



House of Commons

European Scrutiny Committee

Ninth Report of Session 2005-06

**Documents considered by the Committee on 9 November
2005, including:**

European Evidence Warrant



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Report, together with formal minutes

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Notes

Numbering of documents

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

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

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

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

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

Abbreviations used in the headnotes and footnotes

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

Euros

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

Further information

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

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

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1 European Evidence Warrant

(a) (26476) 7828/05 —	Draft Council Framework Decision on the European Evidence Warrant for obtaining objects, documents and data for use in proceedings in criminal matters
(b) (26732) 11288/05 —	Draft Council Framework Decision on the European Evidence Warrant for obtaining objects, documents and data for use in proceedings in criminal matters

<i>Legal base</i>	Articles 31 and 34(2)(b)EU; consultation; unanimity
<i>Department</i>	Home Office
<i>Basis of consideration</i>	(b) EM of 20 September 2005
<i>Previous Committee Report</i>	(a) HC 34-ii (2005-06), para 7 (13 July 2005) and see (25053) HC 42-iv (2003-04), para 6 (7 January 2004); HC 42-ix (2003-04), para 17 (4 February 2004); HC 42-xxxvi (2003-04), para 9 (10 November 2004); HC 38-iii (2004-05) para 8 (12 January 2005) (b) none
<i>To be discussed in Council</i>	No date set
<i>Committee's assessment</i>	Legally and politically important
<i>Committee's decision</i>	(a) Cleared (b) For debate in European Standing Committee B

Background

1.1 This proposal seeks to replace the traditional arrangements for mutual legal assistance in the gathering of evidence by a new procedure (a “European Evidence Warrant”) by which Member States would recognise and enforce, without any further internal review, orders such as search warrants issued in other Member States.

1.2 Under arrangements such as the 1959 Council of Europe Convention on Mutual Assistance in Criminal Matters, cooperation in obtaining evidence is based on a request from a State party to the international agreement in question, which is then executed in another such State in accordance with the law of that State. A number of grounds for refusing to execute such requests are provided for, including the principle that a request need not be complied with if it relates to investigation of conduct which is not criminal in the State addressed. The Member States adopted such an agreement as recently as 2000, when they adopted the Convention of 29 May 2000 on Mutual Assistance in Criminal

Matters between the Member States of the European Union,¹ which was followed by adoption of a Protocol in 2001.²

Consideration of the evidence warrant proposal by the previous Committee

1.3 The previous Committee considered an earlier version of the proposed Council Framework Decision for a European Evidence Warrant (EEW) on 7 January and 4 February 2004. It took oral evidence from the then Minister on 28 April 2004 and considered the proposal again on 12 January 2005. The Committee noted that the EEW would be directly enforceable in other Member States, the executing State being expected to enforce orders issued by the issuing State, with only limited grounds for refusal. An executing State would not be permitted to refuse enforcement of an EEW on dual criminality grounds (i.e. that the warrant related to the investigation of conduct which was not criminal in the executing State), even in the case of entry into and search of private premises. Strict time limits would be imposed for execution of the request, with appeals on the substantive grounds for the order being heard only in the courts of the issuing State. The Committee also noted that the Framework Decision would replace the provisions of the Convention of 29 May 2000 on Mutual Assistance in Criminal Matters between Member States of the European Union and its Protocol of 2001, even though these had yet to come into force.

1.4 The previous Committee raised the question of whether the principle of mutual recognition was really appropriate in the case of search warrants which were made solely on the application of one party and were not the result of any adversarial proceeding in which the grounds for the order could be tested. Secondly, the Committee did not think that police, customs or administrative authorities should be permitted to issue an EEW, since this would have the effect of providing for the near-automatic enforcement in this country of orders made by foreign police forces. The Committee welcomed the view of the then Presidency that the issuing of a European Evidence Warrant should be limited to a judge, court, investigating magistrate or public prosecutor and considered that it should be made clear in the Framework Decision which authorities are to be regarded as “judicial authorities” for the purposes of the proposal.

1.5 Thirdly, the Committee noted that the UK would be obliged to abandon the safeguard of dual criminality after five years, even in respect of the forcible search of a person’s home for evidence relating to acts which were not criminal here. The then Minister confirmed in her oral evidence that circumstances could or would arise under the European Evidence Warrant whereby the home of a person in this country could be forcibly entered at the request of a foreign authority to gather evidence in respect of conduct which was not a crime in this country.³ The previous Committee found it deeply disturbing that a person’s home might be forcibly entered and searched at the request of a foreign authority for the purpose of obtaining evidence to prosecute conduct which was not even criminal in this country. It considered that in this regard the proposal placed too high a value on the

1 OJ No C197 of 12.7.2000, p.1.

2 OJ No C 326 of 21.11.2001, p.1.

3 Oral evidence, 28 April 2004, HC 562-i (2003-04), Q34.

supposed merits of mutual recognition and too little on the rights of persons in this country not to be subjected to investigations at the request of foreign police forces for conduct which would not be criminal here.

1.6 The previous Committee nevertheless welcomed the undertaking given by the then Minister that in no circumstances would an authority in this country be obliged to execute a warrant when to do so would be contrary to the Human Rights Act 1998.⁴ It also welcomed the efforts by the Minister and her officials to secure the inclusion in the proposal of a provision guaranteeing fundamental rights.

Our consideration of the earlier version of the evidence warrant proposal

— *who should issue a European Evidence Warrant?*

1.7 We considered a revised draft of the proposal (document (a)) on 13 July 2005. We noted that, whereas the European Evidence Warrant continued to be defined as a “judicial decision issued by a competent authority of a Member State with a view to obtaining objects, documents and data”, the definition of “issuing authority” had been expanded to include a “court” as well as a judge, “an investigating magistrate or a public prosecutor with competence under national law to issue a European Evidence Warrant”.⁵ This followed the conclusions of the then Presidency that it should be made clear in the Framework Decision which authorities were to be recognised as “judicial authorities” for the purposes of the Framework Decision. The Luxembourg Presidency indicated that it would present a revised text based on a list of those authorities which were competent under the 1959 European Convention on Mutual Assistance in Criminal Matters⁶ and on the declarations made by Member States.

1.8 We noted the explanation of the Minister that other delegations had shared the UK’s view that it was important clearly to identify the issuing authority in the Framework Decision and that the question should not be left to designations by Member States. However, some Member States had raised the concern that authorities which are presently regarded as competent to make requests for mutual legal assistance had been excluded from issuing a warrant under this proposal. The Minister informed us that the working group had been examining whether police authorities should be able to issue EEWs “in so far as they act in a preliminary investigation authority in criminal proceedings and have competence under national legislation to order the measure requested in the EEW”.

1.9 We did not think this concern provided any grounds for expanding the existing definition. In our view, a request for mutual assistance was an entirely different matter from requiring the near-automatic enforcement of an order made by a foreign authority and we considered that the principle of mutual recognition in judicial matters should be

4 Q29.

5 One evident problem with the definition is its circularity, since the competence of an authority to issue a warrant is to be determined by national law.

6 European Treaty Series No 30.

confined to orders made by judges and courts or other bodies having recognisably judicial functions.

— *what can be sought under a European Evidence Warrant?*

1.10 We noted that the material scope of the proposal had remained substantially unchanged, except for the new provision in Article 3(4) relating to objects, documents and data discovered during the execution of a warrant and statements given by persons with whom the executing authority is “confronted” during the execution of a warrant. As before, the warrant could be applied for with a view to obtaining “objects, documents or data” which are need for the purpose of the criminal and other proceedings referred to in Article 4. Article 3(2) provided that a warrant shall not be issued for the purposes of “conducting interviews, taking statements or initiating other types of hearings involving suspects, witnesses, experts or any other party”. Similarly, a warrant shall not be issued for the purpose of “taking bodily material directly from the body of any person, including DNA samples” or for “obtaining information in real-time such as through interception of communications, covert surveillance or monitoring of bank accounts” or for “conducting enquiries concerning existing objects, documents or data by means of *inter alia* as forensic analysis or systematic compilation” (*sic*). These general exceptions were qualified by Article 3(3), which provided that a warrant might be issued for objects, documents and data falling within Article 3(2) where these had been gathered prior to the issuing of the warrant.

1.11 We noted that a new provision in Article 3(4) extended the scope of the warrant to include any other object, document or data which the executing authority discovers during the execution of the warrant and which “without further inquiries considers to be relevant to the proceedings for the purpose of which the warrant was issued”. The warrant now also extended to the taking of statements from persons “with whom the executing authority is confronted” during the execution of a warrant. Such statements “should be limited to information concerning the identity of the person, and may include spontaneous remarks made by him which should reasonably be considered relevant to the proceedings for the purpose of which the warrant was issued”.

1.12 We were concerned that these provisions might lead to “fishing expeditions” by foreign authorities using the extended power to obtain material which it “discovers” in the course of execution of a warrant, and we asked the Minister to explain what safeguards were being provided to prevent this. In relation to the new power to take statements we asked the Minister if, in the execution of a warrant in any part of the UK, it would be made clear that such statements must be made under caution and if the UK would press for the last sentence of Article 3(4)(b) to be expressed in mandatory terms, since we considered the use of the word “should” to be dangerously ambiguous in this context.

— *which offences should a European Evidence Warrant cover?*

1.13 By virtue of Article 4 of document (a) a warrant may be issued in respect of criminal proceedings conducted by a judicial authority in respect of an offence which is criminal under the national law of the issuing State. A warrant may also be issued in proceedings brought by administrative authorities or by judicial authorities in respect of acts which are punishable under the law of the issuing State by reason of being infringements of rules of

law and where the decision may give rise to proceedings before a court having jurisdiction in criminal matters. Finally, a warrant may be issued in connection with such criminal and other proceedings which relate to offences and infringements for which a legal person may be held liable or sanctioned in the issuing State.

1.14 We noted that Article 11 provides for the recognition and execution of a warrant by the executing State “without any further formality being required” but that this was subject to the grounds for refusing recognition under Article 15 or for postponing execution under Article 18. We noted that Article 15 provided new grounds for refusing recognition to a warrant, based on the territoriality of the offence so that recognition may be refused if the offence is regarded under the law of the executing State as having been committed wholly or partly within its territory or in a place equivalent to its territory. (Recognition may also be refused if the offences were committed outside the territory of the issuing State and the law of the executing State does not permit legal proceedings to be taken in respect of such offences when committed outside that State’s territory.) These new grounds for refusing to enforce a warrant were to be in addition to those based on infringement of rules against double jeopardy or the existence of a privilege or immunity under the law of the executing State.⁷

1.15 We asked the Minister to confirm that the provisions on the territoriality of the offence would have the effect of preventing the execution in this country of a warrant in respect of conduct, any part of which takes place in this country, unless that conduct is also criminal here. We also asked the Minister to explain further his reference to having been successful in including under Article 15 additional grounds of refusal to protect essential national security interests.

— *the question of dual criminality*

1.16 We shared the concerns of the previous Committee over the abolition of the traditional safeguard of dual criminality (i.e. the principle that foreign orders are not enforced unless the conduct to which they relate is regarded as criminal in both the issuing and executing State). In particular, we found it objectionable that a person’s home might be searched under a European Evidence Warrant to pursue the investigation of a matter which was not regarded as criminal under the laws of the United Kingdom.

1.17 We noted that Article 16 made new provision in relation to dual criminality. Article 16(1) provided that the executing State may not refuse to recognise and execute a warrant on dual criminality grounds if it was not necessary to carry out a search of private premises in order to execute the warrant. Article 16(2) similarly provided that the execution of a warrant may not be refused on dual criminality grounds if the offence to which the warrant relates falls within the list set out in Article 16(2) and the offence is punishable by a sentence of imprisonment of at least three years.

1.18 The list of offences set out in Article 16(2) is similar to that in Article 2(2) of the European Arrest Warrant. It accordingly includes such concepts as “computer-related

⁷ Oddly, Article 15(2) provides that execution of the warrant may be ‘opposed’ where there is an immunity or privilege under the law of the executing State ‘which makes it impossible to execute the European Evidence Warrant’. It is hard to see how the executing State could exercise a discretion to execute the warrant in such cases.

crime”, “environmental crime”, “racism and xenophobia”, “swindling” and “sabotage”. However, we noted that concepts such as “conduct which infringes road traffic regulations”, “smuggling of goods”, infringements of intellectual property rights,⁸ “threats and acts of violence against persons, including violence during sports events”, criminal damage, theft and offences created by Member States to give effect to obligations under Title VI of the EU Treaty, had been deleted from the list.

1.19 We noted the significant change made by Article 16(4), which now provides only for a review of the question of dual criminality after five years from the entry into force of the Framework Decision. We welcomed the deletion of the provision in the earlier version which would have entirely removed the safeguard of dual criminality within a period of five years.

The revised draft Framework Decision

1.20 The revised draft Framework Decision (document (b)) is a consolidated text reflecting the outcome of negotiations under the Luxembourg Presidency, but also includes a number of proposals by the Presidency with a view to reaching a “general approach” on the draft measure at the Justice and Home Affairs Council on 1-2 December 2005.

1.21 The material changes to the text may be summarised as follows. A new Article 1(3) is proposed, which would provide that the Framework Decision “shall not have the effect of modifying the obligation to respect fundamental rights and fundamental legal principles as enshrined in Article 6 of the Treaty on European Union, and any obligations incumbent on judicial authorities in this respect shall remain unaffected”.⁹

1.22 Article 2 has been amended so as to provide that a police, customs or frontier authority may issue an EEW insofar as such authorities “act in their capacity of preliminary investigation authorities in criminal proceedings”. Articles 3 to 10 have remained substantially unchanged.

1.23 Article 11 (which concerns the recognition and enforcement of an EEW) now contains an expanded Article 11(2). In addition to providing that any further coercive measures rendered necessary by the EEW are a matter for the law of the executing State, the provision permits a Member State to refuse to apply any coercive measure in respect of an EEW issued by a police, customs or frontier authority where this has not been validated by a judge, a court, an investigating magistrate or public prosecutor.

1.24 The grounds under Article 15 for refusing to recognise or enforce an EEW have been expanded. An executing Member State may refuse to enforce an EEW “to the extent that its execution would harm essential national security interests; jeopardise the source of the information; or involve the use of classified information relating to specific intelligence activities”. The revised Article 15 retains the provisions on the territoriality of offences, so enforcement of an EEW may be refused if it relates to a criminal offence which, under the law of the executing State, would be regarded as having been committed wholly or partly in

8 However, ‘counterfeiting and piracy of products’ is in the Article 16(2) list.

9 A Framework Decision could not, in any event, amend the obligations imposed on Member States under Article 6 EU.

its territory, or in a place equivalent to its territory. Enforcement may also be refused if the offence was committed outside the territory of the issuing State and the law of the executing State does not permit legal proceedings against such offences when committed outside that State's territory.

1.25 Article 16 again sets out two circumstances in which the executing State may not refuse to execute a warrant on dual criminality grounds (i.e. that the conduct in respect of which the warrant is issued does not constitute an offence in the executing State). Whereas Article 16(1) in the earlier version provided that the dual criminality test was not to be applied at all if it was not necessary for the execution of a warrant to carry out the search of private premises, the revised text now provides that such a test is not to be applied if it is not necessary to "carry out a search or seizure".

1.26 The other circumstance in which the dual criminality test is not to be applied is if the offence in respect of which the warrant is issued is one of the offences listed in Article 16(2) and is punishable by a term of at least three years' imprisonment. The list in Article 16(2) is unchanged from the previous version and includes such matters as "computer-related crime", "environmental crime", "racism and xenophobia", "swindling" and "sabotage". The text of Article 16(2) makes it clear that the question of whether the conduct is characterised as criminal is a matter solely for the law of the issuing State, so that it would not be permissible for the executing State to refuse to execute the warrant on the grounds that e.g. the acts which the issuing State characterised as "swindling" or "racism and xenophobia" were not criminal under the law of the executing State.

The Government's view

1.27 In his Explanatory Memorandum of 20 September 2005, the Parliamentary Under-Secretary of State at the Home Office (Mr Andy Burnham) addresses the concerns we raised in our report of 13 July 2005 and explains the policy implications of the latest version of the proposal. The Minister adds that the Justice and Home Affairs Council would be looking at some of the unresolved issues on 12 October and that the UK, as Presidency, would be making every effort "in order to be in a position to reach a general approach at the JHA Council on 1-2 December".

1.28 The Minister explains that the Government welcomes the addition of a "human rights clause" to Article 1, noting that "it is commonly accepted" that mutual recognition instruments must be applied in a manner which is compatible with the principles of the European Convention on Human Rights (ECHR). The Minister notes that the inclusion of the clause reflects the fact that Member States already have procedures and safeguards for obtaining evidence which are compliant with the ECHR, and adds that delegations have taken the view that it is unnecessary "to spell out specific safeguards for the execution of the EEW as originally intended in Article 12 of the Framework Decision".

1.29 In relation to Article 2, the Minister confirms that a defendant in criminal proceedings would be able to make an application for an EEW, even though the term "issuing authority" is restricted to a judge, court, investigating magistrate or public prosecutor. The Minister adds that a number of Member States have argued that their police, customs and frontier authorities have responsibilities which are comparable to those of investigating magistrates or prosecutors in other Member States, that they have been designated as

judicial authorities for the purpose of conventions on mutual legal assistance, and that therefore they should be entitled to issue an EEW. The Minister explains that the UK has proposed a compromise text of Article 2(c) and 11(2) as a basis for discussion. The proposed text would ensure that the enforcement of any EEW requiring the use of coercive measures could be refused if the warrant had not been validated by a judge, court or public prosecutor.

1.30 In relation to Article 3 we raised the concern that this might lead to “fishing expeditions” by foreign authorities using the extended power to obtain material which it “discovers” in the course of executing a warrant. The Minister comments as follows:

“We will consider the scope of the text to address the Committees’ concerns. The power which Article 3(4)(a) provides, to secure any other evidence which the executing authority discovers, is not intended as a licence to seize any material. Searches would be undertaken here by UK authorities acting in accordance with national procedures. The executing authority must believe that the material is relevant to the case concerned. If that cannot be established without further enquiries, Article 14, which details the obligation of the executing authority to make the information known, obliges the executing state to notify the issuing authority if it considers that it may be appropriate to undertake investigations ‘not initially foreseen, or which could not be specified when the warrant was issued’. The issuing authority would then be required to issue a further EEW or initiate other co-operation measures before the executing authority could act.

“As the Committee noted, the issuing authority cannot issue an EEW for the purpose of obtaining statements, but a number of delegations wish to ensure that this does not preclude the executing authority from noting statements made during the execution of an EEW which would be deemed valuable to the case. This does not remove the executing authority’s obligations to protect the rights of suspects or others in the execution of an EEW according to its national law. The admissibility of such evidence in proceedings would also remain a matter to be determined by the court in the issuing state.”

1.31 In relation to the territoriality provision in Article 15 the Minister notes our request for confirmation that this would have the effect of preventing the execution in this country of a warrant in respect of conduct, any part of which takes place in this country, unless the conduct was also criminal here. The Minister replies that the principle of a territoriality clause has been agreed, but that there is still no consensus on its scope. The Minister explains that a number of delegations consider the suggested clause to be too broad in its scope and are concerned “that an executing State could refuse to provide evidence important to a criminal case by arguing that some minor element of the case occurred within its territory”. The Minister reports that these Member States argue instead that “the ground for refusal should only apply where the dual criminality condition has not been met for an offence committed in whole or for an essential part in the executing State”. The Minister adds that this would address their principal concern that a State should not be obliged to act against a person who has not acted illegally in its territory, notwithstanding the fact that the conduct may have been an offence under the law of the issuing State. The Minister also notes that “the Commission’s compromise proposal, whereby the broader

territoriality clause would be used for EEWs involving coercive measures and the narrower clause in all other cases, has failed to win support in the working group.”

1.32 In relation to the proposed national security grounds for refusing to execute an EEW the Minister refers to the revised text of Article 15, which permits a Member State to refuse to execute a warrant to the extent that this “would harm essential national security interests; jeopardise the source of the information; or involve the use of classified information relating to specific intelligence activities”, but notes that the wording “is still under discussion”.

1.33 Finally, the Minister recalls that we have re-iterated the grave doubts of ourselves and our predecessors about applying the principle of mutual recognition to orders which are made without giving the person affected a right to be heard, particularly where such orders may be made by a foreign police force not exercising any recognisable judicial function. In reply, the Minister states that the Government “continues to support the application of mutual recognition principles, with appropriate safeguards, to pre-trial judicial decisions such as the EEW”. The Minister refers to the conclusions of the Tampere European Council in 1999 that the principle of mutual recognition should apply to “pre-trial orders, in particular to those which would enable competent authorities quickly to secure evidence”. The Minister adds that both the European Arrest Warrant and the Framework Decision on orders freezing evidence or assets have already been agreed by the Council.

Our assessment of the proposal

1.34 As we have noted on previous occasions, a number of improvements have been made to this proposal by limiting its scope, but we continue to have grave doubts about applying the principle of mutual recognition to orders which are made without the person affected being given an opportunity to be heard in his defence. We do not consider that these doubts are allayed by referring to the conclusions of a European Council which are now some six years old and which did not specifically endorse the recognition of orders made in circumstances where the defendant has been denied a right to be heard. It should be recalled that these conclusions also refer to the judicial protection of individual rights and respect for the fundamental legal principles of Member States.

1.35 These doubts would be substantial enough if the foreign orders were made by a court or a similar body having recognisably judicial functions. They are made the more serious by the possibility under this proposal that the orders of a foreign police force, customs or border authority would have to be given effect in this country with no further judicial validation here. In this connection, we ourselves would refer to the conclusions of the Tampere Council which referred to the principle of mutual recognition as applying to “judgments and other decisions of *judicial* authorities”.¹⁰

1.36 Both we and our predecessors have expressed in the strongest terms our concern that the measure could and would be used by foreign authorities to subject persons in this country to the exercise of police powers when, under the laws of the various parts of the United Kingdom, they have done nothing wrong. The doctrine of dual criminality is more

¹⁰ Paragraph 33 of the Tampere conclusions. Emphasis added.

than a mere technicality, as it gives the United Kingdom citizen (or any other person within the jurisdiction) a guarantee that he will not be pursued by police and prosecution authorities for conduct which is lawful in this country. In our view, the proposal too lightly discards this guarantee.

1.37 As we and our predecessors have pointed out in relation to the European Arrest Warrant,¹¹ the listing of offences in generic descriptions and the abolition of dual criminality in respect of them is an approach which gives rise to difficulties which have not been thought through. It is apparent from their implementation of a similar list in the European Arrest Warrant that Member States have found difficulty in transposing such concepts as “racketeering” and “swindling”. Even in the case of “murder”, Belgium has qualified the list so as to exclude euthanasia and thereby avoid the risk of a person being extradited from Belgium for murder, in circumstances where his conduct may be lawful under Belgian law.

1.38 Above all is the consideration that it is for the foreign issuing authority to classify the conduct as one of the offences in the list. For example, if a foreign authority were to regard the publishing by a journalist of an article trivialising war crimes as the offence of “racism and xenophobia”, or the paying of officials for information about fraud or mismanagement by public bodies as “corruption”, then under the EEW a journalist who had written such an article or arranged for such payments here would be at risk of a search of his home and office in this country in support of the foreign criminal proceedings.

1.39 It is apparent from the Minister’s explanation that at least some Member States share these misgivings, and that a “territoriality” clause has been suggested, so that a person would not be at risk if any part of the alleged offence had been committed in a country where the conduct was lawful. Such a rule is provided for in Article 4(7) of the European Arrest Warrant¹² but it appears that in the current negotiations some Member States wish to limit its effect still further by requiring that the offence should be committed wholly or for an essential part in the executing State before the traditional safeguard of dual criminality can be applied. In our view, the “territoriality” clause should not be limited in this way and the suggested limit is both impractical and likely to cause injustice.

Conclusion

1.40 The European Evidence Warrant raises a number of serious issues of principle, which we have outlined in this report. We consider that the House should have the opportunity to debate the substance and scope of this proposal, including the question of whether a body which is not a judicial body in any recognisable sense should have the power to issue a warrant, and whether the proposal places too high a value on the supposed merits of mutual recognition and too little on the rights of persons in this country not to be subjected to investigations ordered by foreign authorities for conduct which is not criminal in this country.

¹¹ See, for example (26399) HC 34–vi (2005-06) para 20 (19 October 2005).

¹² See also s.137 and 138 Extradition Act 2003.

1.41 We clear document (a) on the grounds that it has been superseded, but we recommend document (b) for debate in European Standing Committee B.

2 Conservation of the European eel

(26912) 13139/05 COM(05) 472	Draft Council Regulation establishing measures for the recovery of the stock of European eel
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<i>Legal base</i>	Article 37EC; consultation; QMV
<i>Document originated</i>	6 October 2005
<i>Deposited in Parliament</i>	14 October 2005
<i>Department</i>	Environment, Food and Rural Affairs
<i>Basis of consideration</i>	EM of 1 November 2005
<i>Previous Committee Report</i>	None, but see footnote 13
<i>To be discussed in Council</i>	No date set
<i>Committee's assessment</i>	Legally and politically important
<i>Committee's decision</i>	Not cleared; further information awaited

Background

2.1 Eels are a catadromous species, in that they live in fresh water but return to the sea to reproduce. According to the Commission, the European eel occurs in fresh waters in almost all of Europe and in northern Africa, as well as in the marine waters of the North Atlantic, and is exploited in most European countries, being also involved in re-stocking and aquaculture. Consequently, it is important, not only as a natural asset, but as an economic resource. However, because concerns about the conservation of the species had been growing, the Commission produced in October 2003 a Communication¹³ setting out an Action Plan for the management of the stock.

2.2 This suggested that, in many areas, the most effective measure would be a reduction in fishing, but said that the life cycle of the eel required action to be taken at different levels, involving both a multinational approach and local measures affecting the many discrete and regional fisheries for eel at different stages in its life cycle. It therefore said that the challenge for the Community was to design a management system in which all stakeholders' contributions to stock recovery were quantified and equitably distributed, but that, since current knowledge was insufficient, it was necessary first to build the basis for such a system.

13 (24928) 13219/03; see HC 63-xxxvii (2002-03), para 11 (12 November 2003).

2.3 It also said that the essentially local nature of eel management meant that the Community should not become involved in the detail of such actions, this being an area where Member States should assume responsibility. However, it proposed that the Community should be responsible for establishing targets for eel management at different life stages; for collating information on the effects of the measures in place; for proposing Community-level measures, where these can reinforce local measures; for backing up local efforts by scientific and technical support; and for the international dimension of eel conservation. It also said that, in the meantime, the advice from the International Council for the Exploration of the Seas (ICES) had made it clear that some emergency measures were needed, and that it was inviting Member States to participate in an examination of those which could usefully be applied at Community level, where it suggested that the first priority should be to maximise the escape of the silver eel,¹⁴ with subsequent actions being aimed at ensuring that sufficient yellow eels survive the fisheries directed at them and have the habitat needed to colonise.

The current document

2.4 Following consultations with Member States and key industry figures, the Commission has now proposed this draft Council Regulation, under which Member States would set up local catchment Eel Management Plans, aimed at ensuring the escape of 40% of the level of adult eels which it thought would, in the absence of the effect of human activity, otherwise migrate to the sea. Until such plans are in place, the Commission proposes a seasonal closure of eel fishing from the first to the fifteenth of every month, though exemptions could be permitted where fishing for glass (juvenile) eels is used for restocking purposes (with access to the sea for the purpose of increased escape), or where existing management methods already allow for the 40% escape target to be met (ascertained on a river basin level). Member States would have to report to the Commission by 31 December 2009 on the monitoring, effectiveness and outcome of each Plan, following which the Commission would have to present a report to the European Parliament and the Council by 1 July 2010.

The Government's view

2.5 In his Explanatory Memorandum of 1 November 2005, the Minister for Local Environment, Marine and Animal Welfare at the Department for Environment, Food and Rural Affairs (Mr Ben Bradshaw) acknowledges the “parlous” state of the stock, pointing out that catches of yellow eels in England, Wales and Northern Ireland have fallen from over 1,500 tonnes in 1995-97 to less than 700 tonnes since 2000, and he says that, without some concerted action, the eel sector could soon be in serious financial difficulty. The UK therefore welcomes and supports the objectives of the proposed Regulation. He also says that, whilst the Government has some concerns that the proposal would potentially extend Community competence into Member States’ fisheries management regimes in internal waters, it recognises the need for Community-wide action, given that reliance on action by Member States alone will not work with a single European-wide stock. It also sees the proposed division of responsibilities between the Community and Member States as

¹⁴ Larval eels become small “glass eels” which migrate upstream and settle into a pelagic phase to become “yellow eels” for most of their life. In the final phase, they become “silver eels”, which eventually migrate to spawning areas in the sea.

appropriate, subject to the proviso that this does not set a precedent for the Community having competence in internal waters for other fish species.

2.6 The Minister adds that, although the UK does not exploit eels nationally to the same extent as many other Member States, they have a local importance in some areas, with the Lough Neagh fishery being the largest commercial wild eel fishery in Western Europe, with an output of 500-600 tonnes, worth £4 million to the Northern Irish economy. There is also a smaller fishery in Lough Erne, and a significant glass eel fishery in the tidal reaches of the River Seven, some of the output from which is used to stock Lough Neagh. Consequently, although the overall impact of the Regulation on the industry is likely to be limited, its effects on the sector concerned could be significant. However, he points out that those in question are likely to be the main beneficiaries of any long-term increase in stocks resulting from these measures, and that some of the effects of the 15 day closure could be mitigated by increasing activity in the period outside the closure and by the exemption for restocking (although this is unlikely to totally compensate for the financial loss from the closure). He says that the industry has been asked for its estimate of the impact of this proposed regulation, but that at present a Regulatory Impact Assessment is not considered to be necessary.

Conclusion

2.7 In their Report of 12 November 2003, our predecessors described the earlier Commission Communication as an interesting and timely document, seemingly in line with UK thinking on the need to allow the recovery of the eel stocks. We are inclined to take a similar view of this document, which seeks, in a manner regarded by the Government as appropriate, to give legislative effect to the thinking set out in that Communication. However, we note that the Government has asked the industry for an estimate of the impact of the proposal, and we think it would be sensible to await that before taking a final view.

3 European Quality Charter for Mobility

(26871) 12639/05 COM(05) 450	Draft Recommendation on transnational mobility within the Community for education and training purposes: European Quality Charter for Mobility
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<i>Legal base</i>	Articles 149(4) and 150(4) EC; co-decision; QMV
<i>Document originated</i>	23 September 2005
<i>Deposited in Parliament</i>	30 October 2005
<i>Department</i>	Education and Skills
<i>Basis of consideration</i>	EM of 11 October 2005
<i>Previous Committee Report</i>	None
<i>To be discussed in Council</i>	15 November 2005
<i>Committee's assessment</i>	Legally and politically important
<i>Committee's decision</i>	Not cleared; further information requested

Background

3.1 In 2001, the Council and the European Parliament adopted a Recommendation on the mobility within the Community of students, persons undergoing training, volunteers, teachers and trainers.¹⁵ The aim of the Recommendation was to eliminate obstacles to mobility, ensure better preparation of students and teachers and recognise the experience gained abroad. The previous Committee considered the draft of the Recommendation at length.¹⁶

3.2 In January 2004, the Commission presented a report by a team of experts on the follow up to the Recommendation.¹⁷ It concluded that there had been insufficient progress in achieving some of the objectives of the Recommendation and that efforts to promote mobility should be increased.

3.3 Article 149(1) of the EC Treaty provides that the Community should contribute to the development of education by encouraging cooperation between Member States and, if necessary, supporting and supplementing their efforts. Article 149(2) provides that Community action should include “developing the European dimension in education, particularly through the teaching and dissemination of the languages of the Member States” and encouraging the mobility of students and teachers. Article 149(4) provides that, in order to contribute to the achievement of the objectives of the Article, the Council may adopt Recommendations.

3.4 Article 150 of the EC Treaty provides that the Community is to implement a vocational training policy which is to support and complement the action of the Member States. Among other things, Community action is to aim at encouraging the mobility of

15 Recommendation 2001/613/EC: OJ No. L 215. 9.8.2001, p.30.

16 See (20960) 5600/00: HC 23-xxix (1999-2000), para 22 (15 November 2000).

17 5780/04.

instructors and trainees. Article 150(4) authorises the Council to adopt measures to contribute to the achievement of the Article's objectives, excluding the harmonisation of the laws and regulations of the Member States.

The document

3.5 In its explanatory memorandum on the draft Recommendation, the Commission says that mobility is one of the main objectives of the Community's education and training programmes. For example, over 1 million students have studied in another Member State under the Erasmus programme.

3.6 This proposal for a Recommendation on a European Quality Charter for Mobility is based on the work of the group of experts who reported on the implementation of the Recommendation of 2001 (see above). The Commission says that:

“This proposal does not set out to create a binding European legal framework. Even if the Treaty permitted this — and it does not — it would be wholly inappropriate. Nevertheless, Member States may be inspired to act on the [proposed] Recommendation as appropriate”.¹⁸

3.7 The objectives of the draft Recommendation are to:

- lay down a common framework of principles which will lead to greater efficiency and effectiveness in all types of organised mobility for learning purposes; and
- provide a reference point for users and providers of education and training, including employers and policy makers, within the proposed Integrated Learning Programme for 2007-13.

3.8 The document recommends Member States to adopt the European Quality Charter for Mobility. The Charter contains the following ten guidelines:

1. Guidance and information

Potential candidates for mobility should have access to reliable sources of guidance and information on opportunities for mobility and the conditions in which it can be taken up.

2. Learning plan

Before undertaking any kind of mobility for education or training purposes, a learning plan should be drawn up and agreed by everyone involved, including the sending and hosting organisations and the participants. The plan should outline the objectives and expected outcomes, as well as how these would be achieved.

¹⁸ Commission explanatory memorandum, pages 2 and 3.

3. Personalisation

Mobility undertaken for education or training purposes should fit in as much as possible with the personal learning pathways, skills and motivation of the participants, and be designed to develop or supplement them.

4. General preparation

Prior preparation of the participants is essential, and should be tailored to their specific needs. It should include linguistic, pedagogical, practical, administrative, legal, personal, cultural and financial aspects, as necessary.

5. Linguistic aspects

Language skills are essential for effective learning. Participants, and their sending and host institutions, should pay special attention to linguistic preparation. Mobility arrangements should include:

- *before departure, language assessment and the opportunity to follow courses in the language of the host country and in the language of instruction, if different; and*
- *in the host country, linguistic support and advice.*

6. Logistical support

Adequate logistical support should be provided to the participants. This could include information and assistance with travel arrangements, insurance, residence or work permits, social security, accommodation, and any other practical aspects, including safety issues relevant to their stay.

7. Mentoring

The hosting organisation (educational establishment, youth organisation, company, etc.) should provide a mentor who will be responsible for helping the participants with their effective integration into the host environment and will act as a contact person for obtaining further assistance.

8. Recognition

If a study or placement period abroad is an integral part of a formal study or training programme, this fact should be stated in the learning plan, and participants should be provided with assistance to ensure its adequate recognition and certification. The way in which the recognition will work should be set out in the learning plan. For other types of mobility, and particularly those in the context of non-formal education and training, a certificate should be issued so that the participant is able to demonstrate his or her active participation and learning outcomes in a satisfactory and credible way.

9. Reintegration and evaluation

On return to their home country, participants should be given guidance on how to make use of competences and skills acquired during the stay. Appropriate help with

reintegration into the social, educational or professional environment of the home country should be available to people returning after long-term mobility. The experience gained should be properly evaluated by participants, together with the organisations responsible, to assess whether the aims of the learning plan have been met.

10. Commitments and responsibilities

The responsibilities arising from these quality criteria should be clearly defined and communicated to everyone involved, including participants. They should be confirmed in writing, so that responsibilities are clear to all concerned.”

The Government's view

3.9 The Minister of State for Lifelong Learning, Further and Higher Education at the Department for Education and Skills (Mr Bill Rammell) tells us that the Government supports the overall aim of improving the quality of student mobility. He draws our attention to Recital 14 of the document which says:

“Member States may adjust the implementation of the Charter according to circumstances, i.e. to adapt it to specific situations and programmes; to make some of the points compulsory and to consider others as optional”.

3.10 The Minister tells us that, to some extent, the practice advocated in the guidelines is already followed in the UK. For example, guideline 2 calls for a learning plan to be drawn up and agreed by everyone involved before the student goes abroad. Such plans are part of the application process for the current education, training and youth programmes.

3.11 However, the Government has some reservations about the proposal:

- Guideline 5 proposes that, before students go abroad to study, they should be offered language assessment and the opportunity to take courses in the language of the country to which they are to go. The Minister says that this might not be within the scope of either Article 149 or Article 150 of the EC Treaty. Moreover, the proposal might add to the costs of individual schools, institutions and employers. The Government wishes to avoid the imposition of additional burdens. The Minister also notes that not all institutions are able to offer courses in the languages of host countries.
- Guideline 6 calls for logistical support for students (such as help with insurance, residence permits, social security or accommodation). The Minister says that the Department for Work and Pensions and other Government Departments already provide information about, for example, work permits and social security. The Government would not want to see any requirements for support to students go beyond what is already provided and, more importantly, “would not want to see any implication of more favourable treatment — for example, in granting work permits or social security benefits”. The Minister adds that provision for logistical support is not within the scope of Articles 149 and 150 of the EC Treaty.

- Guideline 8 calls for the issue of certificates for study in other Member States. The Minister says that the Government would want to avoid any additional costs and burdens on institutions and employers for the issue of certification of non-formal education and training. The Europass arrangements can be used to record such informal experiences and so an additional certificate may not be necessary.¹⁹

3.12 Finally, the Minister tells us that the draft Recommendation is likely to be presented at the Education Council's meeting on 15 November and that a common position on it is likely to be adopted early in the Austrian Presidency.

Conclusion

3.13 **We recognise the potential benefits of mobility for both the individual participants and the economy. We also recognise the value of advice on good practice. There is, however, an important distinction between a counsel of perfection and advice on good practice. We can understand, therefore, why the Government has some reservations about the draft Charter.**

3.14 **We warmly welcome the Minister's close attention to the legal base for the Charter's provisions. As he says, guidelines 5 and 6 may go beyond the ambit of Articles 149 and 150 of the EC Treaty, although it seems to us arguable that the proposal in guideline 5 for linguistic preparation is covered by the first indent in Article 149(2).**

3.15 **The negotiations on the document are still at an early stage. We ask the Minister to give us reports on the progress of the negotiations, and, in particular, on the discussion of the points about which the Government has reservations. Meanwhile, we shall keep the document under scrutiny.**

19 The Europass contains the holder's curriculum vitae; statements of the holder's linguistic and cultural skills; higher education degrees and vocational qualifications; and a statement of any periods of learning in another country.

4 Port services

(26039) Draft Directive on market access to port services
 13681/04
 COM(04) 654

<i>Legal base</i>	Article 80(2) EC; co-decision; QMV
<i>Department</i>	Transport
<i>Basis of consideration</i>	Minister's letter of 1 November 2005
<i>Previous Committee Report</i>	HC 38-i (2004-05), para 10 (1 December 2004)
<i>To be discussed in Council</i>	Not known
<i>Committee's assessment</i>	Politically important
<i>Committee's decision</i>	Not cleared; further information awaited

Background

4.1 In February 2001 the Commission issued a Communication on “Reinforcing quality service in sea ports: A key for European transport”, which included a draft Directive on market access to port services (pilotage, towing, mooring, cargo handling and passenger services). However, in November 2003 the European Parliament narrowly rejected proposals for an amended text which had emerged from the conciliation process between the Council and the Parliament. The legislation therefore fell, mainly because of opposition in the European Parliament to provisions on “self-handling” (i.e. an undertaking itself carrying out port services rather than buying them).

4.2 In October 2004 the Commission proposed a new draft Directive. The text of the new draft was based on that which developed during the previous negotiations. It would:

- introduce a framework for competition in provision of commercial port services in sea ports or port systems of Member States which have an average annual traffic of 1.5 million tonnes of freight and/or 200,000 passengers in the previous three years;
- ensure that the market is aware of the opportunities that exist for provision of such services;
- require ports to allow competing service providers to enter the market;
- allow the number of service providers to be limited in certain circumstances, such as on safety grounds;
- provide for a system of mandatory authorisations for those wishing to provide port services;
- require designation of competent authorities to consider applications for authorisations and for an appropriate appeals mechanism;
- enable self-handling by shippers; and

- require port authorities to keep separate audited accounts for each commercial service they provide.

4.3 The main changes compared with the text rejected by the European Parliament were:

- self handling by ship operators providing a regular short sea shipping service or those with “Motorways of the Sea”²⁰ operations could be conducted using not only land-based personnel but also seafaring crew;
- authorisations for port service providers would be mandatory;
- the duration of authorisations would be reduced;
- transitional arrangements for the new regime would be largely eliminated; and
- compensation arrangements for outgoing service providers would not be as comprehensive.

4.4 When the previous Committee considered this draft in December 2004 it:

- reported on the one hand the Government’s support for the broad principles of market liberalisation and on the other its considerable disappointment with the redrafted proposal;
- noted the Government’s intention to hold a new round of informal but detailed consultations with a representative cross-section of interested parties leading to a preliminary Regulatory Impact Assessment and the Minister’s intention to write to us again with it; and
- decided to keep the document under scrutiny meanwhile.²¹

The Minister’s letter

4.5 The Minister of State, Department of Transport (Dr Stephen Ladyman) writes to tell us that his department has now completed a thorough consultation with all interested parties, including the UK ports sector and the European Seaports Organisation and draws our attention to the initial Regulatory Impact Assessment²² which incorporates the views expressed. This assessment notes that the majority of UK interested parties — both ports and their customers — do not see any significant benefits to be brought about by the revised draft Directive. Such benefits that might arise were limited market opening, guidance on state aid, possible greater choice and lower charges for customers and possible health and safety improvements. Set against these are potential costs which include those related to an inappropriate single model, inadequate and inflexible durations for authorisations of services, uneven spreads of investment, increased financing costs, inadequate compensation provisions, the proposed tendering process, self handling,

20 Motorways of the sea are transnational maritime links to be developed to bypass bottlenecks on land such as the Alps or the Pyrenees. See (24941) 13297/03 (24970) 13244/03: HC 63-xxxvi (2002-03), para 3 (5 November 2003) and *Stg Co Deb*, European Standing Committee A, 11 November 2003, cols.3-26.

21 See headnote.

22 See http://www.dft.gov.uk/stellent/groups/dft_shipping/documents/page/dft_shipping_040009.hcsp.

disruption of existing supply chain benefits for vertically integrated ports, increased bureaucracy, cherry picking of the most profitable services, casualisation of the workforce, risks to pension funds and customer care.

4.6 In the summary of the assessment it is said:

“The Government has indicated from the outset that it believes these proposals (clearly modelled on Continental port structures) must be realistic and proportionate in their impact on UK ports sector interests. In addition the directive must clearly recognise the diversity of the European ports and the opportunities already provided. The assessment made in this paper clearly supports our view that significant improvements are needed in many aspects of this proposal for it to meet those requirements.”

The summary also says that it is not likely that the intended consequences of proposal would have a significant impact on the UK independent ports sector or its stakeholders, but that it is clear that there is a real possibility of serious unintended consequences having an adverse impact, which is not balanced by any compensating advantage. In particular there could be:

“a negative impact on investor confidence slowing growth of the UK ports sector with the most serious threat being to the delivery of new ports facilities with consequent dampening effects on the UK economy; and

“an increase in casualisation of the ports labour force in the UK leading to a degradation in terms and conditions, security, safety and training standards.”

4.7 The Minister tells us that a number of other Member States, the Commission and the European Seaports Organisation have followed the Government in working on impact assessments, many (including the Commission and the European Seaports Organisation) using the questions posed in the UK consultation as a model. (The Commission assessment may be available this month.) It is the Government’s intention as Presidency to use these assessments to underpin further informed consideration of the draft Directive.

4.8 The Minister also tells us that the Transport Committee of the European Parliament is still considering the draft Directive and that there may be considerable opposition to the current text. We understand that the matter might be considered in plenary on 6 January 2006, with complete rejection of the draft Directive not being impossible.

Conclusion

4.9 The desirability of this draft Directive, at least without considerable amendment, seems doubtful. We note that the future of the document will be clearer once the European Parliament has concluded its current consideration of the text. We should like to hear in due course from the Government about the outcome of this consideration and, at the same time, have a statement of the Government’s then intentions in relation to the draft Directive.

4.10 In the meantime we do not clear the document.

5 European rail signalling system

(26704) 10908/05 + ADD 1 COM(05) 298	Commission Communication: Deployment of the European rail signalling system ERTMS/ETCS
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<i>Legal base</i>	—
<i>Document originated</i>	4 July 2005
<i>Deposited in Parliament</i>	11 July 2005
<i>Department</i>	Transport
<i>Basis of consideration</i>	EM of 12 October 2005
<i>Previous Committee Report</i>	None
<i>To be discussed in Council</i>	Not known
<i>Committee's assessment</i>	Politically important
<i>Committee's decision</i>	Not cleared; further information awaited

Background

5.1 The High-Speed Rail Interoperability Directive, 96/48/EC, and the Conventional Rail Interoperability Directive, 2001/16/EC, will lead eventually to the introduction of the European Rail Traffic Management System (ERTMS). ERTMS has two basic components:

- the European Train Control System (ETCS), which passes instructions to a train driver on occupying the track ahead and on speed information, whilst also constantly monitoring the driver's compliance with these instructions. ETCS has three levels — transmission of information to a driver by trackside signals, transmission of information to a driver by GSM-R and transmission of information by a train as to its precise whereabouts. At all three levels an on-board computer, known as Eurocab, can reduce the trains speed if appropriate; and
- the Global System for Mobile Communications — Rail (GSM-R), a digital radio system based on standard GSM (mobile phone) technology but using dedicated frequencies specific to rail and certain advanced functions.

5.2 The High-Speed Rail Interoperability Directive has required, since November 2002, ERTMS for any new high-speed line in the trans-European rail network and for any signalling system which is being renewed. Similar requirements under the Conventional Rail Interoperability Directive are currently coming into force.

The document

5.3 In its Communication the Commission seeks to demonstrate how the diversity of signalling and speed control systems used in Europe — more than twenty — are an important example of the technical barriers to trade and to interoperability which hamper competitiveness in the railway industry and to suggest that introduction of ERTMS will

reduce these barriers, both increasing competition and bringing wider benefits to the internal market and to the economy as a whole. The Commission notes that although the deployment of GSM-R is proceeding rapidly that of ETCS is slower. Amongst the reasons for this are less rapid development of ETCS products — being rail specific it has not benefited in the same way as GSM-R from standards developed for other sectors, the cost and complexity of having more than one system on a train during a transitional phase and the long service life expected of current systems.

5.4 The Commission suggests that shortening the period of migration to ERTMS to ten or twelve years and basing it on the creation of a number of major interoperable international corridors would bring forward benefits from the reduction in number of different signalling systems and from reduced fixed installations as well as allowing enhancements in network performance and safety. In March 2005 it signed a Memorandum of Understanding with the Community of European Railways, the European Infrastructure Managers and the Union of European Railway Industries in order to facilitate such an accelerated strategy. The Commission estimates that the cost of introducing ERTM in this accelerated way would be about €5 billion (£3.415 billion) in the period up until 2016. Drawing attention to its proposals for funding the Trans-European Networks (TENs) for energy and transport during the period 2007-2013, including €20.35 billion (£13.9 billion) for transport, which the previous Committee has kept under scrutiny,²³ the Commission says that it intends to earmark a major part of that funding to support ERTMS deployment. Funds would only be released for projects that included ERTMS and particular attention would be given to priority cross-border projects agreed in April 2004.²⁴

The Government's view

5.5 The Parliamentary Under-Secretary of State, Department of Transport (Mr Derek Twigg) says:

- deployment of ERTMS at the second level (that is ceasing dependence on line side signals, with consequent cost savings, network performance and capacity improvements and safety benefits) in the UK should start as soon as is reasonably practicable. Nothing in the Communication conflicts with this;
- the UK's National Implementation Plan for ERTMS is being developed in accordance with the requirements of the Interoperability Directives. These plans have to be submitted to the Commission for harmonisation and can be returned for amendment if inconsistent with Commission strategy;
- the Commission's objectives are now aimed at improving railway competitiveness over a series of pan-European corridors, focused mainly on freight. ERTMS is seen as only part of what needs to be addressed on each corridor. Six Continental corridors have been identified as initial priorities for future funding and are currently undergoing route based analysis — these freight corridors are not

23 See (25873) 11740/04: HC 42-xxxi, para 6 (15 September 2004).

24 See (24941) 132297/03 (24970) 13244/03: HC 63-xxxvi (2002-03), para 3 (5 November 2003) and *Stg Co Deb*, European Standing Committee A, 11 November 2003, cols. 3-26.

finalised, but are an adaptation of some of priority projects identified in the April 2004 decision;

- none of these freight corridors directly impact upon the UK. But it is expected that the Paris-Brussels-Cologne-Amsterdam-London route will continue to be of interest to the Commission. This raises the issue of the fitment of ERTMS to the Channel Tunnel Rail Link, which will be considered as part of the UK National Implementation Plan;
- the development phase to 2008 of ERTMS in the UK is progressing with implementation of ERTMS on the Cambrian Line. Successful completion is a key element of migration towards national implementation and importantly allows the UK to have a credible position in the engagement with European bodies and ERTMS development processes. It also allows the Government to consolidate its understanding of the potential economic drivers to support ERTMS national implementation;
- an accelerated pan-European migration strategy will be of general benefit to the UK as there will be an increase in the volume of ERTMS orders which in turn should lead to the reduction in unit costs and greater steps towards product maturity and reliability. Realising these benefits will in turn lead to further improvements of the business case for ERTMS in the UK and may well allow acceleration of specific UK routes; and
- most Member States support the introduction of ERTMS, with planned major investments in Spain, Italy, Netherlands, Sweden, Austria and Belgium. ERTMS is increasingly being installed on a number of TENs corridors in Central and Eastern Europe that include routes in Hungary, Bulgaria and Turkey. Switzerland has also made a major commitment to ERTMS. But Germany appears to be notably more cautious, with increasing recognition of the need for economic justification and acknowledgement that ERTMS is only one element in an overall route upgrade or enhancement scheme.

5.6 The Minister then tells us that in accordance with:

- the Government's policy on the proposal for financing TENs for the 2007-2013 period (which we understand in essence to be to await the outcome of the overarching negotiation on the Financial Perspectives for that period);
- its requirement for economic justification for ERTMS; and
- the existing volume of ERTMS implementation across Continental Europe;

the Government in its Presidency role supports measures to remove barriers to trade and to interoperability through the accelerated introduction of ERTMS/ETCS. And it continues to work towards facilitating negotiations on the proposal for financing TENs for the 2007-2013 period and the associated intervention rates that underpin the principles of the present document.

Conclusion

5.7 We recognise that there are potential benefits to be had from ERTMS and that these might be facilitated by an earlier general introduction of the system. We agree with the cautious approach the Government appears to be taking to the Commission's proposals both in regard to the need for a proper economic justification for ERTMS projects and to the wider question of TENs financing. We infer from the Government's statement of support, in its Presidency role, for an accelerated introduction of ERMTS that this represents its view of the UK interest. We should be grateful for confirmation of this.

5.8 Additionally and in due course, we wish to hear further from the Government on the economic justification for these proposals within the context of the outcome of the consideration of the wider issue of finance for TENs projects, before we consider the Commission Communication again.

5.9 Meanwhile we do not clear the document.

6 Road safety

(26852) 12383/05 COM(05) 431	Commission Communication: The 2 nd eSafety Communication — Bringing eCall to citizens
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<i>Legal base</i>	—
<i>Document originated</i>	14 September 2005
<i>Deposited in Parliament</i>	21 September 2005
<i>Department</i>	Transport
<i>Basis of consideration</i>	EM of 10 October 2005
<i>Previous Committee Report</i>	None
<i>To be discussed in Council</i>	Not known
<i>Committee's assessment</i>	Politically important
<i>Committee's decision</i>	Not cleared; await further information

Background

6.1 The Commission's third European Road Safety Action Programme, for the period 2002-2010, set a target of halving the annual number of road deaths in the Community by 2010 (that is from about 47,000 to 25,000 annually). In the context of that programme the Commission published in September 2002 a Communication on "information and communications technologies for safe and intelligent vehicles". This suggested that, while much of the development and use of ICT-enabled vehicles is an industry responsibility, there is a need for and merit in collaboration between the private and public sectors. Areas for collaboration highlighted were facilitating more cooperative intelligent vehicle and intelligent infrastructure systems and assisting in provision of a business case for

widespread and rapid deployment. The Commission discussed action to promote intelligent vehicle safety systems, adapt regulatory and standardisation provisions and remove societal and business obstacles.²⁵ The subject is sometimes referred to as eSafety.

6.2 In its Communication “i2010 — a European Information Society for growth and employment” the Commission announced its intention to launch “flagship ICT initiatives on key social challenges” including safe and clean transport.²⁶

The document

6.3 In this document the Commission makes proposals to carry forward one of the suggestions from its earlier Communication on the use of ICT in road safety: promotion of a pan-European in-vehicle emergency call service, to be known as eCall. It sets this in the context of its intention to launch a flagship initiative, the Intelligent Car, as part of the i2010 programme. The Commission argues that:

- as travel abroad by car becomes more and more frequent there is an increasing need for a pan-European emergency service that can be used by all vehicles regardless of their make, country of registration or location. An increasing percentage of the 180 million calls annually to emergency services originate from mobile phones — currently 60-70%. For an estimated 15% of these calls the location cannot be accurately determined, leading to a significant delay in dispatching help and in some cases preventing help being sent;
- eCall could drastically cut emergency response times — by about 50% in rural areas and up to 40% in urban areas, save lives and reduce the severity of injuries;
- when implemented, eCall would have significant socioeconomic benefits;
- setting-up a full emergency chain for eCall needs the cooperation of many authorities. This co-operation has been slow to materialize and in many Member States is absent; and
- without a full commitment from Member States there will be no investment from the automotive industry, which it is ready to equip with eCall devices all new models entering the market after September 2009.

6.4 The Commission then sets out actions it believes Member States should undertake in order to bring forward the introduction of eCall:

- signing the European Memorandum of Understanding (MoU) for Realisation of Interoperable In-Vehicle eCall²⁷ and commit to implementation of eCall. Over 50

25 See (24592) 9713/03: HC 63-xxviii (2002-03), para 11 (2 July 2003) and (24897) 12736/03 + ADD 1: HC 63-xxxiv (2002-03), para 18 (22 October 2003).

26 See (26616) 9758/05 + ADD 1: HC 34-ii (2005-06), para 1 (13 July 2005) and Stg Co Deb, European Standing Committee C, 8 November 2005, cols 3-22.

27 The MoU “is to secure the realisation of” eCall. It is not legally binding “rather, it is an expression of the individual and collective commitment of the signatories to work in partnership in order to realise a shared objective to the benefit of everyone”. It “creates a framework for the introduction of in-vehicle emergency call at all levels in the emergency call chain”. See http://europa.eu.int/information_society/activities/esafety/doc/esafety_library/mou/invehicle_ecall_mou.pdf.

interested parties have now signed the MoU, but this includes only two Member States (Finland and Sweden). The Commission suggests that lack of signatures, especially from the Member States, could delay implementation and weaken the commitment of industry;

- promoting 112 and E112. 112 is the single European emergency number in use in 24 Member States — in most, including the UK, in parallel with national numbers. On E112, the system to provide location information, the Commission suggests the majority of Member States have been slow in encouraging their public wireless network operators to provide this information and should seek to accelerate the introduction of E112;
- upgrading Public Service Answering Points (PSAPs) to handle location-enhanced E112 calls and eCalls. The Commission recommends that Member States ensure upgrading of the infrastructure in PSAPs for processing eCall information originating from vehicles, to standards being developed by the European Telecommunications Standards Institute, by the end of 2007 and upgrade PSAPs to handle location information from E112 calls; and
- providing adequate location-enhanced emergency services and language support. The Commission recommends that Member States ensure their PSAPs are adequately trained and equipped and upgrade their whole emergency service chain (PSAPs, dispatch, emergency vehicles, and hospital emergency rooms) with adequate ICT based tools to ensure fast and reliable responses to vehicle accidents.

6.5 In the document the Commission also discusses briefly its own actions in relation to:

- eSafety priority topics — Human Machine Interaction Real-Time Traffic and Travel Information;
- work of the eSafety Forum User Outreach Working Group on publicising the benefits of eSafety systems;
- work of the High-Level Group for a competitive EU Car Industry (CARS 21); and
- production in 2005 of a mid-term review of the Road Safety Action Programme.

The Government's view

6.6 The Minister of State, Department of Transport (Dr Stephen Ladyman) prefaces his comments on the suggestions in the document for Member State actions by saying it is a Government objective to improve road safety. So it supports in principle any action that would assist in reducing the number of accidents, deaths and seriously injuries. But any initiative needs to be considered on its merits and costs and benefits need to be measured.

6.7 The Minister tells us that before signing the MoU the Government wants to see further research. It supports the idea of an emergency response system but it thinks there are a number of issues that need to be considered further:

- how eCall relates to other Community initiatives considering the future shape and functionality of a universal On-Board Unit;
- how fiscal incentives might be applied and how they might be justified;
- whether or not the business case is transferable to the UK situation and the likelihood of claimed benefits being realised; and
- how deployment of in-vehicle equipment in all new vehicles from 2009 would work in relation to Whole Vehicle Type Approval.

He adds that the Government would be keen to work with the telecommunications industry, where there are genuine opportunities to use their networks to improve road safety. Equally the telecommunications and transport industries could work together commercially without direct Government involvement. With the business case for eCall unproven, Government support for the scheme is so far not justified. Given doubt as to the robustness of the business case the Government intends some urgent research in order to support an assessment of the likely costs and benefits eCall might have for the UK.

6.8 As for Member States promoting 112 and E112 the Minister tells us that 112 has been introduced as a European emergency number and calls to it in the UK receive the same quality of service and level of priority as 999 calls. Caller location information is automatically provided by all network operators in the UK for all 999/112 calls when they are passed to the call handling agents (or Stage 1 PSAPs) provided on behalf of the operators by British Telecommunications, Cable & Wireless and Kingston Communications.

6.9 On upgrading the capability of PSAPs the Minister says that UK telecommunications operators have been required by the regulator to provide location information. But implementation is for each emergency authority on the basis of available resources and its own priorities. Emergency authority control rooms are being upgraded to receive location information automatically. At present more than 23,000 of the 40,000 calls connected daily by call handling agents are accompanied by this information. It is expected that by the end of 2007 all control rooms will have been upgraded, or have the necessary work programmed as part of wider modernisation plans. The arrangements in place for handling location information should be capable of adaptation for eCall purposes. A protocol for the handling of in-vehicle system emergency calls has been agreed — the proposed eCall arrangements would satisfy the UK protocol.

6.10 On the recommendation that Member States should provide adequate location-enhanced emergency services and language support the Minister tells us that both Stage 1 and 2 PSAPs have personnel trained to handle emergency calls, and training is adapted to the changing needs of the relevant organisation. Stage 1 PSAPs provide English and Welsh language support. Stage 2 PSAPs are able to conference call with organisations providing other language support.

6.11 In relation to the Commission's own activities the Minister says the Government is an active participant in the e-Safety initiative and is keeping a close eye on progress.

6.12 The Minister notes that possible financial implications arise for the UK as the MoU raises the possibility of fiscal incentives and that in the UK one of the major costs resulting from deployment of eCall would be the cost of the in-vehicle equipment — this would need to be met by either the consumer or the taxpayer. He also notes once further research has been undertaken to ascertain the potential impacts on the UK the Government will produce a Regulatory Impact Assessment to inform subsequent consultation.

Conclusion

6.13 **Despite the justifiable caution with which the Government is handling the Commission’s proposals for the introduction of eCall there is the possibility of significant benefits to be gained. So we welcome the Government’s intention to study further possible costs and benefits, to produce a Regulatory Impact Assessment and to have a consultation process. We should like to see the outcomes of these before considering the document further. Meanwhile we do not clear the document.**

6.14 We have a further comment on the document which we should like the Government to act on now with the Commission. As we have said, eCall might hold significant benefits. However the language in which the Commission’s proposals are presented, particularly as regards project and committee names, at times almost amounts to self-parody, for example “The eSafety partners have agreed on a Road Map for eCall roll-out” or “The eSafety Forum User Outreach Working Group”. The Government should point out that at best such language obscures meaning and at worst encourages facetiousness at the expense of what is after all a serious subject.

7 European Monitoring Centre for Drugs and Drug Addiction

(26834) 12143/05 COM(05) 399	Draft regulation on the European Monitoring Centre for Drugs and Drug Addiction
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<i>Legal base</i>	Article 152 EC; co-decision; QMV
<i>Document originated</i>	31 August 2005
<i>Deposited in Parliament</i>	16 September 2005
<i>Department</i>	Health
<i>Basis of consideration</i>	EM of 6 October 2005
<i>Previous Committee Report</i>	None
<i>To be discussed in Council</i>	No date set
<i>Committee’s assessment</i>	Legally important
<i>Committee’s decision</i>	Not cleared; further information requested

Background

7.1 The European Monitoring Centre for Drugs and Drug Addiction (EMCDDA) was set up in 1993.²⁸ It is an EU agency which collects, analyses and disseminates information on drugs and drug addiction.

7.2 Article 152(4) of the EC Treaty provides for the Council to contribute to the achievement of the objectives of the Article by adopting:

- measures on standards for organs and substances of human origin, blood and blood derivatives;
- veterinary and phytosanitary measures with the objective of protecting human health; and
- incentive measures designed to protect and improve human health.

7.3 Article 308 of the EC Treaty provides that if, in the course of the operation of the common market, it is necessary to attain one of the objectives of the Community and the Treaty has not provided the necessary powers, the Council (acting unanimously) may take the appropriate measures.

The document

7.4 The Regulation which set up the EMCDDA in 1993 has been amended three times. The Commission believes that further changes are now necessary to, for example, widen the scope of the Centre's work to reflect recent trends in drug misuse, change the composition of the Management Board and the responsibilities of the Director and create an Executive Committee. Rather than making further amendments to the original Regulation, the Commission proposes a new Regulation incorporating the existing amendments and the new proposals.

7.5 In 2004, the previous Committee considered the first draft of the new Regulation. The legal base for the proposal was Article 308 of the EC Treaty. Our predecessors concluded that the document was not of sufficient legal or political interest to warrant a substantive report to the House and cleared it from scrutiny.²⁹

7.6 During the Council Working Group discussions of that draft, some Member States argued that Article 152 of the EC Treaty was a more appropriate legal base than Article 308. So the Commission withdrew the draft and produced the current document. The legal base is the only difference of substance between the two texts. The current text cites Article 152.

The Government's view

7.7 The Parliamentary Under-Secretary of State at the Department of Health (Lord Warner) tells us that the Government broadly supports the revised text (as it supported the

28 Council Regulation (EEC) No. 302/93: OJ No. L 36, 12.2.1993, p.1.

29 (25287) 5085/04: HC 42-xi (2003-04), para 24 (25 February 2004).

first draft). But the Government considers that Article 308 is the more appropriate legal base because Article 152 does not provide the necessary power. The establishment of a body, such as the EMCDDA, does not constitute an incentive measure.

7.8 The Minister says that:

“A statement registering the UK’s preference for the use of Article 308 was, therefore, included in the minutes of the Council meeting at which the draft proposal based on Article 308 was withdrawn. The UK also plans to enter a similar statement in the minutes of the Council meeting at which the regulation is to be adopted.”

Conclusion

7.9 We share the Government’s view that Article 152 of the EC Treaty would not provide a suitable legal base for the draft Regulation, since it involves the amendment of a Regulation which was itself adopted under what is the new Article 308 EC.

7.10 It is arguable, perhaps, that Article 308 EC, too, is not wholly appropriate because the establishment of the European Monitoring Centre for Drugs and Drug Addiction is not necessary “in the operation of the common market”. But that Article (formerly Article 235) was accepted as the legal base for the original Regulation in 1993 and for the three subsequent amending measures. Moreover, it is arguable that the Monitoring Centre helps improve public health and, therefore, the fitness of the labour force and so contributes to the operation of the common market.

7.11 On balance, therefore, we share the Government’s view that Article 308 EC would provide a suitable legal base for the proposal. Accordingly, we question whether it is sufficient for the Government merely to register its view in a minute statement, and whether the Government should not vote against the adoption of the draft Regulation on a legal basis which it considers to be inadequate. We should be grateful for the Minister’s comment on the question. We shall keep the document under scrutiny pending his reply.

8 Trans European Networks: The eTEN Programme

(26789)
11757/05
COM(05) 354

Commission Communication: "Mid-Term Review of the e-TEN programme"

<i>Legal base</i>	—
<i>Department</i>	Trade and Industry
<i>Basis of consideration</i>	Minister's letter of 3 November 2005
<i>Previous Committee Report</i>	HC 34-vi (2005-06) para 8 (19 October 2005)
<i>To be discussed in Council</i>	To be determined
<i>Committee's assessment</i>	Politically important
<i>Committee's decision</i>	Not cleared, pending evidence session with Minister

Background

8.1 According to the Commission's website, "eTEN is a European Union programme that seeks to extend the potential benefits of the single European market and the information society to all European citizens by facilitating the widest possible participation in the new knowledge economy". It aims at funding electronic services, not infrastructure. It is designed to help the deployment of telecommunication network-based services, or e-services, with a trans-European dimension. It focuses on public services in five areas — e-government, e-health, e-inclusion, e-learning and trust and security — that would help make new on-line services available across the European Union. It runs from 2003 to 2006, with a budget of €170.5m over four years.

The Commission Communication

8.2 The Commission Communication is a summary of a report carried out by independent consultants into the operation of the eTEN programme for the period from July 2000 to June 2004. It examines the way the programme has been carried out, and the impact that it has made, together with some recommendations as to how it can do things better in the future in terms of operation and in orientating the programme so that it has maximum relevance. It also includes the Commission's response to the findings and recommendations.

8.3 In his 29 September 2005 Explanatory Memorandum, the Minister of State for Industry and the Regions (Mr Alun Michael) said the programme underwent a major re-orientation in July 2002, when it was re-aligned "to become the major support mechanism for projects that were intended to take forward the Europe 2005 agenda". The Minister went on to say: "the Commission accepts the report as being a fair assessment of the programme during the period, and welcomes the report's conclusion that the programme is now well re-run and strategically relevant to Information Society policies. It also recognises the need for the programme to evolve further in order to meet the different demands in the future".

8.4 When we considered the Commission Communication on 19 October, we felt that the Minister's limited comments were in line with the rather disappointing nature of his Explanatory Memorandum, which said nothing about the wider context in which the eTEN programme is located — not only its provenance but, more importantly, its proposed future. A glance at the eTEN website showed how ambitious its aspirations are. But there was little in this Mid-Term Review that suggested that, after the best part of a decade, the eTEN programme really knew how well it had done or where it was going. Yet it seemed likely to appear, in an expanded format, in the proposed €4.2 billion Competitiveness and Innovation Programme, as part of the €800 million ICT Policy Support element. When the Committee considered the CIP on 4 July, it seemed that the Minister and we had the same misgivings about an expensive and unconvincing programme, and we urged him to approach it with appropriate rigour in the subsequent discussions — the sort of rigour that seems lacking in the consideration of eTEN.

8.5 We await further information on the outcome of the CIP discussions. In the meantime, we asked the Minister for his views on the effectiveness of the e-TEN programme in terms of delivering concrete, sought-after outcomes; if he believed that there should be an e-TEN-type programme under the CIP; and, if so, why; and we kept the document under scrutiny, while considering it relevant to the debate on “i2010 — a European Information Society for growth and employment” that took place on 8 November 2005.

8.6 The Minister has responded in his letter of 3 November 2005.

The Minister's letter

8.7 The Minister says:

“The Committee's lack of conviction that the eTEN programme has been effective and good value for money is a view that the Government largely shares. Over the years significant amounts of money have been spent without any real evidence that a real difference has been made. However, it may be worth rehearsing the positive points about the programme.

“First, since its re-orientation in 2002 it has supported projects in vital policy areas. It is difficult to disagree with an emphasis on issues such as promoting inclusion in an electronic environment, investigating new ways to engage with the democratic process, new digital health solutions, or looking at how the education process can benefit from the digital age. These are all areas where it is legitimate for the European Commission to investigate whether there is advantage to be gained by supporting pan European solutions. Examples might be projects such as EURODONOR, which will provide definition, specification and realisation of a European Organ Data Exchange Portal and Data Base to be used in the medical field of data organ exchange and transplantation.

“UK Transplant is one of the project participants. Another project with strong UK participation from the Museums, Libraries and Archives Council is MICHAEL, where the goal is to set-up, validate and launch an online pan-European service to enable European cultural heritage to be promoted to a worldwide audience.

“Second, it is not subject to Member State manoeuvring and influence in terms of budget allocation. The budget is distributed by means of public calls for proposals, with the number of proposals outnumbering those that are funded by around 7:1, ensuring that selection can be made from only those scoring very highly against the evaluation criteria. There is also an independent evaluation process, with independent experts selected from across the Member States, and with no participation by the Commission. UK organisations, from business, local authorities and universities, have received funding for their participation, and have taken around 8% of the available budget.

“Finally, by the standards of some other programmes, it is relatively modest in terms of budget. However, I would certainly not underestimate expenditure of some €48 million a year, and it also points to the root of the Government’s reservations about the programme.

“While the focus of the programme is an important one, and it has supported some very interesting projects, its ambitions are seriously out of kilter with the resources it has available to deliver them. This has led to a generally uninspiring record of achievement. Up until the most recent call for proposals virtually the entire budget was spent on feasibility studies, rather than on the actual deployment of services that would make a difference to the areas identified. It is possible that some of those feasibility studies were subsequently used as the basis of deployment outside the programme itself, and if so that is to be welcomed. However, the Commission has little reliable evidence either way, and evaluation of what difference the projects supported have made has been generally lacking.

“There must also be some serious doubt as to whether directing such a budget towards initial deployment projects will make a measurable difference, or whether such expenditure may be displacement of funds that would otherwise have been made available from other sources. There may be a legitimate role for the Commission to perform a facilitation function, so that initiatives in different Member States are made aware of complementary activities elsewhere, and perhaps offer a way in which they can co-operate. However, such a potentially useful function would not require a budget of €48 million.

“This suggests that at present the budget is either too small to make a difference — and increasing it substantially would need to be on the basis of evidence of need that does not appear to be there — or too large for a useful programme of more modest ambition.

“In terms of the future, it is envisaged by the Commission that this will form part of ICT support element of the proposed Competition and Innovation Programme (CIP). I think that it is inevitable that such an element in the CIP, focused on supporting i2010, will receive strong support from most Member States and the European Parliament, and in terms of promoting ICT solutions in the provision of public services this may well be valid. However, we will need to look at what is proposed very carefully.

“Simply repeating the eTEN programme, with the lack of potential for making an impact and a difference, would be unlikely to attract much support from the Government. We would be more interested in a programme that facilitated co-operation and the sharing of best practice where activity was already taking place or planned, and it might then be legitimate for some funding to be available to facilitate a wider knowledge of such plans, broader adoption of such service across Europe, or where only European implementation would be effective. We will seek to influence thinking along those lines, and question any blind replication of eTEN in the proposed CIP without full justification.

“I hope that this gives a helpful insight into the Government’s attitude to the eTEN programme and its future, and that you will now feel able to clear the Mid-Term Evaluation Document from Scrutiny.”

Conclusion

8.8 We are indeed grateful to the Minister for these insights, which might perhaps have been better offered in his original Explanatory Memorandum. From one perspective, they could be seen as refreshingly honest, in acknowledging that “over the years significant amounts of money have been spent without any real evidence that a real difference has been made”. Equally, they could be seen as indicative of one of the fundamental problems of such EU expenditure — that, this diagnosis notwithstanding, it is nonetheless seen as inevitable that “such an element in the CIP, focused on supporting i2010, will receive strong support from most Member States and the European Parliament”, in the face of which the Minister seems to suggest that the best that we can hope for is that sufficient of the Minister’s colleagues will share his professed determination to look very carefully at what is proposed. However, as he himself says, the present programme is too well-funded for a Commission facilitation role whereas “increasing it substantially would need to be on the basis of evidence of need that does not appear to be there”.

8.9 We consider this an unsatisfactory response, and shall be inviting the Minister to explain to us in person why he does not propose to oppose further expenditure in this area. In the meantime, we shall keep the document under scrutiny.

9 EU manufacturing: towards a more integrated approach for industrial policy

(26913) 13143/05 COM (05) 474 + ADDs 1-3	Commission Communication: "A policy framework to strengthen EU manufacturing - towards a more integrated approach for industrial policy"
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<i>Legal base</i>	—
<i>Document originated</i>	5 October 2005
<i>Deposited in Parliament</i>	14 October 2005
<i>Department</i>	Trade and Industry
<i>Basis of consideration</i>	EM of 31 October 2005
<i>Previous Committee Report</i>	None; but see HC 42-xx (2003-04) para 2 (18 May 2004)
<i>To be discussed in Council</i>	Competitiveness Council on 28-29 November 2005
<i>Committee's assessment</i>	Politically important
<i>Committee's decision</i>	Not cleared; further information requested

Background

9.1 In its renewed Action Programme for Growth and Employment,³⁰ the Commission declared its commitment to focussing the renewed Lisbon Strategy on growth and employment, with the following priorities:

- making Europe a more attractive place to invest and work;
- putting knowledge and innovation at the heart of European growth; and
- shaping policies to allow businesses to create more and better jobs.

This Communication on industrial policy was announced under the Community Lisbon Programme of July 2005³¹ and, according to the Commission, "represents an important contribution to the achievement of these objectives".

9.2 The Commission says that "the main role of industrial policy is to provide the right framework conditions for enterprise development and innovation in order to make the EU an attractive place for industrial investment and job creation". It says that "it is evident that it is primarily private sector businesses that create economic growth, not the public sector ... From an industrial policy perspective, the role of public authorities is to act only where needed, i.e. when some types of market failures justify government intervention or in order to foster structural change". It is committed to the horizontal nature of industrial policy

30 "Working Together for Growth and Jobs: a New Start for the Lisbon Strategy" — COM(2005) 24.

31 "Common Actions for Growth and Employment: The Community Lisbon Programme"— COM(2005) 330.

and “to avoid a return to selective interventionist policies”, although for industrial policy to be effective, account needs to be taken of the specific context of individual sectors.

9.3 The Commission pithily illustrates the importance in the EU of manufacturing industry:

- it provides around a fifth of EU output and employs some 34 million people;
- over 80% of EU private sector R&D expenditure is spent in manufacturing;
- it generates the new and innovative products that provide some three-quarters of EU exports;
- over 99% of companies and 58% of manufacturing employment are SMEs; and
- it is closely inter-linked with the service industries, providing demand for business services and supplying key inputs to the services industries.

But new technologies that allow the fast introduction of new products, increased flexibility of production processes and an increased internationalisation of the world economy mean that the EU is increasingly facing international competition as a location for investment, production, and R&D spending. While important EU manufacturing sectors continue to be competitive *vis-à-vis* their counterparts, EU trade overall is still concentrated in sectors with medium-high technologies and low to intermediate labour skills, which exposes it to competition from producers in emerging economies that are upgrading the skill intensity of their exports and catching up in terms of the non-price factors that often underlie the EU competitive edge on world markets. The Commission also notes that there is evidence that the US and Japan are attracting more international R&D expenditure than the EU, whilst there is emerging evidence that China and India are becoming important locations for new R&D investments. Moreover, the US has also been more successful than the EU in attracting researchers and highly skilled staff, leading to a loss of R&D investment and researchers from the EU. Therefore, promoting the conditions to ensure increased adaptability and structural change is essential in order to ensure the competitiveness of EU manufacturing, especially in the light of increasingly strong competition from China and the emerging Asian economies. “The challenge for policy makers is to make a clear and coherent response by making substantial improvements to the framework conditions and general environment in which European industry operates”.

The Commission Communication

9.4 It is with these considerations in mind that the Commission proposes what it says is a new approach to industrial policy “aimed at achieving better designed policies that are more relevant, integrated, and consensual” through a Communication that “deepens and supplements the EU framework for industrial policy by focussing on its practical application to individual sectors”. The Commission have also produced a staff working paper detailing the analysis behind the Communication, a sectoral overview which is the basis of the analysis, and an impact assessment.

9.5 Rather than new legislative measures, the Commission proposes a series of initiatives for further work on a number of specific policy challenges identified as crucial for the

competitiveness of EU manufacturing, a central element of which will be the early and full involvement of key stakeholders and member states in policymaking. Twenty-seven sectors of the EU manufacturing and construction industries were screened to establish the opportunities and challenges faced across the EU, based on the following criteria:

- ensuring an open and competitive single market;
- knowledge, R&D, innovation and skills;
- better regulation;
- ensuring synergies between competitiveness, energy and environmental policies;
- ensuring full and fair access to international markets; and
- facilitating social and economic cohesion.

The most important competitiveness and policy challenges of each individual sector are summarised in Annex 1 to the Communication. Broadly, four categories of industries are identified with distinctive sets of challenges:

- *Food and Life Sciences*: highly innovative industries with medium to high growth rates and making up one fifth of EU manufacturing value-added, the main challenges relate to R&D, protection of intellectual property rights, financing of innovation for highly innovative SMEs; reliance on continued adaptation and updating of regulations to keep up with technological progress, whilst ensuring health and safety; more progress towards creating a fully competitive single market for pharmaceutical products; and environmental and market access issues relating to the food and drink industries, pharmaceuticals, and cosmetics.
- *Machine and Systems industries*: accounting for about one third of EU manufacturing value-added, with medium to high growth rates and high rates of R&D spending, the challenges mainly relate to innovation, intellectual property protection and ensuring the availability of skilled personnel. The Single Market for many of these industries depends upon technical standards that need continual updating. Better access to international markets is also essential notably for ICT, electrical and mechanical engineering and motor vehicles. The transport industries also face a number of environmental challenges.
- *Fashion and Design*: successful structural adjustment is the key challenge: improving innovation, IPR protection, and skills are essential to be able to continue to improve quality and product-diversity. Obtaining better access to currently heavily protected world markets is also a key policy requirement.
- *Basic and Intermediate industries*: some 40% of EU manufacturing value-added; growth rates medium to low; largely energy-intensive, with the main challenges relating to energy and the environment. Important sector-specific challenges include the REACH legislation for the chemicals industry and legislative simplification issues for the construction sector. Structural adjustment is important for ceramics, printing and steel.

9.6 In order to address these clusters of challenges, seven major cross-sectoral initiatives are identified:

- Intellectual Property rights and Counterfeiting Initiative (2006);
- High Level Group (HLG) on Competitiveness, Energy and Environment (end 2005);
- External Aspects of Competitiveness and Market Access (Spring 2006);
- New Legislative Simplification Programme (October 2005);
- Improving Sectoral Skills (2006);
- Managing Structural Change in Manufacturing (End 2005); and
- An integrated European Approach to Industrial Research and Innovation (2005).

9.7 There will also be new sector-specific initiatives, some of which will involve new high-level groups or policy fora. Those already identified are:

- Pharmaceuticals Forum (first annual meeting in 2006);
- Mid-Term Review of Life Sciences and Biotechnology Strategy (2006-2007);
- New High Level Groups on the Chemicals Industry (2007) and the Defence industry;
- European Space Programme;
- Taskforce on ICT Competitiveness (2005-2006);
- Mechanical Engineering Policy Dialogue (2005-2006); and
- A series of competitiveness studies, including for ICT, food, and the fashion and design industries.

The Government's view

9.8 In his 31 October 2005 Explanatory Memorandum, the Minister of State for Industry and the Regions (Mr Alun Michael) says that, as Presidency, the UK regards the Communication and supporting documents as “a positive move” from the Commission. He goes on to say:

“We support their general aim of constructing a work programme to improve the policy framework for manufacturing industry in the EU. Also the focus on producing the right framework conditions for industry can be supported, for example in the areas of skills, R&D, innovation, ensuring open and competitive markets and better regulation, as can the analysis of the specific context of individual manufacturing sectors, which is a key part of achieving the right framework.

“The Commission’s move towards further consultation between themselves, the Member States and Industry is to be welcomed, and the proposals on cross-sectoral and sector-specific initiatives can be broadly supported, in their aim of improving the framework conditions for business in the EU.

“The Commission’s proposal to establish a High Level Group on Competitiveness, Energy, and the Environment is also welcome. This work is expected to begin this year, with the aim of improving the synergies between these three policy areas, and developing a more integrated approach. This work will focus on current and future European legislation, enforcing better regulation principles and identifying any inconsistencies or unexpected consequences from present legislation.

“The UK Presidency also welcomes the emphasis in the Commission’s Communication on the external aspects of competitiveness and market access. The plans to prioritise external trade issues are to be welcomed and we agree with the indicated priorities. We hope that market access plans for specific EU industries will maintain a focus on reducing barriers wherever possible to domestic and international trade and investment and that imports and exports are considered of equal importance for ensuring the benefits of competition.

“The better regulation theme running through the Communication is equally welcome, including its relevance to the 27 sectors studied, the cross-sectoral simplification programme and the better regulation angles to many of the sector specific initiatives, as EU better regulation is one of the major themes of the UK Presidency. We support the new push for legislative simplification focused on improving the regulatory framework for business. The UK Presidency welcomed the publication of the Communication on this topic on 25 October, on which a separate EM will be provided.

“We welcome this Europe-wide approach to developing sector skills and recognise the importance of improving sectoral skills as a key driver of competitiveness. Our network of employer-led Sector Skills Councils, who are taking forward demand-led sector skills strategies, would be able to assist in this area.

“The Presidency notes the specific proposal to develop a High Level Group to examine the competitiveness of the Defence Sector, but also notes the importance of this being complementary to the work being done by the Commission and Member States on the European Defence Agency and the recent Green Paper on Defence Procurement.

“The proposal for a high level ICT taskforce to look at the competitiveness of the ICT manufacturing sector can also be welcomed, though it needs to be consistent and not overlap with the parallel proposals surrounding the i2010 agenda.

“We have concerns that the Communication only covers the manufacturing sector whilst, as the Communication states, ‘a strong and healthy industrial sector is essential to fully exploit the EU’s potential for growth and to enhance and sustain the EU’s economic and technological leadership,’ and that ‘EU manufacturing industry is important in its own right — it provides around a fifth of EU output and employs some 34 million people in the EU’. As set out in the Commission Communication of

April 2004,³² the links between manufacturing and service industries need further consideration”.

9.9 On *Consultation*, the Minister says that the Commission held informal consultations with industry and Member states in its development of the Communication, and will continue its consultations with them, accompanied by specific studies. The UK Government will also consult UK stakeholders as part of the ongoing process as defined in the various cross-sectoral and sector-specific policy initiatives outlined above.

9.10 On the *Timetable*, the Minister points out that the numerous initiatives laid out in the Communication, with their individual timetables, will be the subject of a mid-term review in a Communication scheduled for 2007 that will report on the progress made in the individual initiative areas and consider possible further extensions to other focuses of the economy, e.g. environmental technologies. Since publication on 5 October 2005, the Communication has been presented to the Competitiveness and Growth Working Group and he expects there to be an informal exchange of views on the Communication at the 28-29 November Competitiveness Council.

Conclusion

9.11 **This is a thorough and well-presented piece of work, based on a logical approach and a commendable commitment to early and sustained involvement of the industries concerned and those responsible for industrial policy in Member States. The experience of the emerging economies as well as Japan suggests that there can be a positive role in industrial policy for public authorities, provided — as the Communication rightly observes — it is recognised that it is primarily private sector businesses that create economic growth, and that the role of public authorities is to act only where needed.**

9.12 **The challenge is to agree what constitutes such necessity, given that recent discussions, not least at the 27 October 2005 Informal Meeting of EU Heads of State or Government at Hampton Court, suggest that there is still a range of not entirely consistent views among Member States on this basic question. This is perhaps illustrated by the Minister’s reference to the continuing need for further consideration of the links between manufacturing and service industries, harking back to a Communication of 18 months earlier.**

9.13 **It is also notable that, although there is to be a mid-term review in 2007 to measure progress, the Communication says nothing about milestones or outcomes, with the danger that there will be a confusion between activity and effect, and a great deal of time and effort, and therefore money, will be spent on well-intentioned but ultimately ineffective work.**

9.14 **We have no wish to hold up further informal consideration of the Communication. But we would like the Minister to write to us again after the upcoming exchange of views, in the hope that will he be able to report that not only his, but also our, points of concern have been satisfactorily addressed.**

32 "Communication from the Commission fostering structural change: an industrial policy for an enlarged Europe" COM 2004 (274 Final), debated in European Standing Committee C on 13 October 2004.

9.15 We would also appreciate knowing what the views of the Government are, in addition to those of the Presidency.

9.16 In the meantime, we shall keep the document under scrutiny.

10 Exchange of information between law enforcement authorities

(26925) 13413/05 COM(05) 490	Draft Framework Decision on the exchange of information under the principle of availability
+ ADD 1	Commission staff working document: Impact Assessment

<i>Legal base</i>	Articles 30(1)(b) and 34(2)(b) EU; consultation; unanimity
<i>Document originated</i>	12 October 2005
<i>Deposited in Parliament</i>	19 October 2005
<i>Department</i>	Home Office
<i>Basis of consideration</i>	EM of 1 November 2005
<i>Previous Committee Report</i>	None
<i>To be discussed in Council</i>	No date set
<i>Committee's assessment</i>	Politically important
<i>Committee's decision</i>	Not cleared; further information requested

Background

10.1 In November 2004, the European Council adopted the Hague Programme, setting out a five-year programme for policies on security, freedom and justice in the EU.³³ In the section on Strengthening Security, the Hague Programme says that the cross-border exchange of information between law enforcement authorities should be governed by the “principle of availability”. That principle is defined as follows:

“throughout the Union, a law enforcement officer in one Member State who needs information in order to perform his duties can obtain this from another Member State and that the law enforcement agency in the other Member State which holds this information will make it available”.³⁴

33 See (25730) 10249/05: HC 38-iv (2004-05), para 17 (19 January 2005).

34 Conclusions of the European Council on 4/5 November 2004, Annex 1, paragraph 2.1, page 20.

10.2 The European Council invited the Commission to make proposals by the end of 2005 for the implementation of the principle of availability, incorporating the following conditions:

- information may be exchanged only to permit the performance of legal tasks;
- the integrity of the information must be guaranteed;
- sources of information and the confidentiality of information must be protected;
- common standards for access to data and common technical standards must be applied;
- respect for data protection must be ensured; and
- individuals must be protected from the abuse of data and have the right to seek correction of incorrect data.

The European Council added:

“The methods of exchange of information should make full use of new technology and must be adapted to each type of information, where appropriate, through reciprocal access to or interoperability of national data bases, or direct (on-line) access, including for Europol, to existing central EU databases such as SIS [the Schengen Information System, managed by the Commission]”.³⁵

10.3 Article 29 of the Treaty of European Union (the EU Treaty) provides for police and judicial cooperation in criminal matters, including cooperation between Member States’ police forces, customs authorities and other competent authorities and between them and the European Police Office (Europol). Article 30(1)(b) provides that common action in police cooperation includes the collection, storage, analysis and exchange of information. Article 34(2)(b) provides for the Council to promote cooperation by adopting framework decisions for the approximation of Member States’ laws and regulations. The framework decisions are binding about the result to be achieved but leave the form and methods of implementation to the Member States.

The document

10.4 The document comprises a draft Framework Decision on the exchange of information under the principle of availability; an explanatory memorandum by the Commission; and an assessment (ADD 1) by the Commission of the impact of the proposal and three alternative options.

10.5 The document is the Commission’s response to the European Council’s invitation in the Hague Programme. The Commission says that its proposal goes beyond the present arrangements for the exchange of information and is not a development of the Schengen

acquis.³⁶ It suggests that there are, at present, numerous obstacles to the general and speedy availability of information needed for the prevention, detection and investigation of crime. For example, the intervention of national units or central contact points is usually required to deal with requests for information. The existing bi-lateral and multilateral agreements between Member States do not oblige them to provide information or are geographically restricted. There is not a standardised procedure for making and responding to requests. And there are no efficient mechanisms to establish whether and where information exists.

10.6 The purpose of the draft Framework Decision is to overcome these obstacles. It proposes the conditions and rules under which information held by the competent authorities in one Member State is to be available to the equivalent competent authorities in other Member States in order to help them prevent, detect and investigate criminal offences prior to the commencement of a prosecution.

10.7 The draft Decision applies to six types of information:

- DNA profiles;
- fingerprints;
- ballistics;
- vehicle registration information;
- telephone numbers and other communication data, excluding content data and certain traffic data; and
- “minimum data for the identification of persons contained in civil registers”.

10.8 “Competent authority” means a Member State’s police forces, customs authorities or other law enforcement agencies and Europol. “Equivalent competent authority” means an authority equivalent to a competent authority in another Member State. Provision is made for the determination of the equivalence of authorities.

10.9 The draft Framework Decision proposes that each Member State should have a duty to ensure that the equivalent competent authorities of other Member States and Europol have online access (that is, without prior authorisation) to the information held on electronic databases of the Member State’s competent authorities. If the information is not available online, the Member State must provide an online index of what relevant information is available and who controls it. Having consulted the index, the equivalent competent authority may issue an information demand, to which a reply must be given within 12 hours. The reply may limit the use to which the information may be put so as to:

- i) avoid jeopardising the success of an investigation in progress; or
- ii) protect a source of information or a person; or
- iii) protect the confidentiality of information.

³⁶ The *acquis* comprises the Schengen Convention of 1995, and the supporting agreements, on the abolition of checks at the internal borders of the Schengen area, the strengthening of control of the external borders and police and judicial cooperation.

The reply to a demand for information may also refuse the provision of information either on any of the grounds on which limitations on use may be imposed or to protect the fundamental rights and freedoms of the person whose personal data is involved.

10.10 The draft Decision refers to the provisions of a separate proposal on data protection.

10.11 Member States would be required to take all the measures necessary to comply with the Framework Decision by 30 June 2007.

10.12 The Commission's impact assessment notes that there could be substantial (but unquantified) costs to each Member State in creating its index of information and adapting its systems so that other Member States' competent authorities could gain online access to its databases.

The Government's view

10.13 The Parliamentary Under-Secretary of State at the Home Office (Mr Paul Goggins) tells us that the Government supports the general purpose of the Commission's proposal to increase and speed up the sharing of information and intelligence between Member States and with Europol.

10.14 The Minister notes that:

- Article 7 provides that the information obtained under the draft Decision may be used only for the prevention, detection or investigation of offences. He says that this is, arguably, more restrictive than the present arrangements and practices.
- There needs to be consistency between the data protection provisions of this proposal and the separate draft Framework Decision on the protection of personal data.
- The proposed grounds for refusing a demand for information are, arguably, more limited than the present arrangements and practices.

10.15 The Minister adds that the UK Presidency will, in particular, encourage discussion by the Council of the costs of providing the access to information proposed in the draft Decision.

Conclusion

10.16 Clearly, the exchange of information between Members States and with Europol can make an important contribution to the prevention and detection of crime. We quite see the potential benefits of EU legislation to remove unnecessary obstacles to such exchanges. But it is a major leap from the removal of unnecessary obstacles to the creation of an obligation to give the competent authorities of every other Member State a right to online access to national databases. It seems to us questionable whether the European Council's definition of the principle of accessibility (see paragraph 10.1 and 10.2 above) necessarily entails a right to online access without the prior consent of the Member State which holds the data. In any event, we consider the principle to be of sufficient importance to warrant a debate.

10.17 It is true that the draft Decision proposes that there should be a right, on specified grounds, to impose limitations on the use of the information or to refuse to provide the data. But it also proposes that the reply to a request must be made within 12 hours. We wonder whether this would allow sufficient time for the proper consideration of the request. Moreover, as the Minister says, the proposed grounds for refusal may be more limited than under present arrangements. Further, it is not clear whether the right to refuse would be confined only to requests arising from an entry in the index or would also extend to online access to the databases. It seems to us that the right to refuse should apply to all information and not be confined to data mentioned in an index.

10.18 We agree with the Minister that the provisions on data protection in this proposal and in the separate draft Framework Decision on the protection of personal data need to be consistent. This suggests that discussion of the data protection provisions in the draft Decision on the principle of availability should be postponed until after the other measure has been considered.

10.19 We also agree with the Minister on the importance of consideration of the costs to Member States of providing online access and creating an index. It seems to us inconceivable that the draft Decision should be adopted until robust estimates of the costs have been produced.

10.20 Annex II of the draft Decision specifies the six types of information which Member States would have a duty to make available. The sixth type is described as “minimum data for the identification of persons contained in civil registers”. We ask the Minister to tell us what he understands this to mean.

10.21 We consider the “principle of availability” to be of such importance as to require debate in European Standing Committee B. But before recommending the debate, we should be grateful for the Minister comments on our observations. Pending his reply, the document remains under scrutiny.

11 Trafficking in human beings

(a) (26961) 13590/05 COM(05) 514	Commission Communication: <i>Fighting trafficking in human beings — an integrated approach and proposals for an action plan</i>
(b) (26958) 12402/05 —	Draft action plan on trafficking in human beings

<i>Legal base</i>	—
<i>Document originated</i>	(a) 18 October 2005 (b) 26 October 2005
<i>Deposited in Parliament</i>	(a) and (b) 28 October 2005
<i>Department</i>	Home Office
<i>Basis of consideration</i>	EM of 3 November 2005
<i>Previous Committee Report</i>	None
<i>To be discussed in Council</i>	December 2005
<i>Committee's assessment</i>	Politically important
<i>Committee's decision</i>	(a) Cleared (b) Not cleared; further information awaited

Background

11.1 Title VI of the EU Treaty makes provision for police and judicial cooperation between Member States to prevent and combat crime, including trafficking in human beings.

11.2 Article 1(1) of the Framework Decision on combating trafficking in human beings requires Member States to ensure that the following acts are punishable:

“the recruitment, transportation, transfer, harbouring, subsequent reception of a person, including exchange or transfer of control over that person, where:

(a) use is made of coercion, force or threat, including abduction, or

(b) use is made of deceit or fraud, or

(c) there is an abuse of authority or of a position of vulnerability, which is such that the person has no real and acceptable alternative but to submit to the abuse involved, or

(d) payments or benefits are given or received to achieve the consent of the person having control over another person

for the purpose of exploitation of that person's labour or services, including at least forced or compulsory labour or services, slavery or servitude, or

for the purposes of the prostitution of others or other forms of sexual exploitation, including pornography”.³⁷

11.3 In November 2004, the European Council approved a five year programme to strengthen freedom, security and justice in the EU (the Hague Programme).³⁸ The Programme invites the Council and the Commission to devise a plan in 2005 for the development of common standards, best practices and mechanisms to prevent and combat trafficking in human beings.³⁹

Document (a)

11.4 The Commission’s Communication is intended to contribute to the plan requested in the Hague Programme. It proposes action under the following headings:

(i) “*The fundamental concern: the protection of human rights*”

The Commission suggests that the protection of the rights of victims of trafficking should be the fundamental to the EU’s policy. Among other things, the Commission advocates a Council debate, at least once a year, on EU anti-trafficking policy and the compliance of the policy with human rights; it also calls for the protection of human rights to be emphasised in discussions with third countries about trafficking.

(ii) “*The organised crime dimension*”

The Commission comments on the connections between trafficking in human beings and other forms of serious organised crime, such as money laundering. The Communication goes on to call, for example, for law enforcement authorities to give the prevention and detection of trafficking the same priority as action against other forms of organised crime; and for Member States to ensure that their law enforcement authorities involve Europol and Eurojust in the investigation and prosecution of trafficking.

(iii) “*The illegal migration dimension*”

The Commission notes that trafficking in human beings often involves illegal action to bring people into the area of the EU. It calls, therefore, for the prevention and detection of trafficking to be strengthened through action by Member States, in cooperation with the European Agency for the Management of the External Borders, to improve the control of inward migration; and, for example, for biometric identifiers to be included in visas and residence permits.

(iv) “*Specific groups, especially women and children*”

The Commission notes that women and children are particularly at risk and calls for special attention to be given to action to protect them from trafficking.

37 Framework Decision 2002/629/JHA: OJ No. L 203, 1.8.2002, p.1.

38 See (25730) 10249/05: HC 38-iv (2004-05), para 17 (19 January 2005).

39 Hague Programme, section 1.7.1, last paragraph.

(v) “*Reliable data*”

The Commission says that reliable data on trafficking are not available. It calls for action to improve the comparability, reliability, collection and analysis of relevant information.

(vi) “*Cooperation and coordination*”

The Communication proposes better cooperation between public authorities and non-governmental bodies to increase awareness of trafficking and to prevent it. The Commission also says that it will examine mechanisms to develop minimum EU-wide standards and benchmarks and ways to evaluate Member States’ anti-trafficking policies. Moreover, cooperation with third-countries and international organisations should be strengthened.

Document (b)

11.5 Document (b) is a draft of the Action Plan requested in the Hague Programme. It has been drawn up by the UK Presidency. It takes account of the Commission’s Communication (document (a)), Member States’ comments on a previous draft and a recent conference on trafficking in human beings.

11.6 The Plan itself is prefaced by the draft of a statement of principles on dealing with trafficking. In summary, the statement proposes that:

- “EU action should be focused on improving our collective understanding of the issues and joining up our efforts to maximise our effectiveness.
- The EU recognises the importance of taking forward a Human Rights and Victims-Centred approach.
- The EU should strengthen its operational response to trafficking in human beings.
- Member States should find more and more intensive ways of taking forward cooperation”.

11.7 The draft Action Plan has eight sections (on the coordination of EU action; scoping the problem; preventing trafficking; reducing demand; investigating and prosecuting; protecting and supporting victims; returns and reintegration; and external relations). Each section sets out objectives, the action to be taken, the timetable for action, the body responsible for action (for example, the Commission, Europol or Member States) and how the performance of the action is to be assessed. For example, one of the entries in the section on coordination of EU action proposes:

Objective

“To establish common priorities to enable better targeted EU level action. To improve the effectiveness of EU action.

Action

Member States to share lists of priority origin and transit countries and most frequently encountered routes.

Timetable

March 2006

Responsible party

Member States/Presidency

Assessment tool/Indicator

Member States to have shared information with Presidency by the end of April 2006”.

11.8 The Presidency stresses that the Action Plan and the statement of principles should be regularly reviewed, revised and updated.

The Government's view

11.9 The Parliamentary Under-Secretary of State at the Home Office (Mr Paul Goggins) tells us that the UK Presidency has aimed, so far as possible, to base the draft Action Plan on the document (a). Neither the Communication nor the Action Plan (when adopted) will be binding on Member States. But the Government would expect the Action Plan to direct future work at EU-level and that it will be the Plan, rather than the Communication, which will be implemented.

11.10 The Minister says that some parts of the Communication cannot be translated into items in the Action Plan. The Plan focuses on action where the EU can add value. He recognises that the “Assessment tools/Indicators” proposed in the Plan are more about monitoring activity than actual impact. This is because not enough reliable and consistent data is available at the moment. One of the objectives of the Plan is to improve the availability and quality of data; when it has improved, it should be possible to develop better performance indicators.

11.11 The Minister tells us that the majority of the actions proposed in the Plan would be the responsibility of a specific body — such as Europol or the Commission — and he would expect, therefore, that the actions would form part of the body's annual work programme and be funded from existing budgets. There should not be significant resource implications for Member States.

11.12 Finally, the Minister says that the UK Presidency is aiming for the adoption of the Action Plan at the meeting of the Justice and Home Affairs Council on 1 and 2 December. It is likely, however, that a revised draft will be deposited for scrutiny in mid-November.

Conclusion

11.13 We wish to emphasise our abhorrence of trafficking in human beings and, therefore, the importance we attach to the proposed Action Plan.

11.14 We welcome the pragmatic approach of the draft Action Plan. As the Minister says, the performance indicators are, in the main, measures of activity rather than impact. But we accept that this may be unavoidable until more reliable and consistent data about trafficking in human beings is available. We note that a revised draft of the Plan is likely to be deposited soon. Meanwhile, we shall keep document (b) under scrutiny.

11.15 The Commission's Communication overlaps with the draft Action Plan and has, in effect, been overtaken by it. We see no need, therefore, to keep document (a) under scrutiny.

12 Registration, evaluation and authorisation of chemicals (REACH)

(25115) 15409/03 COM(03) 644	Draft Regulation concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), establishing a European Chemicals Agency and amending Directive 1999/45/EC and Regulation (EC) [on Persistent Organic Pollutants]
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Draft Directive amending Council Directive 67/548/EEC in order to adapt it to Regulation (EC) concerning the registration, evaluation, authorisation and restriction of chemicals

<i>Legal base</i>	Article 95 EC; co-decision; QMV
<i>Department</i>	Environment, Food and Rural Affairs
<i>Basis of consideration</i>	Minister's letters of 26 October 2005 and 4 November 2005
<i>Previous Committee Reports</i>	HC 42-ix (2003-04), para 2 (4 February 2004) and HC 42-xviii (2003-04), para 1 (28 April 2004)
<i>To be discussed in Council</i>	28 November 2005
<i>Committee's assessment</i>	Politically important
<i>Committee's decision</i>	Cleared following debate in European Standing Committee A on 16 June 2004

Background

12.1 It has long been recognised that certain chemicals can cause serious damage to human health and the environment. Consequently, their production, marketing and use within the

Community is governed by a number of legal instruments, which regulate their testing, determine risk reduction measures, and establish duties regarding the safety information provided to users. However, concerns that these measures do not provide sufficient protection led the Commission to review the situation in February 2001, in a White Paper⁴⁰ which identified a number of major problems.

12.2 In particular, it pointed out that the present system distinguishes between “existing substances” (declared to be on the market in September 1981) and “new substances” (placed on the market since that date), and that there was a general lack of knowledge about the properties and uses of those substances in the former category, due to the slowness and resource-intensive nature of the risk assessment process, and the fact that, although manufacturers and importers are required to provide information about them, this obligation does not apply to downstream users. The White Paper also highlighted two major procedural flaws. First, industry can be asked to carry out further testing of a substance only after the relevant authorities have demonstrated that it may present a serious risk, but, without test results, it is almost impossible to provide such proof. Secondly, current liability regimes are insufficient to remedy any problems found, as they require a causal link, which is often impossible to establish.

12.3 The White Paper therefore suggested that both existing and new substances should become subject to a new system called REACH, based upon the *registration* of the basic information which manufacturers would be required to provide; an *evaluation* of those substances whose production exceeds 100 tonnes, as well as of those of a lower tonnage where there is cause for concern; and the special *authorization* of substances giving rise to very high concern. In the case of existing substances, the White Paper envisaged this new system being phased in over a period, but with provisions enabling it be applied more quickly where there is cause for concern. The main aim would be to provide a reliable basis for deciding on adequate safety measures, based on a chemical's hazardous properties and potency, and the exposure arising from its use, thus enabling chemicals to be classified, and decisions to be taken on the appropriate labelling and other measures needed to protect consumers and the environment.

12.4 The White Paper was debated in European Standing Committee A on 12 June 2002, but, following the circulation of draft legislative proposals, the Commission brought forward in October 2003 the current document, which contains two key elements, set out in our predecessors' Report of 4 February 2004. First, both existing and new substances would become subject to the REACH system, along the lines outlined in the White Paper, and secondly, a European Chemicals Agency would be established to manage the technical, scientific and administrative aspects of the system, and ensure consistency of decision-making at Community level. The proposals were accompanied by an extended impact assessment, in which the Commission suggested that, although benefits would eventually extend to improvements to human health and the environment, it was not possible at that stage to give a quantitative assessment, since much of the information needed to provide this would only become available once the proposals had come into operation.

40 (22212) 6671/01; see HC 28-xii (2000-01), para 1 (25 April 2001). Official Report, European Standing Committee A (12 June 2002).

12.5 Our predecessors noted that the Government strongly supported the principles set out in the White Paper, and the overall objective of REACH; that it believed that the proposals could be made to work in a cost-effective way; and that the UK had three key objectives in the negotiations on them.⁴¹ They also said that, notwithstanding the earlier debate on the Commission's White Paper, the current proposal should be considered as well in European Standing Committee A. That debate duly took place on 16 June 2004.

Recent developments

12.6 We recently received two letters — one dated 5 October 2005 from the Parliamentary Under-Secretary of State (Sustainable Farming and Food) at the Department of Environment, Food and Rural Affairs (Lord Bach), and the other dated 20 October 2005 from the UK Metals Industry Reach Group (Annex A). The Minister said that the European Parliament was expected to give the proposal a First Reading on 14-17 November, and that the UK Presidency would be seeking to reach a political agreement at the Competitiveness Council on 28 November on the basis of a text aimed at finding a workable compromise which protects public health, the environment and industrial competitiveness. In particular, this aimed to rationalise the registration process, and to focus first on substances of concern; to redefine the division of responsibility between the Member States and the proposed Agency; and to make all authorisations subject to a review, which would enable consideration to be given in the future to the availability of alternatives. However, the Metals Industry Research Group drew to our attention its concerns about the impact of the proposal on minerals, ores and concentrates, and in particular the fact that, although the Government had responded to these by exempting them from registration and evaluation, this had not extended to authorisation. The Group claimed that this would damage unnecessarily, not only the competitiveness of the UK and the Community, but also that of many developing countries heavily dependent on export revenues from their mining sector.

12.7 In view of these concerns, we wrote to the Minister on 26 October, inviting him to comment. We have now received his reply of 4 November. This stresses the benefits to the industries concerned from the proposed exemptions from the registration and evaluation requirements, but says that, because certain minerals and ores could contain carcinogenic compounds above a certain level, they could meet the criteria requiring their authorisation. He adds that the Government appreciates that substitutes for these compounds are not easily found, which is why the proposal allows for a pragmatic and proportionate approach to authorisation, and provides for the most dangerous substances to be dealt with first. He also says that uses and categories of uses may be exempt from the authorisation process, and that the Presidency text enables the establishment of exemptions to take account of the proportionality of the risk to human health and the environment, for example, where it is modified by the physical form. He suggests that this could apply to metals in “massive form” if appropriate.

41 To develop a workable process to assess chemicals and tackle those of most concern first; to minimise animal testing; and to maintain or enhance the competitiveness of the chemicals industry and downstream users.

Conclusion

12.8 Given that this proposal was debated in June 2004, and that the UK Presidency is seeking to reach political agreement on it in the Council at the end of this month, we can probably do little more at this stage than draw the attention of the House to the present position, including the representations we have received from the UK Metals Industry Reach Group (and the Government's response to these). We would, however, be glad if the Government could continue to keep us informed of developments, and, in particular of any indication that the Commission may be considering revising its original proposal in the light of either the views reached by the Council or any amendments proposed by the European Parliament at its First Reading.

Annex: Letter to Chairman from the UK Metals Industry REACH Group (MIRG)

REACH and the Metals Industry

Since I first wrote, on behalf of the UK Metals Industry REACH Group (MIRG), to the European Scrutiny Committee in February this year, MIRG has been actively engaged in dialogue with the UK Government, seeking to secure their broader understanding of the likely impact of REACH on the UK and EU metals industry.

MIRG fully supports the drivers behind REACH, but to be workable for metals, the proposal must be amended to reflect the special properties of metals and alloys. Without amendment it will have the unintended effect of hindering the effective use of metals compared to less sustainable alternatives. This discrimination will result in socio-economic harm to the UK metals and alloys industries, with no net benefit to the EU environment and health. In its current form, REACH will also distort international trade, undermine EU competitiveness, hamper African development, and that of other developing nations.

One clear illustration of how REACH directly creates competitive market distortion is that the current proposal exempts the raw material feedstock for the plastics industry (oil, coal, natural gas, and polymers) from Registration & Evaluation under REACH, but does not exempt the raw material feedstock for the metals industry (minerals, ores and concentrates). Taking this one step further, it stigmatises metals versus plastics because only metals will require a Chemicals Safety Report. Users will therefore see metal and mineral products as hazardous, but not the competing plastics. Is REACH intended to promote plastic containers over (recyclable) steel and aluminium?

UK Government has partially taken on board this issue, by proposing, in its Sept 05 REACH Compromise Text, that ores and concentrates be exempt from Registration and Evaluation, but *not* from Authorisation. In the original Commission proposal, Authorisation is a *risk-based* policy, intended to ensure proper control of the risks associated with certain hazardous substances OR encouragement of eventual substitution. The UK Government however, is strenuously promoting a *hazard-based* approach to

Authorisation, seeking eventual substitution on the basis of hazard, even if the risks are properly controlled. Recent proposals by the EU Environment Committee go further, stipulating “proper control and progress towards phase-out after a single non-renewable 5 year authorisation period”.

Intrinsic hazard classification alone is an inadequate indicator of actual risk for metals and alloys. It is important for future value-added innovation in the metals sector that REACH adopts a policy on authorisation that is practical and risk-based. The driver should be *net risk reduction*, not simply hazard.

If ores and concentrates remain liable to Authorisation, it will prejudice against the development of future metal-based enabling technologies for society — such as fuel cells, photovoltaic energy systems, advanced telecommunications, bio-fuel plants, pollution control and remediation equipment, etc. The current inadequately sophisticated Authorisation policy must be re-designed to ensure that these innovative technologies, which support the EU wider global sustainable development objectives, are encouraged, not destabilised.

Both the Commission and UK Government have advised us not to be unduly concerned, as ores, concentrates and metals are not the prime target of the legislation and it would be many, many years before Authorisation may be sought to apply. This provides no comfort, as the stigmatisation of our products would be immediate. It suggests that our industries are to be targeted and prejudiced, as described above, for no tangible benefit, or reduction in risks to society, other than compliance with tick-box bureaucracy.

Persisting with an inadequate Authorisation policy for metals will unnecessarily damage not only UK and EU competitiveness, but also those of many developing nations, such as those of South Africa and Chile. The Heads of State of those nations have recently directly appealed to Prime Minister Blair to take action on the fact that metals don't fit within the simple regulatory concepts of REACH. The social and infrastructure development programmes of developing countries, heavily dependent upon mining sector export revenues, will be needlessly prejudiced by an EU Regulation for which no credible evidence has been advanced to show that including minerals and metals will bring any benefit to human health and the environment over and above already existing legislation.

REACH threatens to disrupt global trade flows of key materials for the still present strategic European industries (i.e. aerospace, automobile, electronics, engineering, etc). Europe will have to compete even more aggressively for its raw material feedstock in a world marketplace with markedly more severe entry barriers for Europe. The majority raw material source for the metals sector is outside the EU. Non-EU suppliers will simply desist from supplying into the EU because they have multiple customers for their raw materials elsewhere (i.e. China, India, etc).

In summary, to be workable for both the Authorities and the metals industry REACH must properly accommodate the special nature of metals and alloys — anything less will be a huge disservice to UK competitiveness and global trade flows. The Authorisation issue described above, *plus* the other key concerns indicated in Annex I [*not printed*], must be adequately reflected in REACH to permit metals and alloys to continue to play vital roles in further EU sustainable development policies, e.g. long-life products, increased recycling,

efficient resource use, whilst still remaining internationally competitive and value-adding businesses based in Europe. Much is at stake.

To conclude on Authorisation, the appropriate treatment for ores and concentrates under REACH is:

- Exemption from Registration and Evaluation
- Exemption from Authorisation

(The above does not totally place ores and concentrates outside the Scope of REACH, because they remain liable to the restriction clauses)

MIRG greatly appreciates the continuing concern shown by the House of Commons European Scrutiny Committee to properly address these issues, and the opportunity you represent to convey this matter to the attention of UK Members of Parliament.

Members of the UK Metals Industry REACH Alliance

Anglo American

BHP Billiton

Corus

Inco Europe

Johnson Matthey

Rio Tinto

Aluminium Federation

British Non-Ferrous Metals Federation

British Stainless Steel Association

Cast Metals Federaton

Cobalt Development Institute

UK Steel

European Powder Metals Association (UK Chapter)

Galvanisers Association

International Molybdenum Association

International Tungsten Industry Association

Lead Development Association International

London Metal Exchange

Metals Forum (UK)

Minor Metals Trade Association

Nickel Institute

Non-Ferrous Alliance

Society of British Aerospace Companies

Zinc Information Centre

13 European Union Police Mission in Bosnia and Herzegovina

(26965)	Council Joint Action on the European Union Police Mission in Bosnia and Herzegovina
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<i>Legal base</i>	Articles 14 and 25(3) TEU; unanimity
<i>Department</i>	Foreign and Commonwealth Office
<i>Basis of consideration</i>	EM of 4 November 2005
<i>Previous Committee Report</i>	None; but see HC 152-xx (2001-02) para 22 (6 March 2002)
<i>To be discussed in Council</i>	21-22 November General Affairs and External Relations Council
<i>Committee's assessment</i>	Politically important
<i>Committee's decision</i>	Cleared

Background

13.1 In March 2002, the then Committee cleared two draft Joint Actions and one draft Council Decision⁴² that, between them, established an EU Police Mission in Bosnia and Herzegovina (BiH) and appointed its Head of Mission/Police Commissioner, as well as the EU Special Representative (EUSR), to whom he was to report. The Special Representative was to report to the Secretary General/High Representative, Javier Solana. Lord Ashdown was expected to be (and duly became) the new UN High Representative in BiH. The General Affairs Council agreed that he should also be appointed EU Special Representative and the draft Joint Action on this appointment noted that the two were expected to be one and the same person. The EU Police Mission was expected to improve high-level management, develop the rule of law and, to quote the then Minister, “get the politics out of policing” in Bosnia. EU Foreign Ministers agreed the Joint Action taking the decision to launch the EU Police Mission in Bosnia and Herzegovina (EUPM) at the General Affairs and External Relations Council on 11 March 2002. It was the first European Security and Defence Policy mission.

The draft Joint Action

13.2 The Minister of State for Europe in the Foreign and Commonwealth Office (Mr Douglas Alexander) is now writing in connection with a new draft Joint Action that will re-focus its work. In his helpful 3 November 2005 Explanatory Memorandum, he says:

“Since 2002, EUPM has made considerable progress in developing sustainable policing arrangements under BiH ownership. In particular, it has assisted in the development of State Level institutions, including the State Investigation and

42 See headnote.

Protection Agency, the Ministry of Security and the State Border Service. EUPM has played a key role in progress towards police reform — agreement on which has paved the way for the opening of Stabilisation and Association Agreement (SAA) negotiations — in an advisory capacity and by co-chairing the Police Steering Board with the local authorities.

“Bosnia and Herzegovina has raised standards in policing with EUPM’s help, and in October 2005 agreed to a significant structural reform of its police forces to create a more efficient single structure of policing. But specific challenges remain to be addressed, including tackling organised crime and implementing police restructuring. Bosnia’s state-level law enforcement agencies are not yet functioning adequately and EU troops still remain in Bosnia to maintain a safe and secure environment.

“The new mission will have a more focussed mandate though monitoring, mentoring and inspecting at the senior level in state level agencies and field offices. EUPM will support the police reform process with technical policing expertise and assistance, providing an ongoing assessment in preparing and implementing reforms. EUPM will also take a lead role in tackling organised crime, through implementing projects to strengthen the state-level institutions and co-ordinating EU activities in the field. It will also assist police in the planning and conducting of investigations, facilitate police co-ordination and the exchange of information between entities, the state and the international community. Due to the tightened focus of the mandate and the emphasis on co-locating at the senior levels the mission is expected to be more than halved to approximately 200 international staff, the majority of whom will be police officers. The international staff will be supported by 186 BiH staff. The mission will have a mandate of two years with six-monthly reviews.

“Guidelines have been set out for the co-ordination between EUFOR Althea and EUPM. These will be implemented on the ground through participation in a Crime Strategy Working Group chaired by the EUSR. Under the direction of the EUSR, EUPM will take the lead in co-ordinating the policing aspects of ESDP efforts in support of the fight against organised crime. It will advise EUFOR on when local authorities may need operational support and how best this can be implemented. EUPM will also assist in planning operations and monitor local police performance during these supported operations and the resulting investigations.

“The EUSR, EUPM and EUFOR will also implement an integrated media strategy in support of EU objectives in tackling organised crime. The eventual integration of the press, legal and political departments of the EUSR and EUPM will lead to resource savings and greater coherence. Full complementarity between EUPM and the EC Community Assistance for Reconstruction, Development and Stabilisation (CARDS) programme will continue to be ensured through an existing mechanism whereby EUPM is consulted in the needs analysis if the police services and the identification and implementation of CARDS activities.”

The Government's view

13.3 The Minister says:

“Bosnia has made significant progress across the board on its reform agenda over the last three years, culminating in the recommendation from the European Commission on 21 October 2005 that the EU should open Stabilisation and Association Agreement negotiations with Bosnia. This brings Bosnia into line with the other countries of the region and marks a milestone on its path to EU integration. Bosnia has also significantly improved its cooperation with the International Criminal Tribunal for the former Yugoslavia (ICTY) over the past year, assisting in a series of transfers of fugitive indictees, although more remains to be done.

“The new refocused and streamlined EU Police Mission will be a more cost effective instrument. It will play an important role in building the capacity of the Bosnian law enforcement agencies. This in turn will facilitate the creation of the conditions required for the scaling down, and eventual withdrawal, of the international military presence. With the recent political agreement on police reform, the EUPM will also be the key provider of technical assistance to the process of restructuring police forces. The new EUPM mission is an important element of a broader strategy to improve cooperation among EU actors on the ground and increase the overall effectiveness of the EU in fighting organised crime. It will act as a model for EU coordination elsewhere.

“Building the capacity of Bosnia's security structures is also a high priority in the context of the planned transition in international civilian structures, now that Bosnia is more firmly on the path to EU integration. As the main international civilian presence moves from the executive Office of the High Representative to more non-executive EU-centric structures, the Bosnian authorities will increasingly need to take responsibility for maintaining security, and addressing crime and corruption.

“The EUSR has developed new guidelines for increasing co-operation between himself, EUPM and EUFOR⁴³ which support the UK objective of a more coherent approach to ESDP. These include the participation of all parties in a regular Crime Strategy Working Group, which will be chaired by the EUSR and will provide a forum to set priorities and strategic direction and share political advice. This will help to ensure that the EUPM and EUFOR mission mandates mesh effectively.

“The Government will follow closely the development of the new mandate and will use the opportunities provided by the regular reviews to assess progress and influence the future direction and activities of the mission. We will also second a number of UK police officers and civilian experts to key positions in the mission.”

13.4 On the *Financial Aspects*, the Minister says that the funding for Common Costs (HQ, in-country transport, office equipment, etc.) for 2006 will be met from the CFSP budget, to

43 Operation EUFOR – ALTHEA took over from by NATO's SFOR mission in BiH on 2 December 2004, at the same force levels as SFOR (7,000 troops) with a UN Charter Chapter VII mission to ensure continued compliance with the Dayton/Paris Agreement and to contribute to a safe and secure environment in BiH.

which the UK contributes approximately 17%. Figures are not yet available, but he expects a reduction in costs given the reduction in mission size by more than half (NB: the authorised funds for 2004-2005 are €17.4 million). UK contributions of policing expertise will come from the Whitehall Peacekeeping Budget, which is a call on the Treasury's central contingency reserve.

Conclusion

13.5 Three and a half years ago, our predecessors said that “it was important for this mission to succeed”, presumably not just because of its purpose and the post-Dayton-and-Paris Agreement context, but also because it was the first European Security and Defence Policy mission. It is gratifying to note real progress on both counts, which we are reporting to the House because of the widespread interest in ESDP and developments in the Balkans.

13.6 We now clear the document.

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

Department for Culture, Media and Sport

(26905) Draft Decision concerning the European Year of Intercultural
13094/05 Dialogue (2008).
+ADD1
COM(05) 467

Department for Environment, Food and Rural Affairs

(26931) Draft Council Decision on a Community position within the EU-Chile
13373/05 Association Council concerning the liberalisation of the tariff
COM(05) 464 treatment of wines, spirit drinks and aromatised drinks listed in
Annex II of the Association Agreement between the European
Community and the Republic of Chile.

(26937) Council Regulation repealing Regulation (EC) No. 3690/93
13347/05 establishing a Community system laying down rules for the minimum
COM(05) 499 information to be contained in fishing licences.

(26946) Commission Communication on Simplification and Better Regulation
13494/05 for the Common Agricultural Policy.
COM(05) 509

(26967) Draft Council Decision on the conclusion of an Agreement in the form
13553/05 of an exchange of letters between the European Community and the
COM(05) 519 United States of America on matters related to trade in wine.

Foreign and Commonwealth Office

(26979) Council Joint Action amending the mandate of the European Union
— Special Representative in Bosnia and Herzegovina.
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(26981) Council Joint Action amending and extending Joint Action
— 2004/847/CFSP on the European Union Police Mission in Kinshasa (DRC)
— regarding the Integrated Police Unit (EUPOL "KINSHASA").

Office of National Statistics

(26907) Commission Communication on the appropriateness of establishing
13141/05 rules on a Europe-wide basis for more detailed levels in the NUTS
COM(05) 473 Classification.

Department of Trade and Industry

(26812) Draft Council Regulation concerning balancing mechanism applicable
12172/05 to imports from certain countries not members of the European
COM(05) 398 Community.

(26949) Draft Council Decision authorizing the conclusion, on behalf of the
13581/05 European Community, of a Memorandum of Understanding between
COM(05) 468 the European Community and the Swiss Federal Council on a
contribution by the Swiss Confederation towards reducing economic
and social disparities in the enlarged European Union, and
authorizing certain Member States to conclude individually
agreements with the Swiss Confederation on the implementation of
the Memorandum.

HM Treasury

(26906) Preliminary Draft Amending Budget No. 8 to the General Budget for
13095/05 2005 — Statement of Revenue and Expenditure by Section — Section
SEC(05) 1226 III — Commission.

Formal minutes

Wednesday 9 November 2005

Members present:

Mr Jimmy Hood, in the Chair

Mr David S Borrow
Mr Michael Connarty
Rosie Cooper
Jim Dobbin
Michael Gove

Mr David Heathcoat-Amory
Angus Robertson
Mr Anthony Steen
Richard Younger-Ross

The Committee deliberated.

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

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

Paragraphs 1.1 to 2.6 read and agreed to.

Paragraph 2.7 read, amended and agreed to.

Paragraphs 3.1 to 8.7 read and agreed to.

Paragraphs 8.8 and 8.9 read, amended and agreed to.

Paragraphs 9.1 to 11.12 read and agreed to.

Paragraphs 11.13 to 11.15 read, amended and agreed to.

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

Paragraphs 12 to 14 read and agreed to.

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

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

The Committee further deliberated.

[Adjourned till Wednesday 16 November at 2.30 p.m.]

Standing order and membership

The European Scrutiny Committee is appointed under Standing Order No.143 to examine European Union documents and—

- a) to report its opinion on the legal and political importance of each such document and, where it considers appropriate, to report also on the reasons for its opinion and on any matters of principle, policy or law which may be affected;
- b) to make recommendations for the further consideration of any such document pursuant to Standing Order No. 119 (European Standing Committees); and
- c) to consider any issue arising upon any such document or group of documents, or related matters.

The expression 'European Union document' covers —

- i) any proposal under the Community Treaties for legislation by the Council or the Council acting jointly with the European Parliament;
- ii) any document which is published for submission to the European Council, the Council or the European Central Bank;
- iii) any proposal for a common strategy, a joint action or a common position under Title V of the Treaty on European Union which is prepared for submission to the Council or to the European Council;
- iv) any proposal for a common position, framework decision, decision or a convention under Title VI of the Treaty on European Union which is prepared for submission to the Council;
- v) any document (not falling within (ii), (iii) or (iv) above) which is published by one Union institution for or with a view to submission to another Union institution and which does not relate exclusively to consideration of any proposal for legislation;
- vi) any other document relating to European Union matters deposited in the House by a Minister of the Crown.

The Committee's powers are set out in Standing Order No. 143.

The scrutiny reserve resolution, passed by the House, provides that Ministers should not give agreement to EU proposals which have not been cleared by the European Scrutiny Committee, or on which, when they have been recommended by the Committee for debate, the House has not yet agreed a resolution. The scrutiny reserve resolution is printed with the House's Standing Orders, which are available at www.parliament.uk.

Current membership

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