do both successfully when success with one had so far been limited? We also wondered what Russia's reaction was likely to be. The Committee therefore indicated that it was minded to recommend the Communication for debate in the fullness of time, but first asked the Minister to write, in good time ahead of the Spring European Council (when the December European Council envisaged "this ambitious initiative being approved") with details of the Commission's eventual financial proposals and other aspects of its response to the Council's invitation to study [the proposals in the Communication] and report back prior to that Council.

1.7 In the meantime we retained the document under scrutiny.

The Minister's letter of 12 March 2009

1.8 The Minister said that, since her Explanatory Memorandum of November 2008, there had been "some progress in discussions on the issues" she mentioned. Member States were "broadly content" with the proposed aims, principles and framework for the Eastern Partnership: a bilateral and a multilateral dimension, regular meetings at Head of government level and at foreign minister level, thematic platforms taking forward work on agreed areas including energy, economic integration and convergence with EU policies, people-to-people contacts and democracy, good governance and stability. Following official level discussions covering trade, JHA issues, energy, migration and development, the February General Affairs and External Relations Council gave broad approval to the plans at a conceptual level; the 19–20 March Spring European Council was expected to endorse short conclusions, with a declaration annexed to them; and the Presidency would

host a Summit to launch the Eastern Partnership on 7 May in Prague, which would include a joint statement.

1.9 But there had been "some more difficult aspects":

> *Financing*: the Commission had found €250 million from the regional East envelope within the European Neighbourhood and Partnership Instrument (ENPI). It was now proposing to find the other €350 million for 2010–13 from the budget set aside for crises and to accommodate unforeseen expenditure. The Minister was concerned that sufficient money should be left to cover other priorities that may arise, e.g. Kosovo and Palestine; she was reassured to the extent that the Commission would need Council approval for allocations to Eastern partner countries on an annual basis, which would enable other claims on the margins and other external relations priorities to be considered. She now expected more detailed discussions in the run-up to the 7 May Summit through the EU's annual budgetary process; although Member States had acknowledged the need for adequate financing to enable the Partnership to achieve its political goals, some were concerned that the funding would affect the informal agreement to split ENPI funding by one third for the East and two thirds for the South, even though the Commission had given an assurance that funding for EaP would not come at the expense of resources for the South.
>
> *Mobility*: the Minister was broadly content that the Eastern Partnership proposals should promote the mobility of citizens as long as important conditionality remained built in — for example, that steps towards any visa liberalisation took place gradually, as a long-term aim and on a case-by-case basis, and provided that conditions on improved migration management were in place; the UKBA wanted to guard against any decisions that could increase migratory pressures from any of the six into the UK, and were keen that the UK's position outside of the Schengen region was recognised and that the UK's independent mechanisms for managing migration, such as the visa waiver test, were not threatened.
>
> *Third country involvement*: The Minister was content with the February GAERC decision that third countries such as Russia and Turkey should be invited to participate in Eastern Partnership projects on a case by case basis, but not in the launch summit on 7 May itself; and professed herself keen that communication with Russia on the Eastern Partnership should be fully transparent, to make clear that it was not conceived as an anti-Russian initiative.
>
> *Belarusian participation*: a decision on the level of Belarusian participation at the Launch Summit would be taken in April, nearer the time; Belarusian recognition of South Ossetia and Abkhazia would make their participation in a Summit with Georgia very difficult.

1.10 Finally, looking ahead to the substance of the Summit, the Minister wanted to see a substantive agenda, for example including a discussion of cooperation on energy and economic issues, to reinforce this focus and to help emphasise that the EU was not just considering solutions for Member States but was "reaching out to support Eastern neighbours too."

1.11 We doubted that information seven days before was "in good time before" the European Council, since it made impossible what was our clear intention: that this proposal be debated before then. Nonetheless, the Minister's comments made it clear that there were still sufficient ambiguities — particularly over finance, movement controls, the views of Russia and the involvement of Belarus, with whom the EU has had major difficulties over governance issues — for a debate to be warranted. That debate is now to take place in European Committee B on 27 April.

The Minister's letter of 30 March 2009

1.12 The Minister writes to update the committee following discussion at the Spring European Council:

> "The Spring European Council's endorsement was an important step forward. The Council also gave the go-ahead for preparation of the Eastern Partnership launch Summit on 7 May. The adopted Conclusions, which included a detailed Declaration setting out the aims, principles and process involved for the Eastern Partnership, were helpful and broadly reflect our objectives.[4] We were pleased that the Declaration set a high level of political ambition in line with the Commission's Communication of 3 December 2008. The Eastern Partnership has the goals of significantly strengthening EU policy with regard to the Eastern partners, including supporting reforms and facilitating approximation with EU law and convergence with EU standards. We were also pleased that the Declaration contained a reference to partners' participation being without prejudice to their aspirations for their future relationship with the EU; this safeguards our concern that the EU should keep the door open to potential membership for those partners who have such aspirations and who might meet the membership criteria in the future.
>
> "We will continue to support the Presidency in its preparations for the Eastern Partnership Summit on 7 May. The Summit gives us the opportunity to highlight the contribution that the Eastern Partnership will make in offering support for the political and economic reforms that will help partners in the current economic difficulties. It may be possible to prioritise practical support through fast-track projects. We should also highlight the medium term benefits to partners of closer economic integration with the EU.
>
> "The full details of the Commission's financing proposals have yet to be discussed. Our approach will be to balance our political support for the Partnership with our wish for budget discipline and improvements in the delivery of EU assistance including better resource allocation based on needs and absorption capacities. My officials will be exploring with HMT, DFID and the Commission what scope there might be for further redeployment of financing from the existing ENPI envelope and for ensuring that adequate budget margins are maintained, in line with the Council's conclusions.

4 The Declaration is at the Annex to this chapter of our Report, and the conclusions are available at http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/106809.pdf.

> "We have concerns about human rights and democracy in a number of the partners. Belarus has been the focus of particular concern (my letter to you of 20 March refers). The issue of whether to invite President Lukashenko to the Summit will be given further consideration by the Presidency and EU partners in the coming weeks. More broadly, the Summit will provide an opportunity to encourage governance and human rights reform in the region through engagement."

Conclusion

1.13 **The Minister concludes her letter by looking forward to the debate, as do we, and consider this chapter of our Report relevant to it.**

Annex: Declaration by the European Council on the Eastern Partnership

1. Promoting stability, good governance and economic development in its Eastern neighbourhood is of strategic importance for the European Union. The EU therefore has a strong interest in developing an increasingly close relationship with its Eastern partners, Armenia, Azerbaijan, Belarus, Georgia, the Republic of Moldova and Ukraine. The European Union's proposal for an ambitious Eastern Partnership to be established with these countries serves this objective. The Eastern Partnership will bring about a significant strengthening of EU policy with regard to its Eastern partners by seeking to create the necessary conditions for political association and further economic integration between the European Union and its Eastern partners through the development of a specific Eastern dimension of the European Neighbourhood Policy. To achieve this, the Eastern Partnership seeks to support political and socio-economic reforms, facilitating approximation and convergence towards the European Union. In the same vein, the Eastern Partnership will help to build trust and develop closer ties among the six Eastern partners themselves.

2. Work under the Eastern Partnership will go ahead without prejudice to individual participating countries' aspirations for their future relationship with the European Union. The Eastern Partnership will be governed by the principles of joint ownership, differentiation and conditionality. Shared values including democracy, the rule of law, and respect for human rights will be at its core, as well as the principles of market economy, sustainable development and good governance. Increased European Union engagement will be in line with the main goals of the Eastern Partnership, depending on the progress made by individual partners. Increased financial support in line with the Commission's proposal of €600m for the period to 2013 will respect the resources available under the multiannual Financial Framework, including adequate margins.

3. There will be effective complementarity between the Eastern Partnership and existing regional initiatives in the EU's neighbourhood, in particular the Black Sea Synergy. The European Council underlines the EU's commitment to strengthen the Black Sea Synergy

and to support its implementation, noting that its focus is on regional cooperation in the Black Sea region, whereas the Eastern Partnership focuses on approximation and will strengthen the links of partner countries with the EU. The Eastern Partnership will also be developed in parallel with the bilateral cooperation between the EU and third countries.

4. Bilateral cooperation under the Eastern Partnership should provide the foundation for new Association Agreements between the EU and those partners who have made sufficient progress towards the principles and values set out in paragraph 2 above and who are willing and able to comply with the resulting commitments including the establishment, or the objective of establishing, deep and comprehensive free trade areas. The European Union's Comprehensive Institution-Building Programmes will help the participating countries to improve their administrative capacity. The Eastern Partnership will promote mobility of citizens of partner countries through visa facilitation and readmission agreements. The EU, in line with the Global Approach to Migration, should also take gradual steps towards full visa liberalisation as a long term goal for individual partner countries and on a case by case basis provided that conditions for well-managed and secure mobility are in place. The Eastern Partnership aims to strengthen the energy security cooperation of all participants with regard to long-term energy supply and transit, including through better regulation and energy efficiency. It will put at the disposal of partners the EU's expertise in social and economic development policies.

5. The multilateral framework of the Eastern Partnership will provide for cooperation activities and dialogue serving the objectives of the Partnership. It should operate on a basis of joint decisions of EU member states and Eastern partners, without prejudice to the decision making autonomy of the EU. The European Council proposes to hold regular meetings in principle once every two years at the level of Heads of State or Government of the Eastern Partnership, and once a year at the level of Foreign Ministers. Four thematic platforms should be established according to the main areas of cooperation (Democracy, good governance and stability; Economic integration and convergence with EU policies; Energy security; and Contacts between people). The European Council also supports the launching of Flagship Initiatives in order to give momentum and concrete substance to the Partnership. The EU looks forward to an early discussion with the partners in this regard. Third countries will be eligible for participation on a case-by-case basis in concrete projects, activities and meetings of thematic platforms, where it contributes to the objectives of particular activities and the general objectives of the Eastern Partnership.

6. The Eastern Partnership will engage a wide range of actors, including government ministries and agencies, parliaments, civil society, international organisations, financial institutions and the private sector.

7. On the basis of this Declaration, the EU will conduct the necessary consultations with Eastern partners with a view to preparing a Joint Declaration on the Eastern Partnership to be adopted at the Eastern Partnership launching summit on 7 May 2009. The European Council looks forward to launching the Eastern Partnership as a common endeavour with partners, being confident that this initiative will advance the cause of good governance, increase prosperity and strengthen stability, bringing lasting and palpable benefits to the citizens of all participating countries.

2 Moveable assets

(30468) 7115/09 + ADD 1 COM(09) 94	Draft Council Decision on the signing by the European Community of the Protocol to the Convention on International Interests in Mobile Equipment on matters specific to railway rolling stock, adopted in Luxembourg on 23 February 2007

Legal base	Article 71(1) EC; co-decision; QMV
Document originated	2 March 2009
Deposited in Parliament	4 March 2009
Department	Transport
Basis of consideration	EM of 23 March 2009
Previous Committee Report	None
To be discussed in Council	Not known
Committee's assessment	Politically and legally important
Committee's decision	Not cleared; further information requested

Background

2.1 Those providing asset-based finance for high-value, internationally mobile equipment are reliant on the national laws of the territories through which such equipment passes, but those laws differ in the extent to which a security interest is recognised, thus creating risks for the financier. The 2001 Cape Town Convention on International Interests in Mobile Equipment provides a new uniform international legal order for the creation, registration and enforcement of security and similar interests in such equipment (including insolvency proceedings and the remedies available in the event of default by a debtor). The general regime of the Convention, which, for the Community is a mixed competence instrument, is applied to different high-value mobile equipment by equipment-specific protocols. The Community is still in the process of concluding (acceding to) the Convention.[5]

The document

2.2 This draft Decision is to authorise signature by the Community of the protocol to the Cape Town Convention on matters specific to railway rolling stock, the Luxembourg Rail Protocol. This protocol was adopted at a Diplomatic Conference on 23 February 2007 in Luxembourg, held under the auspices of the International Institute for the Unification of Private Law[6] and the Intergovernmental Organisation for International Carriage by Rail.[7] It is intended to facilitate financing of high-value railway rolling stock by seeking to ensure protection, for example of a leasing company's rights against defaulters, by a method of central registration, priority and common contractual terms. One of the purposes of this is to reduce the costs of leasing contracts for rolling stock.

5 (29920) 12135/08: see HC 19–vi (2008–09), chapter 4 (4 February 2009).

6 See http://www.unidroit.org/.

7 see http://www.otif.org/index.php?L=2.

2.3 The Luxembourg Rail Protocol is, like the Cape Town Convention itself, a mixed agreement falling partly under exclusive Community competence. The Community has competence over certain matters governed by the protocol such as jurisdiction, the recognition and enforcement of judgements in civil and commercial matters, insolvency proceedings and contractual obligations. There is also existing Community rail legislation — Directive 2008/57/EC on interoperability of the rail system within the Community and Regulation (EC) No 881/2004 establishing the European Railway Agency. For these reasons individual Member States cannot sign up to and adopt the protocol in its entirety, rather only those aspects for which the Community does not have exclusive competence.

2.4 Under Article XXII of the Luxembourg Rail Protocol, Regional Economic Integration Organisations may sign, accept, approve or accede to the protocol. In this respect, as the Community has competence over certain matters governed by the protocol, it would be able to sign the protocol provided it obtains the approval of the Council and the European Parliament. Article XXII(2) requires that at the time of signature, acceptance, approval or accession, the Community, as such a regional organisation, must make a general declaration indicating the matters covered by the protocol, which fall within the Community's jurisdiction. A declaration annexed to the draft Decision outlines the Community powers conferred by Regulations (EC) No 44/2001 (on jurisdiction and the recognition and enforcement of judgements in civil and commercial matters), No 1346/2000 (on insolvency proceedings) and No 593/2008 (on the law applicable to contractual obligations), Directive 2008/57/EC (on interoperability of the rail system) and Regulation (EC) No 881/2004 (establishing the European Railway Agency).

The Government's view

2.5 The Minister of State, Department for Transport (Lord Adonis) comments that:

- increasingly, in the UK and elsewhere in the Community, purchase of transport equipment is being financed by private investors, through the capital markets;
- in the light of this, the UK along with other Member States signed the Cape Town Convention;
- although the UK has signed the Cape Town Convention, this in itself is not legally binding with respect to adoption of the Luxembourg Rail Protocol, as it would need to be signed, ratified and transformed into UK law by enabling legislation;
- while the Government realises that it may be advantageous for the Community and other Member States to sign the protocol, it considers that the it would only be of limited benefit to potential UK lenders and lessors who engage in cross-border transactions;
- in April 2003 the Government undertook a full public consultation on the protocol;
- the overall conclusion was that, while there was support from respondents for the protocol on the basis that it may lead to greater security for the leasing companies of rolling stock, this was against the backdrop of only minimal response to the consultation, and concerns about the interaction between the rights of parties who

have invested in stock and those who have defaulted on leasing and credit agreements and how this would relate to the need to preserve public rolling stock service;

- in December 2008 the Government consulted the three principal rolling stock companies in the UK for their assessment of the content and potential benefits of the protocol to the UK;
- their responses indicated a belief that the protocol would only be of limited benefit to UK lessors or financiers;
- there was also concern at the time and cost implications of setting up a central register of rolling stock and common enforcement rights, against any potential benefits, and the potential for conflict or restriction of the current workings of the UK system;
- therefore the Government does not see any need for the Protocol to be implemented in the UK to improve the security of rolling stock financing; and
- before the UK could be in a position to do so, due consideration would have to be given to the reservations that the Government has.

Conclusion

2.6 **We are grateful to the Minister for his explanation of this proposal and the Government's view of it. However we are not absolutely clear as to the Government's intentions. We take it that on the one hand the Government will support the draft Decision, in the interests of those Member States who would benefit from Community accession to the Luxembourg Rail Protocol. On the other hand it does not intend that the UK should accede to the protocol, given its limited interest for the UK. Before considering the document further we should be grateful for clarification of this. Meanwhile the document remains under scrutiny.**

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

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

Legal base	Article 13(1) EC; consultation; unanimity
Department	Government Equalities Office
Basis of consideration	Minister's letters of 25 February and 24 March 2009
Previous Committee Report	HC 16–xxvii (2007–08), chapter 8 (16 July 2008)
To be discussed in Council	No date set
Committee's assessment	Politically important
Committee's decision	Not cleared; further information requested

Previous scrutiny of the document

3.1 When we considered this draft Directive last July,[8] we noted that Article 13(1) of the EC Treaty authorises the Council to take appropriate action, within the limits of the powers conferred by the Treaty on the Community, to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.

3.2 The Council has already adopted three Directives which prohibit discrimination on any of these grounds in employment, occupation or training.[9] Discrimination on grounds of sex and racial or ethnic origin is also prohibited in health care, social care, social security and goods and services available to the public.

3.3 The purpose of the draft Directive is to further the implementation of Article 13 of the EC Treaty by prohibiting discrimination on grounds of religion or belief, disability, age or sexual orientation in health care, social care, social security, education and the supply of goods and services which are available to the public.

3.4 The draft Directive prohibits direct and indirect discrimination. It requires harassment and the denial of reasonable accommodation to a disabled person to be treated as discrimination. The draft Directive's definitions of direct and indirect discrimination and of harassment are identical to the definitions in the existing Directives implementing Article 13 of the EC Treaty.

8 See headnote.

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

3.5 Article 2(6) of the draft Directive gives Member States discretion to provide that differences of treatment on grounds of age are not to constitute discrimination if:

> "they are justified by a legitimate aim, and if the means of achieving that aim are appropriate and necessary. In particular, this Directive shall not preclude the fixing of a specific age for access to social benefits, education and certain goods and services".

3.6 Moreover, Article 2(7) gives Member States discretion to permit proportionate differences of treatment in financial services (such as insurance) where the use of age or disability is a key factor in the assessment of risk using relevant and accurate actuarial or statistical data.

3.7 Article 3 contains exemptions from the scope of the draft Directive, such as Member States' domestic law on marital or family status and reproductive rights and Member States' responsibilities for the organisation of their educational systems and the contents of the school curriculum.

3.8 Article 4 concerns the equal treatment of people with disabilities. It requires providers to make appropriate modifications or adjustments so as to enable people with disabilities to have non-discriminatory access to housing, transport and other services, goods, social security, social and health care and education. It also provides, however, that such modifications and adjustments should not impose a disproportionate burden.

3.9 The remaining Articles of the draft Directive are the same as the corresponding Articles in the Article 13 Directives which have already been adopted.

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

3.11 We asked the Minister to send us:

- progress reports on the negotiations;
- the Government's Impact Assessment of the proposal;
- a note on the conclusions of the Government's further consideration of the Community's competence to legislate on some of the matters covered by the draft Directive; and
- information on the clarification the Government would be seeking of the meaning and effect of some of the provisions.

Meanwhile, we kept the draft Directive under scrutiny.

The Minister's letters of 25 February and 24 March 2009

3.12 In her letters of 25 February and 24 March, the Solicitor General (Vera Baird) tells us that the negotiations have proceeded very slowly. Since November, there have been no meetings of the Council Working Group to consider the draft Directive. The Czech Presidency is expected to hold a meeting of the Working Group towards the end of April. It might then hold two or three further meetings before the end of June; they would be concerned only with the proposals about discrimination on grounds of disability.

3.13 The Civil Liberties, Justice and Home Affairs Committee of the European Parliament has proposed 27 amendments to the draft Directive. The Government has reservations about many of them. The European Parliament is expected to vote on the amendments on 2 April.

3.14 Last autumn, the French Presidency proposed amendments which were intended to clarify the goods and services to which the proposed Directive would apply and to clarify, for example, the factors which would determine whether a difference in the treatment of a person on grounds of age or disability would be proportionate and permissible. The Minister tells us that the Government's aim is to ensure that excessive restrictions are not imposed on the ability of the providers of financial services to take into account the full range of factors required for a proper evaluation of the risk associated with a particular financial product.

3.15 While the Government regards the French Presidency's amendments as a step in the right direction, it has reservations about some of them because, for example, they would widen the scope of the Directive to include provisions on multiple discrimination (which the Government believes is a matter best dealt with in national legislation) or they do not add to the clarity of the document.

3.16 The Minister says that the UK Government and some other Member States question the Community's competence to legislate in the way proposed on:

- housing;
- education; and
- health services and social care (in the Government's view, health services do not come within the definition of "services" for the purposes of Article 50 of the EC Treaty which defines services for the purposes of the Treaty and, therefore, for the purposes of the draft Directive).

The Government has pressed the Commission to explain why it believes that these matters are within the Community's competence but has not yet received a satisfactory reply.

3.17 The Minister tells us that because so much uncertainty remains about the Community's competence and, therefore, about the matters that could legitimately be included in the Directive, it is not yet possible to provide a credible assessment of the Directive's costs and benefits. When there is less uncertainty, the Government will send us both a provisional Regulatory Impact Assessment and an Equality Impact Assessment.

3.18 The Government will shortly begin public consultations on the draft Directive, allowing 12 weeks for comment.

3.19 Finally, the Minister promises to send us further progress reports.

Conclusion

3.20 **We are grateful to the Minister for her letters. We welcome the Government's efforts to establish the Community's competence to legislate on housing, education and health services in the way proposed in the draft Directive. This is crucial because Article 5 of the EC Treaty states that:**

> **"The Community shall act within the limits of the powers conferred upon it by this Treaty and the objectives assigned therein".**

3.21 **We understand why the Minister considers that the Regulatory Impact Assessment should not be prepared until there is less uncertainty about the scope of the Directive.**

3.22 **We ask the Minister not only for progress reports on the negotiations but also for copies of the Government's consultation paper and a summary of the responses to it, together with an explanation of the Government's views in the light of the responses. Meanwhile, we shall continue to keep the draft Directive under scrutiny.**

4 Use of Passenger Name Records for law enforcement purposes

(30385) 5618/09 —	Draft Council Framework Decision on the use of Passenger Name Records (PNR) for law enforcement purposes

Legal base	(a) Articles 29, 30(1)(b) and 34(2)(b) EU; consultation; unanimity
Deposited in Parliament	27 January 2009
Department	Home Office
Basis of consideration	EM of 6 February 2009 and Minister's letter of 11 February 2009
Previous Committee Report	None, but see (29109) 14922/07: HC 16–xxi (2007–08), chapter 7 (14 May 2008), HC 16–xviii (2007–08), chapter 4 (2 April 2008), HC 16 –xiii (2007–08), chapter 5 (27 February 2008), HC 16–vii (2007–08) chapter 7 (9 January 2008); HC 19–v (2008–09), chapter 11 (28 January 2009)
To be discussed in Council	No date set
Committee's assessment	Legally and politically important
Committee's decision	Not cleared; further information requested

Background

4.1 Passenger Name Record (PNR) data is booking information held by airlines about their passengers which can be useful to law enforcement authorities in identifying potential risks. (This is different from Advanced Passenger Information (API) which is data derived from passports.) The proposed draft Framework Decision suggests a system for PNR data to be provided by carriers on incoming and outgoing flights, for this data to be held by Passenger Information Units, and for its use relation to serious crime.

Previous scrutiny of the document

4.2 We have considered the draft Council Framework Decision on the use of PNR data for law enforcement purposes on a number of occasions, the most recent being 28 January 2009. On that occasion we considered a report on consultations carried out from July to November 2008 by a 'Multidisciplinary Group' (MDG) of experts and practitioners on the likely impact of the draft Framework Decision.

4.3 The report recorded agreement across the board that PNR data could provide information about offenders' behaviour, such as itineraries and frequencies of journeys, which made it possible "to analyse behavioural tendencies in criminal circles", thereby helping to prevent and detect crime. The report also concluded that a European PNR system would facilitate the alignment of technical systems in the Member States; this would

encourage the exchange of good practice as well as contributing to effective cooperation between law enforcement authorities and the application of common standards of protection. However, a "vast majority" of Member States rejected the approach of having a centralised EU database of PNR data, preferring to retain or establish databases at national level which were able to transfer data to other Member States in accordance with the procedures prescribed by the Framework Decision.

4.4 The report noted that a consensus was focussing on the systematic transmission of PNR data for all air travel between the EU and third States (including transit within the EU), with the purpose not only of preventing and punishing terrorism and organised crime but also "other serious offences to be defined by reference to the list in the Framework Decision on the European Arrest Warrant". It was further reported that the PNR system put in place by the Framework Decision should not prevent national systems (such as the UK's) from using PNR data for additional purposes such as combating illegal immigration.

4.5 In relation to effective and transparent processing of PNR data, the report underlined the need for Passenger Information Units (PIUs) to be public authorities, but that their mandate should focus strictly on data processing and not law enforcement. Two categories of searches were envisaged in the report: strategic analyses to identify passengers likely to pose a risk based on information received by PIUs from agencies; and specific searches carried out as part of ongoing investigations. Speculative searches of all flights were ruled out as being unnecessary and impractical.

4.6 In its treatment of fundamental rights the report noted that the option of the sole use of the "push[10]" method would be feasible and that the list of data to be transmitted could be reduced compared with the original proposal if information on unattended minors were excluded. The report further called for uniform data protection provisions to be applied to all transmissions; for external supervision of PNR data processing by independent national authorities; and for any exchange of data to comply with the rules of the Framework Decision on data protection.

The revised draft framework Directive

4.7 The Czech Presidency has circulated a revised draft of the Framework Decision. It introduces a significant number of changes, which, in the Presidency's view, fairly translate the findings of the MDG report. The Presidency has also incorporated some proposals on which no consensus had been agreed, including the retention period for PNR data and the use of sensitive data. The Presidency comments that it understands that the revised draft, given that it is an "overhaul" of the previous text, is generally subject to scrutiny by all Member States.

4.8 Items revised within the draft proposal reflect key discussions on intra-EU flights, the collection of data from other modes of transport as well as air carriers, the proposed collection of 100% PNR data, and further definition as to how PNR data should be processed by PIUs. It also broadens the scope of the instrument, introducing the

10 "Push method" means the method under which air carriers transmit the required PNR data into the database of the authority requesting them. "Pull method" means the method under which the authority requiring the data can access the air carrier's reservation system and extract the required data into their database.

processing of PNR to combat serious crime as defined by reference to the list of crimes in Article 2 of the Framework Decision on the European Arrest Warrant.

4.9 The new draft instrument clarifies that, within three years from the entry into force of the Framework Decision, all air carriers will be required to use the push method to transfer PNR data to PIUs. Until then, for those carriers currently lacking the necessary technology, the pull method can be retained.

4.10 The draft further clarifies circumstances in which transfer of PNR data to third countries can take place and allows for the use of PNR data in respect of criminal conduct other than terrorism or serious crime if it is detected during the course of enforcement action for those original purposes. Following input from operational experts, changes have been made to the annex in order more accurately to reflect the data fields provided by PNR information.

The Government's view

The Minister's Explanatory Memorandum

4.11 The Parliamentary Under-Secretary of State at the Home Office (Meg Hillier) deposited a further Explanatory Memorandum (6 February 2009) explaining the Government's views on the revised proposal.

4.12 Overall, the Minister welcomes the redraft of the Framework Decision. It has taken into account Member States' preferences and concerns relating to an EU PNR system which "brings with it the advantage of EU wide cooperation on issues such as combating terrorism and serious crime, minimising the burden on industry, and enabling the EU to set appropriate data protection standards on the use of PNR data". She adds that the Government would like the final instrument to provide "a permissive framework which sets a basis for collection and sharing of PNR data and enables UK authorities to use this data to maintain the security and integrity of national borders".

4.13 The Minister's views are set out in greater detail under the following headings.

Intra-EU flights

4.14 The Minister welcomes the Presidency's amendment of the draft instrument to enable Member States to collect PNR data from intra-EU flights if they should chose to do so. The Government is a strong advocate of the collection of PNR data on intra-EU flights as well as flights from third countries. She comments that the UK's existing e-Borders Programme will continue to process PNR data for intra-EU flights in the belief that those who threaten the UK do not restrict their travel to international flights.

PNR Data Retention

4.15 The new draft instrument introduces PNR data retention periods of three years within an active database and between three and seven years within an inactive database that can be accessed on a case by case basis. The Government welcomes the clarification of periods of data retention provided by the Presidency, although these periods do not reflect the five

years in an active database and five years in an inactive database provided for under UK domestic legislation. The Government is currently discussing the impact of the proposed data retention periods with technical experts.

Scope

4.16 The Minister welcomes the inclusion of serious crime within the scope of the instrument and is consulting on the reference made to the European Arrest Warrant.

4.17 The Minister welcomes the Presidency's amendments to the draft instrument which clarifies the ability of Member States to process PNR data for other purposes and modes of transport than those specified in the instrument. The Government is still keen to use PNR data for other purposes, including to combat illegal immigration and welcomes the change in the recitals of this instrument that gives Members States the flexibility to do this.

100% collection of PNR data

4.18 The new draft Framework Decision sets out an ambitious schedule for the 100% collection of PNR data within six years of final agreement of the Framework Decision. The Government does not agree with the systematic (100%) collection of PNR data from all routes into the EU, as it does not believe it is necessary or proportionate. Instead it advocates a targeted approach to the collection of PNR data on the basis of routes which pose a higher risk. By 2013, the UK Government aims to collect PNR data on 100 million passenger movements per year which will account for about one third of all passenger movements.

4.19 In addition, 100% collection of PNR data means significant cost implications for all Member States and the Government will continue to raise this as an issue in negotiations. Based upon its practical experience, the Government strongly believes that the final draft instrument should provide longer timeframes for Member States to increase their collection of PNR data in order that they can better appreciate the resources required to collect 100% of PNR data. The Government would also like to see the inclusion of stricter review clauses to ensure that the instrument can be easily amended if Member States believe it will be difficult to achieve blanket collection.

Sensitive Personal Information

4.20 The Minister welcomes the Presidency's amendment to allow sensitive personal information contained within PNR data to be processed in pre arrival and departure risk assessments. The Government's experience has shown that processing sensitive personal data contained within PNR can be extremely helpful, often in eliminating individuals from further investigation. It advocates accessing sensitive personal data only on a case by case basis; by an appropriately trained officer; and with a robust audit trail in place once a passenger has been identified as being of potentially higher risk.

Crimes uncovered during enforcement activity

4.21 The Minister welcomes revisions to the draft proposals enabling competent authorities to prosecute crimes uncovered during enforcement action as a result of PNR data processing, but which are not covered by the purpose scope of the instrument.

Harmonisation of data transmission

4.22 The Minister welcomes the Presidency proposal to harmonise procedures for PNR data transfer between Member States. She believes this will facilitate better data sharing between Member States for the combating of terrorism and serious crime. The PNR data set out in Annex A has also been amended to exclude data on unaccompanied minors within the general remarks field.

The Minister's Letter

4.23 In addition to the EM, the Minister wrote to the Committee on 11 February 2009 in response to some of the concerns we had raised in earlier reports. In this letter she says that:

- The Government remained committed to data protection safeguards. The data protection provisions had been both strengthened and clarified in the revised proposal and would complement the safeguards provided under the UK's own statutory Code of Practice which governs the processing of PNR data.

- With regard to our reservation about the Commission being given the power to determine common protocols and encryption standards, she understands that the Commission will apply the International Airport Transport Association standards. She is therefore satisfied that the EU "will not look to introduce new protocols or standards beyond current or future international standards".

- In relation to sensitive personal data, the "General Remarks" field of the PNR data set is a free text field which allows for a range of information. This could include sensitive personal data such as specific meal choices that could indicate an individual's religion, or certain health information such as details about a medical evacuation. The Minister comments, as in the EM, that the UK is keen to retain access to this data "on a case by case basis subject to strict safeguards", and is satisfied that the current draft is consistent with the UK's current use of personal data.

Conclusion

4.24 **We thank the Minister for depositing a further Explanatory Memorandum explaining the Presidency's proposed amendments, and also for writing to respond to some of the questions that the Committee has previously asked. And we note that negotiations appear to be developing in a way which meets many of the Government's concerns.**

4.25 **We still have concerns over certain provisions within the latest draft proposal, including the time limits for retention of PNR data in Member States and third countries, and the inclusion of sensitive personal information within PNR processing under the Framework Decision. But we refrain from an overall review until we know how this latest draft has been received by Member States. We would therefore be grateful to the Minister for an update as soon as negotiations have clarified which aspects of the draft are likely to be agreed, and which remain contentious.**

4.26 **At this stage, however, we signal our strong reservations about the legitimacy of Article 5(1a), which requires Member States to achieve blanket PNR processing of all international flights into the EU within six years of the Framework Decision coming into force. It is to be noted that the scope of the Framework Decision has broadened considerably. It now encompasses the processing of PNR data for all of the crimes listed in Article 2 of the Framework Decision on the European Arrest Warrant; such data will also include sensitive personal information. It is thus clear that the revised Framework Decision is far more intrusive into the privacy of the individual. Bearing in mind the evidence from PNR experts and practitioners that speculative reviews of all flights are both impractical and unnecessary, we consider the obligation imposed on Member States by Article 5 (1a) as being likely to upset the balance between a legitimate and illegitimate restriction on the rights to privacy and data protection. We note that this view is shared by the Minister, who describes 100% PNR data collection as unnecessary and disproportionate. In addition, we question why it is appropriate, or indeed necessary, for the decision on the number of flights that are processed to be prescribed at a supranational level. This falls within the domain of Member State competence given that national threats will differ between Member States. As such, similar flexibility should be extended in the Framework Decision to the number of flights to be processed as was extended to, for example, intra-EU flights, different modes of transport, and processing PNR data for other purposes beyond the detection and prevention of serious crime. We look forward to an update from the Minister on how negotiations on this provision have proceeded.**

4.27 **We note the Minister's comments about the Commission's role in making recommendations regarding common protocols for transmission of PNR data. But Chapter IV of the current draft ("Comitology") does not oblige the Commission to refer only to internationally agreed standards when making recommendations. We would ask that Article 14(3) be amended to reflect this in order to ensure that the Commission cannot introduce new standards.**

4.28 **On a separate note, on two previous occasions we have asked the Minister for an account of the views which the Information Commissioner has provided on this Framework Decision. We would be grateful to receive this.**

5 European automotive industry

(30461) 7004/09 + ADDs 1–3 COM(09) 104	Commission Communication: *Responding to the crisis in the European automotive industry*

Legal base	—
Document originated	25 February 2009
Deposited in Parliament	3 March 2009
Department	Business, Enterprise and Regulatory Reform
Basis of consideration	EM of 24 March 2009
Previous Committee Report	None
To be discussed in Council	No date set
Committee's assessment	Politically important
Committee's decision	Cleared

Background

5.1 The Commission describes the European automotive industry as a key economic driver, with an impact on a wide variety of other sectors, and a cross-border reach which touches every Member State. It believes that the Community needs a dynamic and competitive automotive sector, but notes that the current economic crisis has put the industry under particular pressure. It says that properly targeted support is needed to get through the downturn and to address structural problems, and it has therefore sought in this Communication to set out how the Community can provide the necessary help.

The current document

The situation within the sector

5.2 The Communication begins by noting that the Community is the world's largest producer, with over 18 million vehicles a year, and is a substantial employer of a skilled workforce of over 2 million. In addition, with an annual spend of over €20 billion, it is Europe's largest private investor in research and development; it has an annual turnover of €780 billion, and added value of over €140 billion, making a major contribution to GDP; and it is a major net exporter, with a surplus of €60 billion on overall exports of €125 billion. It goes on to note the close links with many other sectors, such as electronics, engineering, information technology, steel, plastics, metals and rubber, and that there are 250 production lines split between 16 Member States, with every single Member State involved in the supply chain and sales: as a consequence, the value of intra-Community trade in automotive products was around €360 billion in 2008.

5.3 The Commission comments that the current economic crisis has led to a sudden industrial downturn, which has hit this sector particularly hard, given that some 60–80% of

new cars are purchased with the aid of credit, and that similar trends have been observed in those sectors linked closely to it. In particular, it notes that:

- There has been a sharp and uniform drop in demand for passenger and commercial vehicles, both within the Community and worldwide, with new car registrations in Europe declining by an average of 20% in the last quarter of 2008, and an even greater fall in sales of commercial vehicles. It adds that, although the situation varies between Member States, all major producers on the European market are severely affected.

- Parts of the industry are reporting problems with access to credit financing and fears of liquidity shortages, with some companies unable to obtain loans on reasonable terms.

- That the industry suffers from long-term structural problems which pre-date the crisis, due to the very competitive business environment, high fixed costs, structural over-capacity and intensive price competition. It also notes that global production capacity is currently about 94 million vehicles a year, whilst demand in 2009 is put at around 55 million, and that the situation is aggravated by the rising risk of protectionism.

5.4 The Commission adds that current forecasts for 2009 are not encouraging, with a further decline of 12–18% forecast in the passenger car market, which it says it likely to put pressure on the whole automotive chain. It notes that falling production and subsequent cost-cutting has already led to reductions in employment, with 15–20% of the labour force at risk, and that there could be particular regional problems due to the geographically concentrated nature of the industry. It also observes that additional pressure arises from the restructuring of General Motors and Chrysler. Having said that, the Commission suggests that the long-term global outlook is promising, with world-wide demand projected to double or even triple in the next 20 years, and that the need to develop a greener car will bring new opportunities for innovative technology. It therefore concludes that it is particularly important for the industry to weather the current downturn, in order to be able to take advantage when demand returns.

Policy response

5.5 The Commission notes that the European Economic Recovery Plan[11] has identified this sector as requiring a strong policy response, laying emphasis on the need to address, not only the current problems, but also to reinforce long-term competitiveness, notably by responding to consumer demand, particularly for "green" cars (and in the process making a major contribution to a low-carbon economy). It suggests that the primary responsibility lies with the industry, but that, as part of an overall approach, the Community and Member States can contribute to creating framework conditions in which industry can thrive, and by promoting fair competition in open global markets. It suggests that targeted and temporary public sector support can help to support demand and facilitate adjustment,

11 (30092) 16097/08: see HC 16–xxxvi (2007–08) Chapter 4 (26 November 2008).

but that it is important to ensure that measures taken by Member States are coherent, efficient and coordinated.

5.6 The Commission notes a number of steps in particular:

Framework conditions and CARS 21

The Commission points out that it has developed through the CARS 21 process a continuous dialogue and consultation with all main stakeholders, and it reaffirms its commitment to take fully into account any resultant recommendations.

Access to finance and investment in innovation and research

The Commission stresses the key need to restore the availability of finance on reasonable terms and to restore liquidity, and that the first priority is to ensure that the financial system starts to operate properly, particularly if the industry is to fund research and innovation. It adds that, since the issues involved affect the economy as a whole, they should be addressed primarily through measures to support the financial sector, and it notes the steps already taken on state aid rules for the banking sector and the recapitalisation of financial institutions, noting that the financial branches of car makers may qualify for aid under the schemes adopted for the banking sector. In addition, it draws attention to the temporary framework for state aid introduced in December 2008, to the wide range of traditional state aid instruments available to Member States, and to the efforts being made in conjunction with the European Investment Bank and Member States (and the Seventh Research Framework Programme) to maintain investment in future technologies, backed up by a research partnership between the public and private sectors on mobility in the future, with a estimated total value of €1 billion.

Boosting demand for new vehicles and accelerating fleet renewal

The Commission notes that Member States have taken demand-side measures as the most effective means of countering the short-term decline in demand and improving consumer confidence, with nine of them have already established vehicle recycling and recovery schemes (and more considering this). In addition, it says that Member States should make full use of public procurement to boost demand for cleaner and more fuel efficient vehicles.

Safeguarding skills and employment and minimising social costs

The Commission says that the employment situation in the sector is a serious concern, meriting full political attention, and that a European partnership for the anticipation of change in the automotive sector was launched in October 2007, involving a comprehensive two year programme. It adds that various Community funds and policy instruments can be mobilised to support the social cost of adjustment and to ensure that the necessary skill levels are retained in the industry, noting also that it has proposed an increase of advance payments from the European

Social Fund to help finance training. It also believes that the possibility of benefits being financed by the European Globalisation Adjustment fund should be explored.

Open markets and fair competition world-wide

The Commission points to the increased likelihood of countries seeking to protect their own industries in times of economic uncertainty, and suggests that fair competition on open markets can help to combat the current crisis. It says that the Community is committed to avoiding any new trade restrictions towards third countries, and that it expects a similar attitude from its trading partners. It proposes to follow closely international developments, and to encourage dialogue with its main trading partners.

Strengthening the partnership

5.7 The Commission says that it is committed to bringing Member States and other partners together to ensure a coherent and coordinated approach to support the industry, and that it will keep progress under constant review. It intends to strengthen the CARS 21 process, with a round table comprising Member States, producers and suppliers, and trade unions, in order to provide a platform for mutual information and exchange of best practice. It proposes that the round table should also monitor the development of private and public demand, financial support for research, active support for reducing overcapacity, whilst maintaining a skilled workforce, and the strict respect of the CARS 21 recommendations.

The Government's view

5.8 In his Explanatory Memorandum of 24 March 2009, the Economic and Business Minister at the Department for Business, Enterprise and Regulatory Reform (Mr Ian Pearson) says that the Government is supportive of the Commission in bringing this important issue to wider attention, and that it agrees with the need to respond to the current situation identified by the Commission, and the permissive framework for Member State action. He says that the UK has already begun a process of engagement with the relevant organisations to discuss the scale of the problem, the likely timescales, the need for action, the range of possible actions and who might best be responsible for them, as a result of which a range of targeted activity has been announced. This includes the Automotive Assistance Programme, which will provide up to £2.3 billion in loan guarantees for green investment, including facilitating European Investment Bank funding as part of the Clean Transport Initiative. Further assistance has been provided, with up to £100m of training support through Train to Gain and access for the supply chain to assistance packages which are available for small and medium sized enterprises. He also comments that the Communication is consistent with UK Government policy.

Conclusion

5.9 **This Communication appears to be essentially for information, and many of the measures to which it draws attention, such as the need for dialogue, competitiveness and open markets, have a familiar ring. On the other hand, it does provide a useful**

analysis of the current state of the Community automotive industry and of the problems it is facing, and, for that reason, we are, in clearing the document, drawing it to the attention of the House.

6 Community Ecolabel Scheme

(29868) 12074/08 + ADDs 1–2 COM(08) 401	Draft Regulation on a Community Ecolabel scheme

Legal base	Article 175(1)EC; co-decision; QMV
Department	Environment, Food and Rural Affairs
Basis of consideration	SEM of 24 March 2009
Previous Committee Report	HC 16–xxx (2007–08), chapter 4 (8 October 2008)
To be discussed in Council	No date set
Committee's assessment	Politically important
Committee's decision	Cleared

Background

6.1 The Commission says that the Community has taken important steps to achieve its objectives on growth and jobs, and to set the right framework for business in Europe, but believes that there is a pressing need now to integrate sustainability into this wider picture. It has therefore put forward in July 2008 a Sustainable Consumption and Production and Sustainable Industry Policy Action Plan[12] in order to achieve this, accompanied by a further Communication[13] on using public procurement to benefit the environment, and a number of specific measures, including a draft Regulation on the Eco Management and Audit Scheme (EMAS),[14] and a draft Directive on the ecodesign requirements for energy-related products.[15]

6.2 In our Report of 8 October 2008, we cleared the Action plan, the Communication on public procurement, and draft Directive, but left uncleared both the draft Regulation and the current document on the Community Eco-label scheme. In the latter case, we noted that such a scheme had been in place since 1992, aimed at encouraging the sustainable consumption and production of goods and services by setting voluntary non-mandatory benchmarks for good environmental practice, with suppliers able to provide verified evidence of significant potential for environmental improvements being eligible for the

12 (29874) 12026/08
13 (29858) 12041/08
14 (29870) 12108/08
15 (29872) 12119/08

scheme's logo ("eco-label"). However, the current scheme has been limited to certain areas (such as white goods, paints and textiles, as well as tourist accommodation and campsites), and Commission considers that it is not achieving its objectives. In particular, it suffers from low awareness of the label and uptake by industry, and the explicit exclusion of certain areas.[16]

6.3 This proposal would therefore give it a more significant role in the marketing of greener products, by making it simpler for companies to obtain the label, which would also be extended to cover a more environmentally relevant range of goods and services, and by the removal of the restriction excluding food. In addition, the key environmental aspects would be extended; companies would be able to register for the eco-label simply by providing relevant documentation; and the present annual fee would be discontinued, alongside a reduction in the maximum application fee. The proposal would also require any new criteria developed by nationally recognised labelling schemes to be at least as strict as those under the Community scheme.

6.4 In our Report, we noted that the Government had suggested that, since the policy implications depended upon the product groups selected for development and the criteria eventually adopted, the proposal itself did not give rise to any policy conflicts. Also, whilst there had for many years been a broad consensus about encouraging the use of components which can be recycled without environmental damage, many products contained substances whose impacts were disputed: for that reason, the introduction of more representative new arrangements for the development of criteria was welcome.

6.5 However, the Government had expressed reservations over the proposed new registration process, and had said that, although the UK did not have its own national eco-labelling scheme, it was not clear whether the proposal would affect arrangements such as the Green Tourism Business Scheme. It also said that, since this was a voluntary scheme, the financial implications of the proposal for business were likely to be low, but that an Impact Assessment would be provided shortly. We therefore said that we thought it would be sensible to await this before taking a final view.

Supplementary Explanatory Memorandum of 24 March 2009

6.6 We have now received from the Minister for Sustainable Development, Climate Change Adaptation and Air Quality at the Department for Environment, Food and Rural Affairs (Lord Hunt) a supplementary Explanatory Memorandum of 24 March 2009, enclosing the promised Impact Assessment. This says that it has not been possible to quantify the expected environmental benefits arising from the incentive to manufacturers to improve the recycled content of products, their durability, energy efficiency, toxicity and sustainable sourcing, since this will depend upon the Scheme's uptake. However, it says that it is reasonable to assume that these benefits will be significant, and that, together with the synergies which would be provided with other relevant areas such as green public procurement and eco-design criteria, they would outweigh any costs to businesses arising from application fees. In particular, the Assessment points out that the scheme is

16 Such as food, drink, pharmaceuticals and medical devices.

voluntary, and that it can be assumed that any company choosing to participate sees some advantage in doing so.

Conclusion

6.7 **We note that, since the Eco-label Scheme is voluntary, it is not possible to quantify the overall impact of this proposal, and that it will be for companies considering whether to participate to make this assessment for themselves. In view of this, the Government's long-standing support for this Scheme, and its assessment that the overall impact of the changes proposed is likely to be positive, we see no further need to withhold clearance of the proposal, given also that its aim is to make an existing measure more effective.**

7 European Investment Bank lending in non-EU countries

(30361) 5444/09 COM(08) 910	Draft Decision granting a Community guarantee to the European Investment Bank against losses under loans and loan guarantees for projects outside the Community

Legal base	Art 179 and 181 a TEC; QMV; co-decision
Department	International Development
Basis of consideration	Minister's letter of 26 March 2009
Previous Committee Report	HC 19–vii (2008–09) chapter 3 (11 February 2009); also see (27643) 11003/06 and (27645) 11006/06: HC-xxxvii (2005–06), chapter 8 (11 October 2006) and HC 41–v (2006–07), chapter 10 (10 January 2007); and (27924) 13558/06: HC 41–v (2006–07), chapter 9 (10 January 2007)
To be discussed in Council	March 2009
Committee's assessment	Politically important
Committee's decision	Cleared, but further information requested

Background

7.1 The European Investment Bank (EIB) was created by the Treaty of Rome in 1958 as, according to its website, "the long-term lending bank of the European Union"; its mission is "to further the objectives of the European Union by making long-term finance available for sound investment"; its task being "to contribute towards the integration, balanced development and economic and social cohesion of the EU Member States." To this end, the EIB "raises substantial volumes of funds on the capital markets which it lends on

favourable terms to projects furthering EU policy objectives". The EIB "continuously adapts its activity to developments in EU policies."

7.2 It offers four main services to clients:

— Loans: granted to viable capital spending programmes or projects in both the public and private sectors; counterparties range from large corporations to municipalities and small and medium-sized enterprises;

— Technical Assistance: expert economists, engineers and sectoral specialists to complement EIB financing facilities;

— Guarantees: available to a wide range of counterparties, e.g. banks, leasing companies, guarantee institutions, mutual guarantee funds, special purpose vehicles and others;

— Venture Capital.

7.3 The EIB is active both inside and outside the European Union. According to its website, the majority of EIB lending is attributed to promoters in the EU countries (87% in 2007) supporting the continued development and integration of the Union; while outside the Union, EIB lending is governed by a series of mandates from the European Union in support of EU development and cooperation policies in partner countries — in the enlargement area in southern and eastern Europe; in the Mediterranean Neighbourhood; in Russia and the Eastern Neighbourhood; in the African, Caribbean and Pacific (ACP) countries; in South Africa; in Asia; and in Latin America.[17]

7.4 A Community guarantee aims to prevent such operations, which often bear a significantly higher level of risk than the EIB's operations within the EU, from affecting the credit standing of the Bank, and thereby to allow the EIB to maintain attractive lending rates outside the EU. The Commission says that this 13% of overall EIB lending amounted to €6.4 billion in 2007, of which €3.7 billion was under Community guarantee.

7.5 The Commission describes that EIB's operations in third countries as "a crucial complement to limited EU budget funds to increase the effectiveness and the visibility of the EU's external action." While the Community budgetary external assistance is focused on lower income countries and support to the social sectors, "EIB operations are of particular relevance in middle-income countries and in infrastructure, financial and commercial sectors." The EIB having originally been set up and structured financially to operate within the EU, "the mandates under Community guarantee cover represent the key tools which allow the EIB to carry out operations outside the EU, by providing the necessary political and financial backing by the Community for countries and projects which would not normally fit within the EIB's standard guidelines and criteria."[18]

The proposed Council Decision

7.6 As the Parliamentary Secretary at the Department for International Development (Mr Michael Foster) explained in his Explanatory Memorandum of 3 February 2009, this

17 See http://www.eib.org/ for full information.

18 COM(08) 910, page 4.

proposal — to provide a Community guarantee to EIB operations in non-EU countries under the External Lending Mandate (ELM) of the Bank — was originally adopted by the Council in December 2006 to cover the renewal of the ELM that expired on 31 January 2007. However, he explained, following an action brought by the European Parliament:

— the European Court of Justice annulled this Council Decision, ruling that it should have been adopted on the basis of Articles 179 (Development Cooperation) and 181a (Economic, Financial and Technical Cooperation with Third Countries) as opposed to Article 181a only of the EC Treaty;

— the Court allowed a grace period of 12 months to enable the Council Decision to be replaced by one adopted under the dual basis of both Articles;

— the main practical difference resulting from the amendment was that the new legal basis would be adopted as a co-decision of the Council and European Parliament.

7.7 The Minister further explained that the proposal clarified the exact nature of the guarantee and extended the coverage to loan guarantees made by the EIB, as well as loans; it also comprehensively covered the EIB for losses on operations with the public sector (national and local/regional) or public sector guaranteed operations, and for operations falling outside of the public sphere, against specific political risk only.

7.8 The Minister also noted that the proposal:

— included articles setting the size of the regional ceilings,[19] putting the size of the whole ELM at €27.8 billion (£26.5 billion), including a €2 billion (£1.9 billion) optional mandate to be decided by the European Parliament and the Council and based on the outcome of the mid-term review of the ELM, due to be produced by 30 June 2010;

— set out which countries are eligible and how countries can become eligible;

— included articles relating to the consistency of EIB actions with EU policy, cooperation with other International Financial Institutions (IFIs), reporting and accounting standards and recovery of payments made by the Commission under the guarantee.

7.9 The Minister went on to say that amending the current legal base to encompass Development Cooperation would enable the Government "to emphasise its policy of promoting an EIB that focuses on the development impact of its operations (particularly in terms of the value they add), rather than the quantity": although the content of the Decision remained the same, "the new base gives an explicit link to development in the EIB's lending outside the Union [which] will strengthen the UK's position in pushing for greater developmental impact of EIB activities".

7.10 The Minister regarded renewal of the ELM as helping to improve the development impact of the EIB by promoting:

- improved quality of EIB development investments;

19 See COM(08) 910, page 7, for the regional breakdown.

- a more unified EU development package comprising a balanced mix of grants, loans and equity;
- a more coherent and clear role for EIB within the international development architecture.

7.11 The Minister also highlighted a number of features in the Mandate that he believed should help improve EIB's effectiveness: it had been asked to strengthen the way it supported EU objectives and worked with IFIs, which was "particularly in response to past anecdotal evidence that the EIB had on occasions undercut other lending institutions on price and through less stringent conditionality."

7.12 Other features the Minister noted were:

- maximising coordination between EIB financing and the EU's grant resources (particularly through better links with EC's grants-based country and regional strategies).
- strengthening of cooperation with IFIs including through co-financing, risk sharing and coherent conditionality.
- the end of the so called Mutual Interest Clause for operations in Asia and Latin America. (This clause restricted EIB financing to projects involving EU companies.)
- a Mid-Term Review looking at all aspects of EIB lending outside Europe, to be fully informed by an independent evaluation, the preliminaries for which had now started.

Our assessment

7.13 In October 2006 and January 2007 the Committee considered the proposal adopted by the Council in December 2006. In between these two occasions, a process of negotiation had been undertaken. As with all such negotiations, not everything had been achieved. But it was plain to us that the outcome was a considerable improvement on the original proposal; in particular:

— the focus of 80% of the €25.8 million committed expenditure would be on the EU's Neighbourhood and the Pre-Accession countries;

— the €5.1 billion increase was only half that originally proposed;

— there was to be a mid-term review of the new mandate in 2010, with input from external experts;

— €2 billion of that was subject to further consideration in the light of the mid-term review.

We were accordingly glad to note that these key features remained in the present proposal.

7.14 When, in January 2007, we cleared the original Council Decision, we noted that the question of value added was central to the ELM mandate renewal, and that the four short paragraphs on "Value added of the EIB" in the Commission's voluminous accompanying report did not amount to a great deal.

7.15 We also considered an assessment of an EIB "regional fund": FEMIP (Fund for Euro-Mediterranean Investment and Partnership), which was created in October 2002 to stimulate economic growth and private sector development in the Mediterranean region and combined EIB loans with EU budget resources to provide technical assistance, interest rate subsidies for environmental projects and risk capital. Agreement had been reached on improvements that — if effectively implemented — were judged as enabling FEMIP better to achieve its key objective of SME development, with two clear targets — doubling the private sector percentage of FEMIP lending, and more effective cooperation from partner governments, particularly with regard to the issuing of bonds in local currencies (a problem). There, as here, a mid-term review, with outside expert participation, was planned for 2010, which would assess how well cooperation was working between the EIB and the Commission. We suggested that it should also assess the level and effectiveness of cooperation of partner governments (this having been a further problem highlighted in the assessment); and that a way should be found of involving the Court of Auditors in both this and the ELM mid-term review — they being extremely experienced in assessing the effectiveness of the Community's development assistance.

7.16 The Minister, rightly, talked about adding value and effectiveness. But he made no mention of this suggestion. We therefore asked him to confirm that he saw no difficulty with taking it forward.

7.17 As, according to the Minister, the Commission did not plan to put the proposal formally to the Council and the European Parliament until after the summer break, in the meantime we retained the document under scrutiny.

The Minister's letter of 26 March 2009

7.18 The Minister begins by explaining that, subsequently, there has been both a first and then a second change to the timetable of discussion on the Proposal in Brussels. He notes that the first of these — that the European Parliament would look at the Proposal in the week of the 23 March and the Council shortly afterwards — was discussed on 5 March with the Committee, when it was agreed that he would reply in good time for the Committee to consider his response before then; however, his officials were subsequently informed on the evening of 11 March that a vote was to be taken on the Proposal in the Committee of Permanent Representatives (COREPER) on the morning of 12 March:

> "DFID attempted to postpone the agenda item given your outstanding Reserve. The Presidency, however, said that it could not be delayed as they needed a general approach on the dossier to take it to the Parliament's Plenary session on the 23 March and that there would not be another opportunity for COREPER to discuss it before then, due to the European Council on the 19–20 March.
>
> "As we still had a Scrutiny Reserve on the dossier but were unable to postpone the Qualified Majority Voting process, the UK Representative was instructed to abstain

during the vote. COREPER was informed that this abstention was due to the outstanding Scrutiny Reserve and our frustration with the changing timeframe has been communicated to the Commission and the Presidency."

7.19 The Minister then turns to the questions raised by the Committee concerning the mid-term review of the Facility for Euro-Mediterranean Investment and Partnership (FEMIP) planned for 2010 and its observation, in clearing the original Commission Decision in January 2007, that the Commission had not adequately covered the issue of the added value of the EIB:

"I can confirm that FEMIP's mid-term review will be carried out within the framework of the overall mid-term review of EIB's external mandate. We will discuss the Committee's suggestion with the Bank that the FEMIP Review should assess the level and effectiveness of the cooperation of partner governments and ensure that this suggestion is fed in to the independent evaluation team. I understand that the Council of the EU has not retained any role for the European Court of Auditors in the reviews; I agree with the Committee's view that some involvement by the Court in the reviews would have been valuable, given its experience of assessing the effectiveness of the Community's development assistance. We will therefore investigate whether there is any scope for the evaluation team to keep the Court informed as the reviews are taken forward.

"I can also confirm that the added value of the EIB remains a central concern to the UK. We will use the review of the Mandate, due to report back in June 2010, to identify how the EIB can ensure this is demonstrated in its operations. The UK will then press for the review's recommendations on value added to be taken into account in the new mandate.

"Because the European Parliament is fast-tracking the legislation it is demanding that the Commission's current proposal be regarded as a 'transitional' arrangement, only valid until May 2011. They also demand that the Commission should present a new proposal by 15 October 2009 which the new Parliament would then deal with. This later decision would also take into account the mid-term review of the EIB.

"Aside from the timing issues, in general, HMG welcomes this EP proposal and believes it could further improve the development aspects of the Mandate, but with one serious reservation. We are concerned that if the mid-term review is to report by October 2009, this will not give the reviewers adequate time to produce a thorough review as the process has only recently begun. We and other Member States are therefore pushing for the review to report back by April 2010; that the 'transitional' arrangement be regarded as being valid until December 2011; and that the new Commission proposal be presented as soon as it is able to take account of the findings of the mid-term review in 2010."

Conclusion

7.20 **Any over-ride of scrutiny is disappointing. But we accept that, in this instance, it was in no way of the Minister's making and that, once he was presented with what was effectively a *fait accompli*, he acted appropriately. We have also already noted the**

improvements in this Council Decision compared with its predecessor. We accordingly now clear it from scrutiny.

7.21 **In so doing, however, we share the Minister's concern about the European Parliament's latest proposal. Like him, we are concerned that any new proposal be informed by a proper review of both the ELM mandate and the FEMIP. We are disappointed that (for reasons that the Minister does not explain) the Council has failed to involve the Court of Auditors formally in the process, which we hope does not indicate that it is not taking the review process as seriously as we, and seemingly he, would wish; we hope that he will still be able to find a way of informing the Court nonetheless.**

7.22 **Whatever the claimed improvements of the new proposal may be, they cannot be so urgent that they cannot await, so as to incorporate the lessons of a proper review of both the ELM mandate and FEMIP — particularly since the latter is to focus on SME development and the level of cooperativeness of partner governments — which would be forestalled by a rushed process. We accordingly endorse the Minister's endeavours to rein in the Parliament's enthusiasm, and ask that he write to us in due course about the outcome of these discussions and his views on the implications for his and our concerns.**

8 Allocation of slots at Community airports

(30497) 7500/09 COM(09) 121	Draft Regulation amending Regulation (EEC) No. 95/93 on common rules for the allocation of slots at Community airports

Legal base	Article 80 (2) EC; co-decision; QMV
Document originated	10 March 2009
Deposited in Parliament	17 March 2009
Department	Transport
Basis of consideration	EM of 30 March 2009
Previous Committee Report	None
To be discussed in Council	Not yet known
Committee's assessment	Politically important
Committee's decision	Cleared

Background

8.1 Allocation of slots at Community airports is governed by Council Regulation (EEC) 95/93, as most recently amended, by Regulation (EC) 793/2004.[20] The Regulation allows Member States to designate an airport as "coordinated" where there is a significant shortfall between capacity at the airport and airline plans to use it, potentially causing significant delays, and where there are no other options for resolving the problem in the short term. In the UK Heathrow, Gatwick, Stansted and Manchester are designated as coordinated airports and the Government is currently consulting on whether London City should also be so designated. Under the system:

- the Regulation creates "slots" at coordinated airports and requires Member States to appoint an independent "coordinator" to allocate slots according to defined criteria and in a neutral, transparent and non-discriminatory way;
- the coordinator for all UK airports is Airport Coordination Limited[21] — the Government has no role in the processes of slot allocation;
- an airline that uses a slot in one scheduling season (either Summer or Winter) has first claim, or "grandfather rights", on it in the next corresponding season, provided that it has used the slot for at least 80% of the time — this is known as the "use it or lose it" rule;
- if the airline fails to use its slots for 80% of the time they are returned to a pool to be reallocated by the coordinator to other airlines, amongst which new entrants to an airport have priority;
- the "use it or lose it" rule helps ensure the best use of existing airport capacity, by preventing an airline sitting on slots it is unable or unwilling to use; and
- the "use it or lose it" rule has been suspended twice, following the terrorist attacks of 11 September 2001 and the SARS outbreak and Iraq invasion in 2003.[22]

The document

8.2 The draft Regulation the Commission proposes in this document would suspend the "use it or lose it" rule for the Summer 2009 scheduling season and allow for it to be suspended in Winter 2009/10 season, depending on the economic circumstances at the time. Airlines would therefore retain their grandfather rights to the slots in Summer 2010, regardless of whether or not they had used them 80% of the time in the Summer 2009 season.

20 (22519) 10288/01 (23997) 14205/02: see HC 152–xxxv (2001–02), chapter 8 (3 July 2002), HC 63–v (2002–03), chapter 2 (18 December 2002), HC 63–xxxvi (2002–03), chapter 11 (5 November 2003) and HC 38–iii (2004–05) chapter 19 (12 January 2005) and (24485) 8757/03: see HC 63–xxiii (2002–03), chapter 3 (4 June 2003) and HC 63–xxviii (2002–03), chapter 9 (2 July 2003).

21 See http://www.acl-uk.org/default.aspx.

22 (23145) 5360/02: see HC 152–xxi (2001–02), chapter 13 (13 March 2002) and (24485) 8757/03: see HC 63–xxviii (2002–03), chapter 9 (2 July 2003).

8.3 The intention of the measure is to provide assistance to airlines in the current economic and financial circumstances. The Commission notes forecasts from Eurocontrol[23] suggesting a likely scenario of a 4.9% fall in traffic and figures provided by the Association of European Airlines showing a 21.4% fall in freight traffic in December 2008, with passenger traffic expected to fall by 4% in 2009.

8.4 The Commission suggests that suspension of the "use it or lose it" rule would help airlines operating at coordinated airports, as without it they may continue to operate uneconomic services so as not to lose their slots in future, so exacerbating their current difficulties. Suspending the rule should allow airlines to better match their capacity to demand.

The Government's view

8.5 The Parliamentary Under-Secretary of State, Department for Transport (Jim Fitzpatrick) says that in normal circumstances the Government fully supports the "use it or lose it" rule. He says the rule:

- is an important element of the airport slots Regulation;
- helps to make the most effective use of airport capacity at coordinated airports;
- can help new entrant and other airlines, by ensuring that unused slots are returned to a pool for reallocation, gain access to slots that would otherwise be unavailable to them; and
- can therefore help competition between airlines to the benefit of consumers.

8.6 The Minister continues that the Government is however sensitive to the problems faced by some UK airlines due to the current economic and financial downturn. He comments that:

- the Government recognises that in the present exceptional circumstances the rule can hinder an airline's ability to respond fully to reductions in demand if it is concerned about losing a potentially highly valuable asset — its grandfather rights to certain slots;
- this may have short term adverse economic consequences for the airline by encouraging it to run services that it otherwise would not have done in order to keep its slots; and
- this would also have adverse environmental impacts;

8.7 The Minister tells us that his Department has informally consulted UK airlines, UK airports, Airport Coordination Limited and the Civil Aviation Authority about the proposal. (He says the short timescale under which the proposal has been developed has not allowed a formal consultation.) He reports that:

23 Eurocontrol is the European Organisation for the Safety of Air Navigation — see http://www.eurocontrol.int/corporate/public/standard_page/org_aboutus.html.

- while some UK airlines, including Virgin, British Airways and BMI, support the proposal others do not;
- Easyjet sees the proposal as a means of inhibiting the development of the air services market by preventing airlines who want to expand from accessing slots that other airlines would have had to surrender if the rule remained; and
- the UK airport operators concerned, BAA and Manchester Airport Group, are opposed to the proposal.

8.8 The Minister says that, taking account of these factors, the Government's position is that:

- suspension of the "use it or lose it" rule should be a short term measure, targeted at the Summer 2009 season;
- suspension should only be extended to the Winter 2009/10 scheduling season after a full impact assessment, including the effects on consumers and competition; and
- it believes that the Commission should commit itself to reviewing the slots Regulation in 2010 (when the new Commission is in place) to consider a more rational system of slot allocation and how environmental factors could be taken more fully into account in allocating slots.

8.9 The Minister continues that there are no direct financial implications for the Community or the Government arising from the proposal. He says that, given the short time since the proposal was developed and published, an impact assessment has not been produced. But he comments that:

- in broad terms, the benefits from the proposal fall to airlines that have slot holdings and are spared the risk of losing valuable grandfather rights in the economic downturn, as well as avoiding the loss from running uneconomic flights to retain slots;
- there are some environmental benefits, for example from the fuel not used;
- costs from the proposal are the efficiency losses of the slot allocation mechanism and missed expansion opportunities for airlines who might have gained slots lost because they were not used 80% of the time;
- passengers may also suffer to the extent their may be less competition and hence higher air fares from airlines who may have gained slots;
- airports will lose from lower airport charge revenue and other income from fewer flights operating;
- the Government's view is that the benefits and costs are quite finely balanced; and
- given, however, the exceptional economic circumstances at present, the benefits may outweigh the costs particularly as the proposal is of limited duration.

8.10 Finally the Minister tells us that:

- the airline Summer 2009 scheduling season starts on 29 March 2009;
- thus the Commission hope the legislative process can be completed quickly;
- discussion of the proposal was to take place at the Transport Council on 30 March 2009; but
- the timetable for agreement has not yet been set.

Conclusion

8.11 **The case for this proposal is finely balanced and we understand the Government seeking conditionality, an impact assessment before any further suspension and a commitment to a more fundamental review of airport slot allocation, whilst supporting the proposal. In the circumstances we see no need to delay progress on this matter and clear the document.**

8.12 **However, we do draw this proposal to the attention of the Transport Committee, as it may be of interest to it, particularly in view of the competition implications.**

9 Annual Policy Strategy

(30460) 6852/09 COM(09) 73	Commission Communication: *Annual Policy Strategy 2010*

Legal base	—
Document originated	18 February 2009
Deposited in Parliament	27 February 2009
Department	Foreign and Commonwealth Office
Basis of consideration	EM of 20 March
Previous Committee Report	None
To be discussed in Council	No date set
Committee's assessment	Politically important
Committee's decision	Cleared

Background

9.1 The Annual Policy Strategy (APS) sets out the European Commission's policy priorities for the forthcoming year and identifies the initiatives it considers necessary to realise them. The Annual Policy Strategy forms the basis for consultations with the other EU institutions on what the Commission's priorities should be. The Commission's Legislative and Work Programme (CLWP), published in the autumn, is informed by those consultations.

The Commission Communication

9.2 The Communication sets out the Commission's views on the policy priorities for 2010 while noting that "It will be for the next Commission to review the policy priorities in the light of its strategic objectives, and to turn them into an operational programme when it draws up its Work Programme for 2010".[24]

9.3 The policy priorities for 2010 are described under the following five headings:

- "***Economic and Social Recovery***" — One of the Commission's main tasks will be to ensure the effective follow-up of the European Economic Recovery Plan. Other priorities include: encouraging greater use of the European Social Fund and European Globalisation Adjustment Fund to help tackle unemployment and sustain social cohesion; completing and implementing the overhaul of the regulation and supervision of financial markets; implementing the 2008 Small Business Act and improving SMEs' access to markets in third countries; and implementing the legislation on network industries, which is likely to be agreed in 2009, so as to make the telecoms, electricity and gas markets more competitive.

- "***Climate Change and Sustainable Europe***" — Priorities will include implementation of the EU Climate and Energy Package (assuming the EU achieves its ambition of securing a new international agreement on climate change at Copenhagen in 2009) and the revised EU Emissions Trading Scheme; redrafting the guidelines for Trans-European Energy Networks to make them an effective instrument for energy security; and continued promotion and implementation of the Commission's integrated maritime policy.

- "***Putting the Citizen First***" — 2010 will be the first year of implementation of the next five-year programme of action on justice and home affairs ("the Stockholm Programme"). The Commission also proposes action on public health, animal health and welfare, and consumer protection.

- "***Europe as a World Partner***" — Accession negotiations with Croatia and Turkey will continue and the Commission will implement the European Council's request to accelerate the stabilisation and association process in the Western Balkans. The Commission will also, for example, propose measures to support Kosovo's socio-economic development; and it is also likely to be engaged in the conclusion and the practical implementation of the Doha Development Round.

- "***Better Regulation and Transparency***" — the Commission remains committed to simplifying and improving regulation with the aim of reducing the administrative burden on businesses by 25% by 2012. It will also continue its work under the European Transparency Initiative.

24 Commission Communication, paragraph 1.

The Government's view

9.4 In paragraph 27 of her Explanatory Memorandum of 20 March, the Minister for Europe at the Foreign and Commonwealth Office (Caroline Flint) tells us that The Government welcomes the priorities outlined in the APS:

> "… whilst recognising that very few specifics are outlined here, and that it will be for the new Commission to put flesh on the bones of these policy priorities in the CLWP for 2010. We would reasonably expect the CLWP to be delayed given that there will be a new Commission."

9.5 The Minister comments briefly on the main priorities mentioned in the APS and says that the Government will tell us its views on each of the Commission's specific proposals for legislation when they are presented to the Council. She also says that the Government will provide time for the APS to be debated in Westminster Hall.

Conclusion

9.6 **The Annual Policy Strategy for 2010 contains few new policy proposals. Its main focus is on the implementation of measures which have already been adopted or are likely to be adopted in 2009. We have decided, therefore, that we should not conduct an inquiry into it. But we believe the document may provide the House with useful information and we welcome the Government's intention to provide time for it to be debated in Westminster Hall. We shall draw the APS to the attention of the Departmental Select Committees to alert them to the policy priorities the Commission has in mind for 2010.**

9.7 **It remains our view — as we said in our report on the previous Annual Policy Strategy—that it would be helpful if the Commission provided more information about the background to its policy priorities and why the it has included them in the Strategy.[25] But we see no need to keep the APS for 2010 under scrutiny and we clear it with this short report to the House.**

25 See HC 16–xvi (2007–08) chapter 6 (19 March 2008).

10 EU relations with Belarus

(30507)	Council Common Position amending Common Position
—	2006/276/CFSP concerning restrictive measures against certain
—	officials of Belarus and repealing Common Position 2008/844/CFSP

Legal base	Articles 15 and 23 TEU; unanimity Articles 60 and 301TEC; QMV
Department	Foreign and Commonwealth Office
Basis of consideration	EM of 25 March 2009 and Minister's letter of 30 March 2009
Previous Committee Report	None; but see (30076) —: HC 16–xxxiii (2007–08), chapter 5 (29 October 2008); and (27458) 8836/06 and (27459) — : HC 34–xxviii (2005–06), chapter 15 (10 May 2006)
To be discussed in Council	6 April 2009 Justice and Home Affairs Council
Committee's assessment	Politically important
Committee's decision	Cleared, but further information requested

Background

10.1 The Belarus "Country Profile" on the Foreign and Commonwealth Office website catalogues a litany of repressive and undemocratic behaviour since Alyaksandr Lukashenko won the first Presidential elections in July 1994.[26]

10.2 In September 2004 the EU imposed a travel ban on four individuals implicated in the disappearances of four well-known persons in Belarus in 1999/2000 and the subsequent obstruction of justice. A further two names were added in November 2004 because of:

> (a) their role in the flawed elections and referendum held in October 2004, lifting a constitutional ban on a third term for President Lukashenko (the Chair of the Central Electoral Committee) and
>
> (b) for the severe repression of the subsequent peaceful demonstration in Minsk by the authorities and the arrest of the opposition leaders (the commander of the Minsk riot police).

10.3 It was renewed the following September, given that there had been no independent investigation into the disappearances, nor any reform of the electoral code, in line with OSCE recommendations, nor any concrete action to respect human rights with respect to peaceful demonstrations: on the contrary, the situation had continued to deteriorate.

26 See Belarus Country Profile at http://www.fco.gov.uk/en/about-the-fco/country-profiles/europe/belarus?profile=politics&pg=7

10.4 At the General Affairs and External Relations Councils of 7 November 2005 and 30 January 2006 EU Foreign Ministers stated their readiness to take restrictive measures against those responsible if the Presidential election in Belarus on 19 March was not conducted in line with OSCE and other international standards. According to the preliminary conclusions of the OSCE/ODIHR International Election Observation Mission, the Belarus Presidential election failed to meet OSCE commitments for democratic elections. In addition, following the election, peaceful demonstrations in Minsk were again forcibly broken up, and demonstrators and leaders of the opposition arrested. The European Council of 24 March 2006 accordingly agreed that the EU would take restrictive measures against those responsible for the violation of international electoral standards, including President Lukashenko. At the General Affairs and External Relations Council of 10 April EU Foreign Ministers agreed to impose a travel ban on 31 officials (in addition to the original six), including President Lukashenko (Common Position 2006/276/CFSP, repealing Common Position 2004/661/CFSP).

10.5 On 10 May 2006, the Committee cleared amendments to Common Position 2006/276/CFSP and an accompanying proposed Regulation, which imposed an assets freeze on those individuals (plus an additional five) and on any person or entity associated with them. The amendments to the Common Position also made some technical amendments to the annexes to Common Position 2006/276/CFSP. Conditions for releasing frozen assets were set out in the instruments.

10.6 Both the travel ban and assets freeze lists included President Lukashenko. Common Position 2006/276/CFSP was renewed by Common Position 2007/173/CFSP on 19 March 2007. On 7 April 2008 the Council adopted Common Position 2008/288/CFSP extending the measures by 12 further months until 10 April 2009.

10.7 In so doing, the Council agreed that the restrictive measures provided for by Common Position 2006/276/CFSP should be extended for a period of 12 months, but that the travel restrictions aimed at certain officials of Belarus (with the exception of those involved in the 1999–2000 disappearances and the President of the Central Electoral Commission) should not apply for a reviewable period of six months, so as to encourage dialogue with the Belarus authorities and the adoption of measures to reinforce democracy and respect for human rights; at the end of this six-month period, the Council would re-examine the situation in Belarus and evaluate the progress made by the Belarus authorities on reforming the Electoral Code to bring it into line with OSCE commitments and other international standards for democratic elections, and consider any other practical action to strengthen respect for democratic values, human rights and fundamental freedoms, including the freedom of expression and of the media, as well as the freedom of assembly and political association and the rule of law.

10.8 In her accompanying Explanatory Memorandum of 28 October 2008, the Minister for Europe at the Foreign and Commonwealth Office (Caroline Flint) recalled that, following the 2006 Presidential elections — "described by the Organisation for Security and Co-operation in Europe (OSCE) as 'seriously flawed'" — the Government supported the EU wide visa ban and asset freeze on key members of the regime in Belarus, and has had a ban on ministerial contact since 1997. As a result of these actions, she said, "Belarus has become increasingly isolated in the international community." She continued thus:

"This year, we have seen some signs that Belarus might be interested in increasing its contacts with the Member States and willing to adopt a more moderate stance on other issues. Belarus released its last three internationally recognised political prisoners in late August. This meets one of the 12 conditions for engagement set out by the EU in the Commission document 'What the EU could offer Belarus' published in November 2006.[27] Meanwhile, President Lukashenko promised that parliamentary elections on 28 September would be free and fair. Whilst the initial report by OSCE monitors does not support this (it said that the elections failed to meet OSCE standards) Belarus was significantly more co-operative in their interactions with OSCE monitors.

"This represents less progress than we would have liked. But we share the view of other EU Member States that isolating Belarus will not promote further positive progress but rather focus the leadership on strengthening their ties with Russia whilst failing to deliver on EU demands. The UK therefore supports the EU consensus in favour of suspending the visa ban for six months whilst renewing the restrictive measures for a further 12 months, backed up by a strong statement from Council Members, as the approach most likely to encourage the Belarusians to make further progress on the road toward human rights and democracy.

"We will continue to follow a path of critical engagement ensuring Belarus understands that the process begun by the General Affairs and External Relations Council (GAERC)[28] must be sustained by further Belarusian steps. Whilst it is unlikely that all 12 conditions for engagement will be met over the next six months we expect to see some positive progress, particularly in the areas of freedom of the media, civil society and elections. In addition to pushing for the EU to set down clear modalities measuring progress we will continue to deliver clear and firm messages basing our demands explicitly on the EU's '12 Propositions.'[29]

"The lifting of the visa ban will enable us to engage at senior levels and create personal incentives for senior officials in Belarus, who will be keen to ensure that the ban is not imposed again.

"The proposal gives Belarus a six month window in which to demonstrate concrete improvements in human rights and democracy. We hope that Belarus will make the most of this opportunity to rebuild the relationship with the EU. If Belarus fails to move toward the necessary reforms, it ensures that the restrictions will be automatically re-imposed at the end of that six month period. A unanimous decision will be required to extend the decision by another six months."

27 See http://ec.europa.eu/external_relations/belarus/intro/non_paper_1106.pdf for the full text of the paper.

28 Presumably a reference to the Council Conclusions on Belarus, which are available at http://www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/en/gena/103299.pdf and at Annex 1 of this chapter or our Report

29 Which are set out in the Council Non-Paper to which the Minister refers, and which we reproduce at Annex 2 of this chapter of our Report.

Our assessment

10.9 We said that it was clear from our examination in chapter 4 of the same Report of a similar process, and change of approach, regarding another repressive regime — in that case Uzbekistan[30] — why we were somewhat sceptical of the notion of a "probationary period" during which progress in relation to clear benchmarks will determine whether or not a temporary suspension is made permanent.

10.10 As with the revisions to the Common Position on Uzbekistan, we were also concerned that we were effectively being presented, not with a proposal to be scrutinised, but with a fait accompli — a decision announced in the 13 October GAERC Conclusions, followed by changes to the Common Position to give it effect. So we asked the Minister to appear before us to explain the position she had taken, and why she had handled the process in this way. The first part of that evidence session (held on 4 February 2009)[31] was devoted to a discussion out of which the Minister, in referring to the six-month deadline, suggested "a conversation about that before we get to the final stage of renewal or extension of that package".[32]

The Minister's letter of 9 March 2009

10.11 In her letter, the Minister reported that the EU had made clear its five priorities — no new political prisoners, freer media, reform of electoral code, liberalisation of NGO environment, and freedom of assembly — and that the Belarusians had "refrained from flagrant human rights abuses" and introduced "a number of small reforms." But progress against the five priorities had been mixed, the positive changes had not been systemic and could be reversed and the Minister was concerned by some negative steps in the immediately preceding couple of weeks — including the arrest of three human rights activists, two of whom had been recognised as political prisoners by the international community during previous periods of detention.

10.12 The Minister then went on to say that, while some member states shared her concerns, most were leaning towards renewal of the suspension on the grounds that there had been some progress, which they felt would be more likely to set back reform rather than be an encouragement. Though renewal could demonstrate the EU's commitment to engagement with Belarus, and "tie them closer to international organisations and internationally accepted standards through the Eastern Partnership and the Council of Europe, so encouraging further reform", renewal on the basis of the limited reforms so far, the Minister said, "risks suggesting that we were satisfied with progress, weakening an important lever for further reform" and "could lead them to believe that sanctions would be lifted altogether when they come up for renewal in October." Conversely, the Minister said, re-imposition could be interpreted negatively by international bodies other than the IMF and jeopardise the additional assistance that their $2.5 billion loan in January assumed, and make Belarus vulnerable to Russian influence, which would in turn be unlikely to help the reform process.

30 See (30048) —: HC16–xxxiii (2007–08), chapter 4 (29 October 2008).

31 Published on 2 March 2009 as HC 231.

32 Ibid, Ev 4.

10.13 Overall, the Minister concluded, her judgement on whether to support renewal of the suspension would be based on the most effective way of supporting reform; the Belarusian reaction to whichever step the EU took was unpredictable, with neither option providing guarantees of improved performance; an important part of the effectiveness of her approach would be achieving EU unity, "so Belarus was left in no doubt about our messages", which unity would be needed when the Common Position was due for renewal in October, without which the sanctions would lapse. Given "these challenges", the Minister said her position would "continue to evolve in the run up to the GAERC", and she would "inform the committee in the usual way of the outcome of the Council."

10.14 In its response of 11 March 2009, the Committee thanked the Minister for having shared her analysis with it and recognised the difficulties involved in making the right decision. But, it noted, a key EU priority was no new political prisoners: the Minister had said that the visa ban suspension provided for its immediate re-imposition if the Helsinki-Belarus commission were to assess that any of the human rights activists were political prisoners in this instance, but did not say when she expected the commission to deliver its assessment. The Committee presumed that, given the importance the EU rightly attached to this issue, the judgement of this commission would be important in determining any final decision by the Council, and that it would be available to the Council before it came to a view, and accordingly asked the Minister to let the Committee know what the situation was prior to her going to the Council, and how she expected this to affect the outcome.

The Minister's letter of 20 March 2009

10.15 The Minister then wrote on 20 March regarding the 16–17 March GAERC's decision to extend the Common Position for 12 months, and renew the suspension of travel restrictions for 9 months.

10.16 The Minister again said that views differed about the best way to respond; some felt that refusing to renew the suspension would push Belarus away from the EU, discouraging further reforms; others, that renewing the suspension without clear evidence of commitment to reform would send the wrong message to the Belarusian authorities. The UK objective was "to continue to engage with Belarus to promote reform in the country, while maintaining the option to revert to sanctions if the human rights situation deteriorates", and the UK had "played an important role in building consensus around an approach that would promote engagement, while making clear that the EU was not yet convinced of the Belarusian authorities' commitment to reform." This was "a good outcome, and a good foundation for the EU's relationship with Belarus." It would be accompanied by "increased focus on reforms within Belarus"; if the EU judged that Belarus had "failed to make progress, or if there are significant human rights violations, the Common Position can be amended by unanimous agreement at any point during the next year, and restrictions re-imposed".

10.17 Responding to the Committee's recent letter, the Minister then said that "any <u>new</u> (our underlining) arrests of human rights defenders or prisoners of conscience in Belarus would result in a major set-back in EU-Belarus relations"; Member States had agreed that new prisoners of conscience would be a very clear indication that Belarus was not committed to reforms; and that under these circumstances would amend the Common

Position to re-impose the travel restrictions: the EU had "made this position very clear to the Belarusian authorities." The Minister then noted that Amnesty International's definition of "prisoners of conscience" was "men, women or children imprisoned solely for the peaceful expression of their beliefs". To decide whether an individual met these criteria Member States would rely on the judgement of international and local NGOs, including the Helsinki-Belarus commission — in particular, on the judicial process against the three activists referred to in her previous letter, Nikolay Avtukhovich, Yuri Leonov and Vladimir Asipenka — and would "continue to raise such cases with the Belarusian authorities to make them aware of the damage continued detention of such individuals would do to their relationship with the EU."

10.18 In its 25 March 2009 response, the Committee said that we found this somewhat ambiguous. First, we were not clear what the difference was between human rights defenders who had already been arrested — which those in question had been — and prisoners of conscience. But it would seem that she and other Member States did draw such a distinction; in which case we asked her to explain this more fully.

10.19 Secondly, the one clear criterion among the five she had listed earlier was "no new political prisoners", and she had said that there had been no new political prisoners. But she had then said that three former political prisoners, and human rights defenders, had been arrested. To the Committee, this already suggested a breach of the one clear criterion among the five. Now, in referring to "any new (our underlining) arrests of human rights defenders", it seemed to us that Member States were instead awaiting the verdict of the Helsinki-Belarus commission regarding the status of those individuals referred to in her earlier letter. Having said earlier that the visa ban suspension provided for immediate re-imposition if the Helsinki-Belarus commission were to assess that any of the human rights activists were political prisoners in this instance, the Committee asked the Minister to clarify these ambiguities, confirm that this is what Member States intend to do, and say when she expected to know the Helsinki-Belarus commission's view; and to do so in the Explanatory Memorandum that she would now be submitting on the amendments to the Common Position.

The Common Position

10.20 This draft Common Position extends the restrictive measures (asset freeze and travel ban) provided for by Common Position 2006/276/CFSP for a further period of 12 months; except that the travel restrictions imposed on certain leading figures in Belarus, with the exception of those involved in the disappearances which occurred in 1999 and 2000 and of the President of the Central Electoral Commission, will be suspended for a period of 9 months.

10.21 By the end of that 9-month period, the Council will conduct a review of the restrictive measures, taking into account the situation in Belarus. At any time, the Council may decide by unanimity to re-apply the travel restrictions, if necessary in the light of actions by Belarusian authorities in the sphere of democracy and human rights.

The Government's view

10.22 In her Explanatory Memorandum of 25 March 2009, the Minister for Europe recalls that, following the "seriously flawed" Presidential elections in 2006 the UK supported the EU wide visa ban and asset freeze on key members of the regime in Belarus; that the UK has had a ban on ministerial contact since 1997; and that, as she said last October, Belarus had consequently become increasingly isolated in the international community. She also recalls the signs in 2008 that "Belarus might be interested in increasing its contacts with the Member States and willing to adopt a more moderate stance on other issues", including the release of its last three internationally recognised political prisoners in late August and the 2008 presidential elections which, though still failing to meet OSCE standards, had found Belarus "significantly more co-operative in its interaction with OSCE monitors." Though adding up to less progress than she would have liked, the Minister had shared the view that isolating Belarus would not promote further positive progress but rather focus the leadership on strengthening their ties with Russia whilst failing to deliver on EU demands; last October's GAERC decision had given Belarus "incentives to re-engage with the EU and a six-month period in which to demonstrate concrete developments.". She continues as follows:

> "Heads of Mission from EU Embassies in Minsk have assessed Belarus' progress against five priorities (no new political prisoners, freer media, reform of electoral code, liberalisation of NGO environment and freedom of assembly) but felt progress has been mixed. Belarus has taken several positive actions — no further political prisoners, allowed limited circulation of opposition press, permitting registration of the opposition organisation 'For Freedom' and the creation of three consultative councils covering foreign investor relations, media issues and civil society. However, the UK is concerned at recent negative steps taken by the Belarus authorities — e.g. their refusal to register the human rights NGO 'Nasha Vyasna' and the arrest of three activists. These arrests are not currently deemed to be political imprisonment, but this is a situation we are monitoring with concern.
>
> "Some EU colleagues felt that failing to suspend further the visa ban would discourage Belarus from cooperating with the EU, and compromise further reforms. Others felt that renewing the suspension without clear evidence of commitment to reform would send the wrong message to the Belarus authorities. The UK's objective is to continue to engage with Belarus to promote reform in the country, while maintaining the option to revert to sanctions if the human rights situation deteriorates. In the light of this divergence of views, the UK played an important role in building consensus around an approach that would promote engagement, while making clear that the EU was not yet convinced of the Belarusian authorities' commitment to reform.
>
> "The draft Common Position extends sanctions for a further 12 months, but partially suspends the visa ban for a further 9 months. If the EU judges that Belarus has failed to make progress, or if there are significant human rights violations, the Common Position can be amended by unanimous agreement at any point, and restrictions re-imposed.

> "We believe that this is a good outcome. The package promotes engagement, but makes clear that the EU is not yet convinced of the Belarus authorities' commitment to reform. The UK's proposal of a 12-month extension enables the EU to maintain leverage for a longer period than the previous Common Position. It should also be noted that the partial suspension does not apply to those involved in disappearances which occurred in 1999–2000 or the Chair of the Central Electoral Commission."

10.23 The Minister concludes by noting that in order to comply with article 3 of Common Position 2008/844/CFSP (that it be reviewed before 13 April 2009), the draft Common Position will need to be adopted at the Justice and Home Affairs Council on 6 April 2009.

The Minister's letter of 30 March 2009

10.24 The Minister has responded to our letter of 25 March as follows:

> "Nikolay Avtukhovich, Yuri Leonov and Vladimir Asipenka have been arrested for arson, and are currently in pre-trial detention. We have serious concerns about the independence of the Belarusian justice system and may in the future come to categorise these individuals as human rights defenders or political prisoners, but it is currently too early to make that conclusion. This view is shared by the Belarus Helsinki Commission who were consulted by officials at our Embassy in Minsk earlier this week. The Belarus Helsinki Commission are following the case especially closely because Nikolay Avtukhovich and Yuri Leonov have previously been recognised as political prisoners.
>
> "Until the three individuals are released, or until the Belarus Helsinki Commission consider them political prisoners, we will work with our EU colleagues to continue to urge the Belarusian authorities to ensure that their case is dealt with promptly and fairly.
>
> "We will make clear to the Belarusian authorities that any action that results in the Belarusian Helsinki Commission considering these individuals as political prisoners will have a significant impact on Belarus's relationship with the EU.
>
> "The EU undertook to review the provisions of Common Position 2008/844/CFSP before 13 April 2009. If the current draft Common Position is not adopted by that date, the EU will be unable to review those provisions and EU colleagues may feel that the UK is not serious about its obligations under EU legislation. Furthermore, it may send a signal to the Belarus authorities that the EU is not united on this issue — a position it will exploit to undermine the effectiveness of the sanctions measures."

Conclusion

10.25 **Given the clear differences of view between Member States that the Minister has herself discussed, it would be odd if the Belarus authorities had not already concluded that the EU was not united on this issue — especially since she has again failed to state that, should the individuals in question be classified as political prisoners, the travel ban will be reimposed.**

10.26 **We leave it to the House to judge whether or not this "a good outcome", particularly as it is developments in this area of "common values" and governance that it is said will determine what place Belarus will have in the proposed new Eastern Partnership between the EU and six Eastern neighbours — Armenia, Azerbaijan, Belarus, Georgia, Moldova and Ukraine. That proposal is to be debated in the European Committee on 27 April.**[33]

10.27 **We look forward to further information from the Minister as the situation develops, particularly with regard to the arrested individuals and in the run-up to the review in 9 months time.**

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

Annex 1: Council Conclusions of 13 October 2008 on Belarus

"1.The Council notes that, despite some improvements, the parliamentary elections held on 28 September 2008 in Belarus failed to meet the democratic criteria of the OSCE. The Council calls on the Belarusian authorities to remedy the shortcomings observed and to cooperate fully to that end with the Office for Democratic Institutions and Human Rights.

"2. The Council notes with satisfaction that some progress has been made during the electoral campaign compared with previous elections, in particular as regards cooperation with the OSCE/ODIHR and broader access for the opposition to the media. It again welcomes the release of the last internationally recognised political prisoners before the elections. The Council also notes that the opposition was able to demonstrate peacefully on the evening of the elections.

"3. The European Union earnestly hopes for gradual re-engagement with Belarus and is therefore ready to develop a dialogue with the Belarusian authorities, as with all those participating in the democratic debate, with the aim of encouraging genuine progress towards strengthening democracy and respect for human rights in that country. The Council has taken note of the troika meeting with the Belarusian Minister for Foreign Affairs and, in support of these developments, has decided to restore the contacts with the Belarusian authorities which had been restricted pursuant to the Council conclusions of 22 and 23 November 2004.

"4. In order to encourage dialogue with the Belarusian authorities and the adoption of positive measures to strengthen democracy and respect for human rights, the Council — while deciding to extend, for one year from today's date, the restrictive measures provided for by Common Position 276/2006/CFSP, as extended by Common Position 288/2008/CFSP — has decided that the travel restrictions imposed on certain leading figures in Belarus, with the exception of those involved in the disappearances which occurred in 1999 and 2000 and of he President of the Central Electoral Commission, will

33 See (30248) 16940/08 and (30249) 16941/08: HC 19–xi (2008–09), chapter 5 (18 March 2009).

not apply for a period of six months which may be renewed. At the end of that period, the Council will reconsider whether the Belarusian authorities have made progress towards reforms of the Electoral Code to bring it into line with OSCE commitments and other international standards for democratic elections and other concrete actions to respect democratic values, the rule of law, human rights and fundamental freedoms, including the freedom of expression and of the media, and the freedom of assembly and political association. The Council may decide to apply travel restrictions sooner if necessary, in the light of the actions of the Belarusian authorities in the sphere of democracy and human rights.

"5. With a view to strengthening links with the administration and population, the Council supports the intensification of technical cooperation initiated by the Commission with Belarus in areas of mutual interest. The European Union will continue to provide assistance for Belarusian civil society in order to promote the development of a democratic and pluralist environment.

"6. The European Union reiterates that it remains ready to deepen its relations with Belarus and to review the restrictive measures taken against leading Belarusian figures in the light of progress made by Belarus on the path towards democracy and human rights. The Council is ready to assist Belarus in attaining these objectives. "

Annex 2: The EU's "12 points"

- "respect the **right** of the people of Belarus **to elect their leaders democratically —** their right to hear all views and see all election candidates; the right of opposition candidates and supporters to campaign without harassment, prosecution or imprisonment; independent observation of the elections, including by Belarusian nongovernmental organisations; their freedom to express their will and have their vote fairly counted;

- "respect the **right** of the people of Belarus **to independent information**, and to **express themselves freely** e.g. by allowing journalists to work without harassment or prosecution, not shutting down newspapers or preventing their distribution;

- "respect the **rights of non-governmental organisations** as a vital part of a healthy democracy — by no longer hindering their legal existence, harassing and prosecuting members of NGOs, and allowing them to receive international assistance;

- "**release all political prisoners —** members of democratic opposition parties, members of NGOs and ordinary citizens arrested at peaceful demonstrations or meetings;

- "properly and independently investigate or review the cases of **disappeared persons;**[34]

34 Yuri Zakharenko (former Minister of the Interior, disappeared on 7 May 1999), Victor Gonchar (former Vice-President of the Parliament of Belarus, disappeared on 16 September 1999), Anatoly Krasovski (businessman

- "ensure the **right** of the people of Belarus **to an independent and impartial judicial system** — with judges who are not subject to political pressure, and without arbitrary and unfounded criminal prosecution or politically-motivated judgements such as locking-up citizens who peacefully express their views;
- "end arbitrary **arrest** and **detention**, and ill-treatment;
- "respect the **rights and freedoms** of those Belarusian citizens who belong to **national minorities**;
- "respect the **rights** of the people of Belarus **as workers** — their right to join a trade union and the right of trade unions to work to defend the people's rights; respect the **rights** of the people of Belarus **as entrepreneurs** to operate without excessive intervention by the authorities;
- "join the other nations of Europe in abolishing the death penalty;
- "make use of the support which the OSCE, the EU and other organisations offer to Belarus to help it respect the rights of its people."

11 Financial Management

(30280) 17606/1/08 COM(08) 859	Commission Communication concerning the revision of the Multiannual Financial Framework (2007–2013) Draft Decision amending the Interinstitutional Agreement of 17 May 2006 on budgetary discipline and sound financial management as regards the Multiannual Financial Framework

Legal base	Article 272 EC; QMV; the special role of the European Parliament in relation to the adoption of the Budget is set out in Article 272
Department	HM Treasury
Basis of consideration	Minister's letter of 29 March 2009
Previous Committee Report	HC 19–iii (2008–09), chapter 6 (14 January 2009), HC 19–viii (2008–09), chapter 7 (25 February 2009) and HC 19–x (2008–09), chapter 1 (11 March 2009)
Discussed in Council	19–20 March 2009 (European Council)
Committee's assessment	Politically important
Committee's decision	Cleared

disappeared with Mr Gonchar) and Dmitri Zavadski (cameraman for the Russian TV channel ORT, disappeared on 7 July 2000)

Background

11.1 In the context of the Commission's Communication, *A European Economic Recovery Plan,*[35] the Government told us that:

- the Commission proposes revising the 2007–2013 Financial Framework[36] (which sets overall expenditure ceilings for the budget) for the purposes of mobilising €5.00 billion (£4.10 billion) for trans-European energy interconnections and broadband infrastructure; and
- it should be noted that the ECOFIN Council comments for the European Council of 11–12 December 2008 specifically referred to considering the Commission's plan "within the existing" ceilings and headings of the Financial Framework.[37]

11.2 In December 2008 the Commission proposed in this document the revision of the 2007–2013 Financial Framework to which we had been alerted. The revision was to be achieved by amendment to the Inter-Institutional Agreement of 17 May 2006 on budgetary discipline and sound financial management, which set the current Financial Framework.[38] The draft Decision would allow a €5.00 billion (£4.10 billion) increase to the Heading 1a (Competitiveness for Growth and Employment) ceiling for 2009 and 2010, with a corresponding €5.00 billion (£4.10 billion) reduction to the Heading 2 (Preservation and Management of Natural Resources) ceiling for 2008 and 2009.

11.3 When we considered this document, in January 2009, we:

- noted that the Government was keen, as a strong believer and advocate of budget discipline and sound financial management, to avoid any further revision of the 2007–2013 Financial Framework, an important tool for budget discipline;
- noted that it would work with like-minded Member States to ensure that the Commission explored all other possibilities for additional resources to be met from within the existing Financial Framework through, in the first instance, appropriate redeployment, reprioritisation, and re-profiling; and
- asked to hear about progress in securing that objective.

11.4 When we considered the document again, in February 2009, we heard that:

- the Netherlands, Germany, Sweden, Denmark, Austria and France had expressed concerns with the proposal to revise the Financial Framework;
- as well as calling on the Commission to propose reprioritisation and redeployment of existing resources within both Headings 1a and 2, the Government and the like-minded Member States were opposed to use of the 2008 unallocated budget margin and to any increase in the overall Financial Framework ceiling;

35 (30213) 16097/08: see HC 19–i (2008–09), chapter 4 (10 December 2008) and *HC Deb*, 20 January 2009, cols. 626–53.

36 In previous budgetary periods the Financial Framework was known as the Financial Perspective and is still often referred to as such.

37 (30213) 16097/08: *op. cit.*

38 See http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2006:139:0001:0017:EN:PDF.

- in the light of this the Commission had revised its proposal, limiting the overall increase of commitment appropriations under Heading 1a to €3.50 billion (£2.91 billion), but proposing an additional €1.50 billion (£1.25 billion) of expenditure for infrastructure projects under Heading 2, to make the total up to €5.00 billion (£4.15 billion);

- the Government objected to this revised proposal as it still drew on the 2008 margin to finance the package; and

- it would continue to take a proactive part in discussions with the Commission and other Member States.

11.5 When we last considered the document, on 11 March 2009, we heard that:

- at a General Affairs and External Relations Council on 23 February 2009 the Government had set out a broad alternative approach to draw on the redeployment of existing resources and future year margins, which was supported by Sweden and Austria and opposed by Poland, Ireland and Greece and on which France, the Netherlands and Germany called for more detailed work to be done before a decision could be reached;

- a compromise proposal from the Presidency was expected shortly and the Government would continue to work for a financing solution that avoided any Financial Framework revision, or at least limited it to an absolute minimum; and

- the financing package was on the agenda for the General Affairs and External Relations Council on 16 March 2009 — if agreement was not reached then, the Presidency would seek to reach agreement in time for the Spring European Council on 19–20 March 2009.

11.6 We noted that:

- although there had been some progress towards obtaining a more satisfactory outcome on this matter, the Government was attempting to secure more;

- fast moving negotiations in the run-up to the European Council might require a Government decision on a compromise before scrutiny was complete, in order to secure a favourable outcome;

- as the Government acknowledged, it would be regrettable if it had to agree to a decision on this matter whilst the document was still under scrutiny;

- nevertheless, we did not yet feel able to clear the document from scrutiny;

- but, given the circumstances, the Government could, if it deemed it necessary and in accordance with paragraph (3) (b) of the Scrutiny Reserve Resolution, agree to a compromise on this matter; and

- we should, of course, want a prompt account of developments on the document, when we would again consider whether then to clear it from scrutiny.

Meanwhile the document remained under scrutiny.[39]

The Minister's letter

11.7 The Economic Secretary to the Treasury (Ian Pearson) writes to tell us of the final outcome of discussion of this proposal. He says that:

- at the European Council of 19–20 March 2009 agreement was reached on financing the additional €5.00 billion Community contribution to the European Economic Recovery Plan;
- the basis for final agreement was a Presidency compromise as an alternative financing solution to that originally proposed by the Commission;
- the Government was instrumental in arguing for an alternative budget-disciplined financing mechanism for the whole €5.00 billion package which will draw on existing budget resources; and
- consistent with the Government's long-standing concerns and objectives, the agreement involves no overall increase to the 2007–2013 Financial Framework or use of funds from previous years, as originally proposed by the Commission.

11.8 The Minister continues that the main elements of the agreed package were:

- the overall €5.00 billion reference amount was maintained — €1.02 billion would go toward broadband internet and "CAP Health Check" related measures[40] and €3.98 billion for energy infrastructure projects;
- financing of the former would be exclusively from within Heading 2, €600 million of which would be covered by the existing 2009 Heading 2 budget margin;
- financing the energy projects in 2009 would be done by a revision of the Financial Framework ceilings such that an increase of €2.00 billion to the 2009 ceiling of Heading 1a would be offset by a decrease of the 2009 ceiling of Heading 2 by the same amount;
- at least €2.60 billion of the existing 2009 Heading 2 margin has been allocated to finance the recovery plan;
- the remaining €2.40 billion will be secured during the course of the 2010 and 2011 annual budget negotiations;
- available resources under Heading 2 will be committed to meet the remaining €420 million for broadband internet and CAP Health Check measures; and
- to finance the outstanding €1.98 billion for energy projects, the remaining margins available under the 2009, 2010 and 2011 budget ceilings will be used.[41]

39 See headnote.

40 See http://ec.europa.eu/agriculture/healthcheck/index_en.htm.

41 The text of the compromise proposal is at http://register.consilium.europa.eu/pdf/en/09/st07/st07848-re01.en09.pdf.

11.9 The Minister comments that:

- The Government worked with like-minded Member States to delete any reference in the compromise text to the possibility of increasing the overall Financial Framework ceiling;
- the €5.00 billion package is part of a wider Community fiscal stimulus which the Government supports in line with policies it is pursuing nationally and internationally to help the global economy recover;
- guaranteed access to funding across the Community should leverage additional investment and create jobs and could make the vital difference between projects going ahead or not;
- carbon capture and storage technology development in the Community as a whole will receive over €1.00 billion as a consequence of this package;
- agreement on the €5.00 billion package represents a good and hard-fought outcome for the UK that ensures an estimated €265 million (£237 million) additional investment for UK energy projects (for electricity interconnection, off-shore wind and carbon capture and storage) and for the provision of broadband infrastructure in rural areas;
- the UK post-abatement gross contribution associated with the Presidency compromise package will be an estimated €488 million (£435 million), some €70 million (£62.50 million) less than what it would have been with the original Commission proposal;
- in avoiding an increase to the overall Financial Framework ceiling the Government has ensured that at least €2 billion of 2009 CAP budget margins will be reallocated to energy infrastructure projects; and
- this represents a good outcome consistent with the Government's broader aims for re-shaping the budget and for a fundamental review of Community expenditure.

Conclusion

11.10 **We are grateful to the Minister for this account of the final outcome on this proposal. We have no further questions to ask and now clear the document.**

12 Financial management

(30458) 6904/09 + ADD1 COM(09) 96	Commission Report : *Member States' replies to the Court of Auditors' 2007 Annual Report:*

Legal base	—
Document originated	24 February 2009
Deposited in Parliament	26 February 2009
Department	HM Treasury
Basis of consideration	EM of 20 March 2009
Previous Committee Report	None
To be discussed in Council	No discussion planned
Committee's assessment	Politically important
Committee's decision	Cleared

Background

12.1 The Commission is obliged to inform Member States of the references to them in the annual reports of the European Court of Auditors and to invite them to respond. The Commission publishes annually a report on those responses.

The document

12.2 In this document the Commission reports on the responses of Member States to the references to them made in the European Court of Auditors' 2007 Annual Report.[42] The Commission outlines general comments that Member States made on the overall audit approach, reports responses to questions on common errors in relation to structural policies, provides responses to specific observations of the Court and presents the Commission's conclusions. The staff working document accompanying the report summarises all the general and specific responses from Member States.

12.3 The Commission first recapitulates the Court's Statement of Assurance and says it asked Member States to:

- indicate, for each applicable observation or error identified in the Court's report, if action had been or would be taken, the timing of any action taken and the content of action taken or, if no action, the reason for not taking action;
- answer a series of questions on action taken to address shortcomings in relation the Court's report on Cohesion and Agriculture and Natural Resources; and

42 (30203): see HC 19–iii (2008–09), chapter 3 (14 January 2009) and *HC Deb,* 20 January 2009, cols. 654–79.

- answer two general questions on improvement of management of Community projects by Member States.

12.4 In relation to follow up of observations and errors the Commission says that:

- it informed Member States of errors pertaining to them and asked them to provide details of actions taken to rectify the errors;
- the majority of Member States responded on time and in detail;
- it will monitor the actions taken as part of its routine follow up of all Court reports;
- all Member States provided at least partial replies concerning quantifiable errors, stating in each case whether the error had been accepted or rejected and what actions had been taken;
- several Member States (the Czech Republic, Germany, Ireland, Spain, Greece and the UK) accepted most of the errors attributed to them by the Court; and
- in their replies to the actions taken 15 of the 17 Member States affected provided some information on the actions taken and their likely outcome. Some highlighted that recoveries have either been initiated or had already taken place.

12.5 In relation to actions taken to address shortcomings in Cohesion and Agricultural and Natural Resources the Commission says that:

- the Court had assessed that the most urgent issues to be addressed in the Agriculture and Natural Resources chapter were entitlements, information on land parcels and clarification and simplification of rules underpinning the measures, in particular the use of the national reserve;
- Member States were asked to give details about improvements made to the Single Payment Scheme, which is currently being applied in 17 Member States with the remaining ten scheduled to start from 2010;
- most indicated that some improvements had been made but several new Member States confirmed that they were currently not applying the scheme;
- Member States with the system in place indicated that they had recently been audited and approved by their competent national authority and that all the issues which had been mentioned by the Court were taken into account;
- four questions on the Cohesion policy area were based on the levels of staffing and training for national staff in managing and paying authorities;
- the majority of Member States replied that new staff had been taken on in the context of restructuring and, in certain cases, for the closure of the 2000–2006 programming period as well as to cover the programmes for the new 2007–2013 period;
- over 70% responded positively that staff in both managing and paying authorities had been trained in financial management and control in the last 12 months;

- several highlighted ongoing training in financial management and control programmes and explained that contractual management in the form of seminars, information sessions and conferences were standard features of their training programmes;

- induction courses and starter packs (containing checklists, guidance notes and procedure manuals) were an integral part of most Member States' training package, together with the use of the intranet for disseminating information as standard practice;

- the Court had noted difficulties with public procurement and the resulting problems with tender procedures as leading to a frequent cause of errors — Lithuania commented that it would like to see more Commission support in this area;

- due to the misinterpretation of the term "Audit Body" by Member States the Commission was not able to assess replies provided to a question about the Court's comment on the failure of audit bodies to carry out sufficient checks — nearly all Member States deemed the term "audit body" to mean its National Supreme Audit Body, whereas the Court had been referring to entities auditing in the context of project management and control; and

- in relation to a question focused on the overall reduction of errors identified in the past year, most Member States were unable to make the comparison, as the Court had not carried out audits for two consecutive years in the same country.

12.6 In relation to Commission help in improving management of Community projects by Member States it says that its first general question was based on tripartite discussions held between the Court, certain Member States and the Commission in May-July 2008. The Commission reports that:

- discussions centred on the Court's error findings on audited programmes and projects;

- participating Member States were asked to comment on how useful the discussions were to them; and

- six Member States replied that, although the outcome of the meetings was not always entirely favourable to the Member State concerned, they were nevertheless satisfied with the initiative which they found to be very useful.

12.7 On its second general question, which asked Member States to suggest improvements to its supervisory role in shared management, the Commission says that the majority were generally satisfied with the way in which it performed this role. It asserts that the various Contracts of Confidence signed with Member States in the Regional and Cohesion Funds area and the guidelines issued for the 2007–2013 programming period attest to this, but adds that over half of the Member States, particularly the new ones, suggested improvements:

- on rules and regulations — provision of guidelines, best practices and training for managing and paying authorities; simplification of rules and regulations in order to promote more efficient project implementation;
- on monitoring — improvements in monitoring with more information on the methodology used for inspection missions undertaken by the Commission; and
- public procurement — more supervision in the field of public procurement and training in Community law and guidelines for public procurement.

12.8 The Commission concludes its report by saying that:

- it was satisfied with the quality of the replies to the questionnaire, the adherence to the deadline and the provision of extensive documentation concerning the corrective measures employed by some Member States;
- Member States commented on the improvements in the 2007 Statement of Assurance, which for the first time provided an unqualified opinion on the reliability of the accounts;
- in the field of shared management Member States continue to make efforts to improve their systems and reduce errors;
- staffing levels have improved and training in managing and paying authorities has increased;
- Member States accepted the errors which had been attributed to them by the Court and in a large number of cases, actions have already been taken to rectify them;
- Member States were satisfied with the way in which the Commission performed its supervisory role;
- they did however comment on the need to simplify rules and regulations and for the Commission to further strengthen and develop guidelines and to improve the assistance provided;
- Member States sought further clarification on best practice from the Commission and the Court; and
- replies to the questionnaire showed an overall positive attitude.

The Government's view

12.9 The Economic Secretary to the Treasury (Ian Pearson) says that the Government:

- welcomes this report and is encouraged to see that Member States have responded and have rectified errors identified in the Court's findings;
- finds it useful to consider Member States' responses in conjunction with the Court's own report as this informs its understanding with regard to problems encountered and the efforts being made by other Member States to improve their systems and reduce errors;

- welcomes the opportunity to contribute its thoughts on the Court's findings and looks forward to seeing improvements in this area;
- supports further simplification of rules and regulations, better cooperation between everyone involved in the management and audit of Community funds and strengthening of guidelines to facilitate implementation of projects according to propriety requirements; and
- thinks Member States' requests for further clarification on best practice can only contribute further to improvements in the management of Community funded projects.

The Minister concludes that the Government position remains that high standards of financial management and effective control systems are of paramount importance across the Community.

Conclusion

12.10 **This report gives useful background to the preparation and conclusions of the European Court of Auditors' 2007 annual report and more generally to the audit process. Thus, while content to clear the document, we draw it to the attention of the House.**

13 Bilateral Agreements

(30334) 5147/09 COM(08) 893	Draft Regulation establishing a procedure for the negotiation and conclusion of bilateral agreements between Member States and third countries concerning sectoral matters and covering applicable law in contractual and non-contractual obligations

Legal base	Articles 61, 65 and 67(5) EC Treaty; unanimity; consultation.
Department	Ministry of Justice
Basis of consideration	Minister's letter of 18 March 2009
Previous Committee Report	HC 19–vii (2008-09), chapter 5 (11 February 2009)
To be discussed in Council	6/7 April 2009 (possibly), June 2009 JHA Council (probably)
Committee's assessment	Legally and politically important
Committee's decision	Cleared.

Background

13.1 The external competence of the Community is its capacity to act separately from its Member States internationally, in particular to negotiate and conclude binding international agreements and to belong to, and participate in, international organisations. The Community's external competence may be either exclusive or shared. Where the Community has exclusive external competence, Member States have no further power to act internationally in respect of that subject-matter. The European Court of Justice has established that the Community's external competence will normally be exclusive if, inter alia, an agreement falls into an area of law which, internally, is already largely covered by Community rather than national law, or if the effectiveness or purpose of Community's internal rules may be adversely affected or undermined by an international agreement concluded by Member States. The Community's external competence may thus be exclusive in areas of law where it only has shared internal competence.

The document

13.2 The purpose of this proposal is to establish a procedure to enable Member States in future to negotiate and conclude bilateral agreements with third countries in certain areas of the choice of law concerning non-contractual and contractual obligations. Subject to the satisfaction of certain conditions, this procedure would enable the Commission to authorise such negotiations and their conclusion.

13.3 These subject areas have recently been covered by Community legislation, respectively EC Regulation No. 864/2007 ("Rome II") and EC Regulation No. 593/2008 ("Rome I"). The consequence of this Community legislation is to establish exclusive external Community competence in these areas. This has had the result that in principle Member States are prevented from entering into bilateral agreements which fall within the scope of this legislation. Concerns were raised by some Member States during the negotiations on Rome II that the consequent extension of external competence in this area might prove too restrictive in some circumstances, for example in the context of cross-border infrastructure projects involving third countries, such as airports or tunnels, where it might be desirable to put in place special choice of law regimes which departed from the terms of the relevant Community legislation.

The Government's view

13.4 In his Explanatory Memorandum of 22 January 2009 the Parliamentary Under–Secretary at the Ministry of Justice (Lord Bach) outlines the Government's position in the following terms:

> "The Government is in principle supportive of the underlying aim of this proposal which is to introduce some degree of flexibility into the rigidity of the doctrine of external Community competence. The effect of this doctrine is generally to prevent individual Member States from entering into bilateral agreements with third countries in those areas that are subject to such competence. This is likely to be particularly problematic for those Member States, such as the United Kingdom, which have a significant number of bilateral agreements with third countries with

which they have important historical and cultural links. The problem will be acute in those cases where the Community as a whole has no sufficient interest in entering into an agreement with a particular third country.

"While the Government welcomes the proposal, as the United Kingdom does not have bilateral agreements in the area of choice of law there will be limited value for us as it stands. The value of the proposal would be increased if the scope was extended to the recognition and enforcement of judgments. This is an area where the United Kingdom has many bilateral agreements, mostly with Commonwealth countries, in accordance with the Administration of Justice Act 1920 and the Foreign Judgments (Reciprocal Enforcement) Act 1933. In the light of this the Government will seek to widen the scope of the proposal during the course of the negotiations.

"Article 4 lays down the conditions under which the Commission may authorise a Member State to pursue negotiations with a third country. One of these conditions is likely to be of particular importance. This is the requirement under Article 4(2)(b) that the proposed agreement should be 'of *limited* impact on the uniform and consistent application of the Community rules in place and on the proper functioning of the system established by those rules'. The Government will seek clarification of the meaning of 'limited' in this context. If what is meant here is any impact that is of more than minimal significance then that would be likely to diminish significantly the utility of this proposal. On the other hand, if it is intended that only agreements which would clearly have a significant impact on the *acquis communautaire* should be excluded from the proposed procedure, then the utility of the proposal would be correspondingly increased."

13.5 When we originally looked at this proposal we expressed support for the Government's initial assessment of the proposal which would allow Member States to retain shared external competence in the area of choice of law concerning contractual and non-contractual obligations. We asked the Minister if the Government intended to 'opt in' to the proposal. We also expressed some concern about the imprecise description of some of the conditions attached to the exercise of Member State competence in this area. We asked the Minister to seek an appropriate clarification of the meaning of "limited" in Art 4(2)(b) which seeks to ensure compatibility of any bilateral agreement with the functioning of the intra-EU and EEA conflict of laws rules. Finally, we supported the Minister in his suggestion that possible ways of extending the proposal to the recognition and enforcement of judgments should be explored in future negotiations.

The Minister's Letter

13.6 The Minister has now replied and in his letter of 18 March 2009, which covers both this and a related proposal (5146/09, COM(08) 894). He writes as follows:

"I am writing to respond to the points made in the Committee's report on the above proposals, to update you on progress on them and to inform you of the possible next steps. Negotiations on the proposals are moving quickly, and the Presidency is planning to bring them forward for political agreement as early as the next JHA Council meeting on 7–8 April. As such, I am also seeking your agreement to release them from formal scrutiny.

"You are aware of the content of these proposals and the Government's position on them from earlier correspondence and the Explanatory Memoranda. In short, both proposals seek to establish a mechanism whereby Member States could enter into agreements with third (i.e. non-EU) countries on certain matters where there is external Community competence but no existing or foreseen Community level agreement with the country in question. It seeks to provide a system which allows the Commission to oversee any such agreements to ensure that these do not disrupt the proper functioning of established Community law (the acquis Communautaire). There are two proposals, one for certain civil law matters and one for family law matters, each reflecting the different Treaty bases and procedures applicable. As each proposal essentially establishes the same mechanism, I propose to consider these as a pair for the purposes of this letter so the comments below apply to both proposals unless stated specifically otherwise.

"The Government is broadly supportive of the principle underlying these proposals since they offer the prospect of injecting some flexibility into the application of the doctrine of external competence, which has become potentially more restrictive as the Community has legislated in more areas of civil and family law. I have noted that the Committee broadly supports that view. The proposals are largely uncontroversial and do not give rise to any issues of major concern. Our main point has been to ensure the proposals deliver the aim of providing legal certainty and being of practical use to the Member States whilst ensuring that the acquis is suitably protected.

"There have been several Working Group meetings of officials to discuss the texts. The most recent, on 9/10 March, produced new Presidency texts and there has been a brief first reading of these. I enclose copies of those texts. Overall good progress was made on all the UK's points, most notably the concern we had about the wide discretion allowed to the Commission to determine the outcome of the process has more or less been resolved. You will see that the conditions under which the Commission must determine a request are now clearer (see Article 4), including an amendment to the earlier provision which gave rise to some concern, which was also noted and shared by the Committee in its report, about its ambiguity and how it might be applied, namely it provided that even only a 'limited' impact on Community law could provide a basis for the Commission to decline to authorise. It has now been clarified that the agreement would have to 'undermine' the proper functioning of Community law.

"Your Committee supported, as does the Government, an extension of the scope of the proposal dealing with choice law issues to cover the recognition and enforcement of judgments in civil and commercial matters. At the last meeting of the Working Group in Brussels our delegation urged such an extension in order to ensure that the proposal would be of practical utility for the United Kingdom. This reflected the many agreements of this kind which we have with Commonwealth countries. Unfortunately the Commission was strongly opposed to an extension of this kind. The basis of the reasoning behind this position was not entirely clear. It appears not to be based on technical legal objections but on broader political considerations relating to the importance of the Brussels I Regulation. Equally unfortunate was the

lack of any general support for the UK's position on this issue among the other Member States. Although we will continue to advocate such an extension of scope, in particular in the European Parliament, it must now be unlikely that it will be included within the finally agreed instruments.

"Overall, whilst I regret that it now looks unlikely that the proposal will be extended in scope to make it of use to the UK I consider that neither proposal contains anything objectionable. The remaining points are minor and should be successfully negotiated. As such, we remain supportive of the principle of seeking flexibility in the application of the external competence doctrine. I would hope that with the experience of the use of this limited proposal, if that is how it emerges, the Commission might be more persuaded (and other Member States perhaps more determined) to extend the scope at the formal review stage, anticipated for 5 years after adoption.

"Your Committee asked whether the Government intended to opt in to the proposal/s under our Title IV Protocol. The Government is minded to opt in to both proposals, though a decision on this has not yet been taken. We are due to declare our position on that by 16 April, though if it comes before Council prior to then we would hope to be able to make our position clear then. I note that you have not previously objected to this course of action and infer from your general comments that your Committee would agree with that.

"As I noted above, it seems probable that the Czech Presidency will seek political agreement on these proposals from the JHA Council on 6/7 April. In the light of this tight timescale I would be grateful if your Committee would clear them from scrutiny in time for that meeting. In view of the improbability that the recognition and enforcement of judgments in civil and commercial matters will be brought within scope these proposals are unlikely to be of much practical utility for the UK. On the other hand the detailed terms of the procedure envisaged under these proposals have certainly been improved in various ways and should provide a reasonably satisfactory precedent in the event that a decision is taken in later years to extend scope in a way which could be useful for us."

Conclusion

13.7 **We thank the Minister for his detailed reply. We welcome the changes to the original text of the proposal, in particular the amendment to the conditions attached to the exercise of Member States' competence in this area, which further limits the Commission's power not to authorise Member States to enter into bilateral agreements.**

13.8 **On the understanding that the final text will contain the promised safeguards which reflect these amendments and the Minister's assurances, we are happy to clear the proposal from scrutiny and support the Government's intention to "opt in" to the proposal on the grounds that it limits rather than extends the Community's exclusive external competence in matrimonial matters.**

13.9 **We welcome the Government's "opt in" in part because it also clarifies that the United Kingdom regards the conclusion of bilateral agreements covering applicable law in contractual and non-contractual matters as falling within the "opt in" Protocol arrangements and that UK participation in purely intra-EU measures in the field does not deprive the Government of its separate "opt in" in relation to external agreements in contractual and non-contractual matters.**

14 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

(30510) — —	Draft Council Regulation amending Council Regulation (EC) No. 1255/96 temporarily suspending the autonomous common customs tariff duties on certain industrial, agricultural and fishery products.
(30511) — —	Draft Council Regulation amending Council Regulation (EC) No. 2505/96 opening and providing for the administration of autonomous Community tariff quotas for certain agricultural and industrial products.

Department for Environment, Food and Rural Affairs

(30500) 7567/09 COM(09) 120	Draft Council Regulation on the conclusion of the Fisheries Partnership Agreement between the European Community and the Republic of Guinea.
(30501) 7568/09 COM(09) 119	Draft Council Decision concerning the conclusion of an Agreement in the form of an Exchange of Letters on the provisional application of the Protocol setting out the fishing opportunities and financial contribution provided for in the Fisheries Partnership Agreement between the European Community and the Republic of Guinea on fishing off the coast of Guinea for the period from 1 January 2009 to 31 December 2012.

Foreign and Commonwealth Office

(30479) 8109/09 COM(09) 85	Commission Report: Macao Special Administrative Region: Annual Report 2008

Home Office

(30492) 7510/09 COM(09) 106	Draft Council Decision concerning the signing of the Agreement between the European Community and Pakistan on readmission Draft Council Decision concerning the conclusion of the Agreement between the European Community and Pakistan on readmission

(30495) 6730/09 —	Draft Council Decision on the conclusion on behalf of the European Union of the Agreements between the European Union and the United States of America on extradition and mutual legal assistance in criminal matters

Formal minutes

Wednesday 1 April 2009

Members present:

Michael Connarty, in the Chair

Mr Adrian Bailey
Mr David S Borrow
Jim Dobbin
Mr David Heathcoat-Amory
Kelvin Hopkins

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 8.11 read and agreed to.

Paragraph 8.12, read, amended and agreed to.

Paragraphs 9 to 14 read and agreed to.

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

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

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[Adjourned till Wednesday 22 April at 10.30am.

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*)