House of Commons

European Scrutiny Committee

Seventeenth Report of Session 2009–10

Documents considered by the Committee on 30 March 2010

Report, together with formal minutes

Ordered by The House of Commons
to be printed 30 March 2010

HC 5-xvi
Published on 6 April 2010
by authority of the House of Commons
London: The Stationery Office Limited
£0.00

Notes

Numbering of documents

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

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

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

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

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

Abbreviations used in the headnotes and footnotes

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

Euros

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

Further information

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

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

Staff

The staff of the Committee are Alistair Doherty (Clerk), Laura Dance (Second Clerk), David Griffiths (Clerk Adviser), Terry Byrne (Clerk Adviser), Sir Edward Osmotherly (Clerk Adviser), Peter Harborne (Clerk Adviser), Paul Hardy (Legal Adviser) (Counsel for European Legislation), Dr Gunnar Beck (Assistant Legal Adviser), Hannah Lamb (Senior Committee Assistant), Allen Mitchell (Committee Assistant), Mrs Keely Bishop (Committee Assistant), Dory Royle (Committee Assistant), Shane Pathmanathan (Committee Support Assistant), and Paula Saunderson (Office Support Assistant).

Contacts

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

Contents

Report

1 Value added taxation

(31234) 17760/09 COM(09) 672	Draft Council Regulation laying down implementing measures for Directive 2006/112/EC on the common system of value added tax (Recast)

Legal base	Article 113 TFEU; consultation; unanimity
Department	HM Treasury
Basis of consideration	Minister's letter of 29 March 2010
Previous Committee Report	HC 5–vii (2009–10), chapter 5 (20 January 2010)
To be discussed in Council	Possibly 18 May or 8 June 2010
Committee's assessment	Politically important
Committee's decision	Not cleared; further information requested

Background

1.1 In 2006 Council Directive 2006/112/EC, the VAT Directive, which entered into force on 1 January 2007, consolidated the legislation governing value added taxation in the EU.[1] Article 397 of the VAT Directive says "The Council, acting unanimously on a proposal from the Commission, shall adopt the measures necessary to implement this Directive." Article 398 establishes "the VAT Committee", a Commission-chaired advisory body, to examine questions raised by the Commission, or Member States, in order to agree how the provisions of the Directive should be applied, where there is some doubt.

1.2 With this draft Regulation the Commission proposed a recast (that is codification, or consolidation, together with some substantive amendment) of Council Regulation (EC) No 1777/2005, which prescribed the implementing measures for the pre-2007 VAT legislation.[2] The aim of the proposal was to provide clear and uniform interpretation of selected areas of the VAT Directive.

1.3 In addition to recasting the measures in Council Regulation (EC) No 1777/2005 to reflect the structure and numbering of the VAT Directive, there were articles in the proposal derived from guidelines as to how the VAT Directive's provisions should be interpreted, which had been unanimously, or nearly unanimously, agreed by Member States in the VAT Committee. New measures proposed were of three types:

- Guidelines agreed within the last year that are directly linked to the changes to the rules for "place of supply" in Council Directive 2008/8/EC, which entered into force on 1 January 2010[3] — there were 30 of these, forming by far the largest and most significant category of measures;

1 (25558) 8470/04: see HC 42–xx (2003–04), chapter 23 (18 May 2004).

2 (26014) 13394/04: see HC 42–xxxv (2003–04), chapter 12 (3 November 2004).

3 (26739) 11439/05: see HC 34–v (2005–06), chapter 6 (12 October 2005), HC 34–xv (2005–06), chapter 3 (18 January 2006) and *Stg Co Debs*, European Standing Committee B, 16 February 2006, cols. 3–20.

- four Guidelines relating to different elements of the VAT Directive which were agreed in the VAT Committee prior to adoption of Council Regulation (EC) No 1777/2005, but which for various reasons were not included within it; and
- four Guidelines relating to different elements of the VAT Directive which had been agreed in the VAT Committee since adoption of Council Regulation (EC) No 1777/2005.

1.4 When we considered this document, in January 2010, we heard, in relation to "place of supply" rules, that:

- although the Government broadly welcomed the proposal and supported the objectives in principle, it had identified a small number of issues on which it proposed to undertake some further analysis and consult with UK business;
- the Government also needed to ensure sufficient time was built into the discussions of the proposal to enable the detail to be tested against commercial transactions undertaken under the new "place of supply" rules, before being finally consolidated into a legally binding Regulation; and
- it would therefore continue to work with business to monitor what happens in practice and to obtain a clearer picture on these issues.

On the other new provisions in the draft Regulation we heard that they covered a range of topics which broadly reflected the Government's existing approach or which provided welcome clarifications, but that while it would be desirable to achieve agreement to this category of new measures, they were not as important as the "place of supply" category.

1.5 We commented that, clearly, this draft Regulation would serve a useful purpose and we recognised that the draft was largely unexceptionable. Nevertheless, before considering the document further we asked to hear from the Government about progress in improving the text in the light of its further analysis and its consultations with UK business. Meanwhile the document remained under scrutiny.[4]

The Minister's letter

1.6 The Financial Secretary to the Treasury (Mr Stephen Timms) writes now to update us on where things stand on this proposal. In relation to Council consideration the Minister says that:

- the Spanish Presidency so far has held two Working Party meetings for a first consideration of the draft Regulation;
- it is currently producing a compromise which, when issued, is expected to be discussed at meetings planned for 14 April and 5 May 2010; and

4 See headnote.

- depending on the content of the compromise text and the outcome of the meetings, the Presidency may then take the proposal to the ECOFIN Council on either 18 May or 8 June 2010 for political agreement.

1.7 On consultation with UK business the Minister says that:

- the Government has held initial discussions with business, through existing HMRC and Treasury liaison fora, including the Joint VAT Consultative Committee and the VAT Forum;
- this has led to creation of a Joint Working Group, to review the text in detail;
- business welcomes the clarity and consistency that such implementing measures would provide and so early agreement would be advantageous, provided the content is satisfactory;
- the Joint Working Group will undertake a review of the Presidency compromise text when it emerges to test that; and
- this will then inform the Government negotiation position for the meetings in April and May 2010.

1.8 Finally the Minister says:

> "If the legal text or the outcome of those discussions provides UK businesses with the right level of clarity and consistency, then business will be keen to see early agreement and the Government would certainly not wish to stand in the way of that."

Conclusion

1.9 **We are grateful to the Minister for this account of where matters stand on this draft Regulation. We note that the Government may wish, if UK business is content with the outcome of negotiations, to accede to a political agreement on this proposal. We do not yet wish, in the absence of a definitely acceptable text, to clear the document. However, if the Government judges it appropriate we would be content for it to support a political agreement, under the terms of Article (3)(b) of the House of Commons Scrutiny Reserve Resolution of 17 November 1998.**

1.10 **Whether the Government makes use of this dispensation or not we would, of course, wish to have a further account of developments on the proposal. Meanwhile the document remains formally under scrutiny.**

2 Interpretation and translation rights in criminal proceedings

(31224) 16801/09 + ADDs 1–3 —	Draft Directive on the rights to interpretation and translation in criminal proceedings

Legal base	Article 82(2)(b) TFEU; QMV; co-decision
Department	Justice
Basis of consideration	Minister's letter of 22 March 2009
Previous Committee Report	HC 5–vii (2009–10), chapter 7 (20 January 2010)
To be discussed in Council	No date set
Committee's assessment	Legally important
Committee's decision	Not cleared; further information requested

Previous scrutiny

2.1 We last reviewed this proposal in January, when we asked, among other things, to be kept informed of the progress of negotiations.

The Minister's letter

2.2 The Parliamentary Under-Secretary at the Ministry of Justice (Lord Bach) wrote on 22 March to inform us of the progress of negotiations with the European Parliament. The aim is for a first reading agreement. The Rapporteur, Baroness Ludford, issued a draft report on 5 March, which was discussed in the LIBE committee on 17 March. However, the Commission has issued an alternative proposal (reported elsewhere in this week's Report) which is likely, the Minister says, to slow down progress, and inform the views of the European Parliament.

2.3 The Government's views on the proposed amendments are as follows:

- *Relationship with the European Convention on Human Rights (ECHR) and the Charter of Fundamental Rights.* The report proposes including a new provision in Article 1 stating that the provisions of this Directive which correspond to rights guaranteed by the European Convention on Human Rights (ECHR) or by the Charter shall be interpreted and implemented consistently with those rights, as developed in the relevant case law. The Government supports clarity on the relationship between this Directive and the rights under the ECHR; in his Explanatory Memorandum of 30 December, the Minister explained that the Government supported the inclusion of recital 18 which helped to clarify this point. The Government therefore welcomes the intention behind the European Parliament's amendment concerning the ECHR. It is also considering the wording of the added references to the Charter in this and other draft amendments.

- *Detention*. The draft amendments propose to extend the scope of the proposal to detention, and refer to the "rules of detention" and "official contacts" between the detaining authorities and the suspect. The Government's initial view is that detention is a distinct issue and the amendments proposed fall outside the scope of the fair trial right and the rights after arrest under Article 5 ECHR. The Government sees the aim of this measure as being to ensure trust and confidence that a suspect has had or will get a fair trial for the purposes of mutual recognition of judicial judgments and decisions. Measure F of the Roadmap will provide an opportunity to consider pre-trial detention.

- *Communication between lawyer and client*. The draft amendments propose stating that interpretation of communication between the suspect and his lawyer shall be provided throughout the proceedings. The Government welcomes this clarification.

- *Translation*. The Rapporteur has proposed an amendment to list essential documentary evidence to be translated. The Government believes that such decisions are best made at Member State level, given this will require a specific assessment in each case to determine what translation is needed to safeguard a suspect's rights. In the draft amendments, the list of essential documents includes essential documentary evidence and written legal advice. The Government is not currently convinced that it is necessary to specify essential documentary evidence, given that there is a general obligation in the draft Directive to translate all essential documents, and in the draft amendments to translate "all written material necessary to ensure that he [the suspect] is able to understand the case against him and exercise his rights...". Regarding legal advice, the Government believes that the degree to which full translations are required to safeguard a suspect's rights will depend upon the circumstances in each case.

- The draft amendments also propose that the suspect must be given an indexed and fully referenced summary of the prosecution evidence in translation. The Government's view initial view is that this draft amendment would create a right to information itself, rather than interpretation and translation as provided for by this Directive.

- *Oral translation or summary*. The draft amendments propose restricting to a much greater extent the circumstances in which an oral translation or summary of documents can be given instead of a written translation. The Government agrees that oral translation should not be used if it prejudices the fairness of the proceedings. However, it will be exploring whether there is any alternative solution that could be used here to meet this objective.

- *Waiver*. The Rapporteur also suggests that a waiver of the right to translation should only be valid if the suspect has received legal advice, the waiver is unequivocal, it is given in writing in the presence of his lawyer and it does not run counter to any important public interest. The Government believes that Article 3(7) of the draft Directive is adequate. The Article sits within the context of the right to translation, a right of review and a right to interpretation in court with the additional safeguards that come with judicial oversight. The Government's initial

view of the draft amendment is that it may be unnecessarily restrictive. However, the Government understands the Rapporteur's intention to provide additional safeguards, and it will consider alternative language on this point.

- *Appeal/review in relation to a decision that interpretation or translation is not needed.* The draft amendments propose referring to a "right of appeal to a judicial authority" rather than a right to a "review" in Articles 2 and 3. The Government agrees that there should be an effective means within the overall process of challenging a decision not to provide interpretation or translation. However, the term "review" achieves this aim, and allows for a review in court as part of an appeal but also, at the investigation stage, for a decision by a police officer to be reconsidered by a more senior officer.

- *Physical and mental impairments.* The draft amendments refer to "physical and mental impairments" which "affect the suspect's ability to communicate effectively". However, the amendment potentially covers a wide range of conditions, e.g. autism, dementia, Down's Syndrome and speech impediments. Many of these require other forms of assistance than foreign language or sign language interpretation as required by this Directive. The Government's current view is that it would be more appropriate to consider the needs of those with mental or physical impairments under Measure E of the Roadmap which will deal with special safeguards for vulnerable defendants.

- *Training, Quality and Accreditation.* The draft report proposes including new provisions on training of those involved in criminal justice, and the training, qualification, accreditation and registration of interpreters and translators. The draft report also suggests that interpretation and translation should be of a "high quality" rather than of an "adequate quality". The Government welcomes in principle the idea of including training for those involved in criminal justice in this Directive, although it is still considering the current amendment, particularly given that the judiciary and defence lawyers are independent of Government in the UK. It also agrees that it is important to have the right quality of interpretation and translation. However, its initial view about this draft amendment is that the definition of "adequate quality" is sufficient to ensure that the proceedings are fair. It also believes that the Rapporteur's proposed new provision on training, qualification, accreditation and registration of interpreters and translators may extend obligations too far, and the practical implications of this provision need further consideration.

- *Use of Technology.* The Rapporteur also proposes a new provision stating that technology such as video links, telephone or internet access can be used to provide interpretation only "as a last resort when the personal attendance of an interpreter is impossible ...". The draft amendments also suggest it should not be used for proceedings in court. The Government believes it is disproportionate to restrict the use of technology to this extent. The aim is to ensure the defendant receives a fair trial; use of technology is acceptable providing the trial is fair. In some remote areas, for example, it may be in the defendant's interests to use technology to avoid delay or find an interpreter of the right quality. Courts can be expected to decide

whether use of technology in a particular case is or is not against the interests of justice and the fair trial rights of the suspect.

- Another amendment creates an obligation to record suspect interviews, oral translations and summaries or waivers under Article 3(7). The Government is generally in favour of recording suspect interviews and supports exchanging best practice on this. However, this Directive deals with interpretation and translation, rather than other rights. It also believes that the obligations in this amendment may be disproportionate, for example to provide both "an audio and a video recording". There may also be some circumstances where for good reason written records are equally sufficient.

The Committee's view

2.4 In general, the Committee welcomes any amendments which shore up the rights contained in the proposal, but, like the Government, would wish to see that over-prescription is avoided. So we welcome an amendment which clarifies that the standards in this proposal correspond to the rights guaranteed by the ECHR. But we are of the opinion that too many references to the Charter are neither necessary nor helpful. We consider that the proposal as drafted covers interpretation and translation requirements in pre-trial detention adequately. We welcome an amendment which reinforces the fact that the suspect and his/her lawyer must be able to understand each other at all times. We agree with the Government that what amounts to an essential document can be determined by a police officer or judge, in cases of doubt; to incorporate a definitive list would be to over-legislate. Whether oral translation can be used should also be left to the discretion of competent officials. We agree with the Government that the provisions on waiver of the requirement for interpretation or translation is perfectly adequate. However, we do see force in stating that the quality of interpretation and translation services should be "high" rather than "adequate". We agree that a "review", rather than an "appeal", of a decision on whether to allow interpretation and translation services better covers the different types of decisions that will be taken at Member State level. We do not think that a reference needs to be made to people with physical or mental impairments, for the reasons outlined by the Government; nor do we think it is right that the proposal prescribes when video and audio technology can or cannot be used.

Conclusion

2.5 **We thank the Minister for his helpful letter. It is a good example of how the Committee should be kept informed of significant developments in negotiations with the European Parliament under the ordinary legislative procedure.**

2.6 **Our comments on the European Parliament's draft amendments are set out above. Overall, we agree with the Government that many of the Rapporteur's, Baroness Ludford's, proposals run the risk of stifling the exercise of discretion in the criminal justice process. This is to be avoided. However, where the European Parliament seeks to clarify or reinforce a principle or right, we support it. But we are of the opinion that too many references to the Charter of Fundamental Rights are neither necessary nor helpful.**

2.7 **We would be grateful for a final update when a clearer picture of the final text emerges, and the fate of the Commission's alternative proposal is known. Until then we keep the proposal under scrutiny.**

3 Interpretation and translation rights

(31421) — COM(10) 82	Draft Directive on the right to interpretation and translation in criminal proceedings

Legal base	Article 82(2)(b) TFEU; co-decision; QMV
Document originated	9 March 2010
Deposited in Parliament	17 March 2010
Department	Justice
Basis of consideration	EM of 25 March 2010; Minister's letter of 25 March 2010
Previous Committee Report	None; but see (31224)16801/09: HC 5–vii (2009–10), chapter 7 (20 January 2010)
To be discussed in Council	No date set
Committee's assessment	Legally and politically important
Committee's decision	Not cleared; further information requested

Background

3.1 The Commission's proposal comes as a surprise. This is because we have already reported on a Member State proposal for a Directive on interpretation and translation rights,[5] which is at the first-reading stage of the ordinary legislative procedure (and is reported in the previous chapter of this week's Report). The Member State proposal is substantially the same as the text of the Framework Decision on interpretation and translation right, which lapsed with the entry into force of the Lisbon Treaty.

The Commission's Proposal

Recitals

3.2 The first recital refers to Article 47 (right to a fair trial, including to legal advice and representation) and Article 48 (respect for the presumption of innocence and the rights of the defence) of the Charter of Fundamental Rights.

5 See headnote.

3.3 Recitals two and three recall the establishment (following the Tampere Conclusions) of mutual recognition as the cornerstone of judicial cooperation in the EU and the adoption of that principle in the Hague Programme. The fourth and fifth recitals make the link between implementation of the principle of mutual recognition and the need for mutual trust of each other's criminal justice systems, while the sixth notes that being party to the ECHR does not in itself guarantee that trust. The seventh recital refers to Article 82(2) TFEU as a basis for establishing minimum rules in order to facilitate mutual recognition and judicial cooperation through improving mutual trust.

3.4 The eighth and ninth recitals refer to the Roadmap on procedural rights. Recital eight refers to the "step by step" approach of the Roadmap and its adoption in November 2009, and lists the proposals it contains. The ninth recital states that this Directive is the first measure on the Roadmap, and that it lays down common standards for interpretation and translation in order to enhance confidence between Member States. The tenth recital explains that this Directive aims to facilitate the application of rights to interpretation and translation under Article 6 of the European Convention on Human Rights (ECHR) in practice with a view to safeguarding the right to fair proceedings. The eleventh recital notes that the Directive extends to European Arrest Warrant (EAW) proceedings, and costs will be borne by the executing Member State.

3.5 Recital 12 refers to communication between suspect and counsel, and explains that the suspect should be able to explain his version of events, point out any statements with which he disagrees and make his counsel aware of any facts that should be put forward in his defence. Recital 13 deals with review of a decision that there is no need for interpretation or translation, and states that there should be a right to "challenge" such decisions, including where the interpretation or translation provided is so deficient that it amounts to an absence of interpretation. The fourteenth recital deals with the provision of appropriate assistance and attention to those with physical impairments.

3.6 Recital 15 refers to the need to translate certain essential documents as a minimum, including "key documentary evidence" as well as any decision depriving the person of liberty, the charge or indictment and any judgement. Recital 16 states that a waiver of this right should be unequivocal and only valid after legal advice has been received. Recital 17 introduces the subject of training, and states that this should be offered to judges, lawyers, prosecutors, police and other relevant court staff to "raise awareness of the situation of those needing and those providing interpretation".

3.7 Recital 18 acknowledges that the Directive sets minimum rules, so Member States may extend rights further, and notes that the level of protection should not fall below the ECHR. Recital 19 states that this Directive respects fundamental rights and observes the principles recognised by the Charter of Fundamental Rights, particularly rights to liberty, a fair trial, and of the defence, and adds that it has to be implemented accordingly. Recital 20 provides that Member States should ensure that, where provisions of the Directive correspond to ECHR rights, they are implemented consistently with the ECHR and its case law. Recital 21 explains that this Directive is consistent with the principles of subsidiarity and proportionality. Recital 22 deals with the possibility of opt in for the UK and Ireland, and Denmark's opt out of EU criminal justice legislation.

Articles

3.8 Article 1 sets out the subject matter and scope of the Directive: to lay down rules concerning the rights to interpretation and translation in criminal proceedings and proceedings for the execution of an EAW. The rights apply from the time that a person is "informed" by the Member State's competent authorities that he is suspected of having committed a criminal offence until the conclusion of the proceedings.

3.9 Article 2 describes the ambit of the right to interpretation. Article 2(1) states that Member States must ensure that a suspect or accused person is provided "without delay" with interpretation of a quality sufficient to safeguard the "fairness of the criminal proceedings". Interpretation must be provided during the proceedings before investigative and judicial authorities including during police questioning, during all necessary meetings between the suspect and his lawyer and during court and interim hearings. Article 2(2) states that, where necessary, legal advice received throughout the proceedings must be interpreted for the suspect. Article 2(3) states that there must be a "procedure" to ascertain whether the suspect understands and speaks the language of the proceedings. Article 2(4) provides that the suspect must have the right to "challenge" a decision that there is no need for interpretation. Article 2(5) notes that the right to interpretation includes assistance to persons with hearing or speech impediments. Article 2(6) provides that subjects of EAW proceedings who do not understand and speak the language of the proceedings shall be provided with interpretation.

3.10 Article 3 sets out the right to written translation of essential documents. Article 3(1) provides that Member States shall ensure that a suspect or accused person who does not understand the language of the criminal proceedings is provided with written translations of all essential documents. The translations must be of sufficient quality to safeguard the fairness of the criminal proceedings. Article 3(2) states that the essential documents must include the detention order depriving the person of liberty, the charge/indictment, essential documentary evidence and the judgement. Article 3(3) allows for the suspect or his lawyer to submit a reasoned request for the translation of further documents, including written legal advice from the lawyer. Article 3(4) states that Member States shall ensure that the suspect has the right to "challenge" a decision that there is no need for translation. Article 3(5) states that the executing Member State shall ensure that those who are the subject of proceedings for the execution of an EAW shall be provided with a translation of it. Finally, Article 3(6) states that the suspected or accused person may waive his rights under this Article after receiving legal advice on the point.

3.11 Article 4 provides that Member States shall cover the costs of interpretation and translation arising from Articles 2 and 3, irrespective of the outcome of proceedings.

3.12 Article 5 deals with effectiveness of interpretation and translation. Article 5(1) states that interpretation and translation must be provided in such a way as to ensure that the suspect is fully able to exercise his rights. Article 5(2) introduces training, and provides that Member States shall offer training to judges, lawyers, prosecutors, police officers and other court personnel. This is to ensure the suspect is able to understand proceedings and that those involved in criminal justice can better comprehend the role of interpreters and translators.

3.13 Article 6 is a non-regression clause, which makes clear that nothing in the Directive is to be construed as limiting or derogating from the rights and procedural safeguards that are ensured under the ECHR, the Charter of Fundamental Rights, other relevant international law or national laws which provide a higher level of protection.

3.14 Articles 7, 8, and 9 deal with implementation, reporting on compliance and entry into force. Article 7(2) states that, when Member States adopt the measures necessary to comply with this Directive, those measures will contain a reference to this Directive or be accompanied by such a reference when they are published. The Government will consider this obligation, and the implementation timetable.

The Government's view

3.15 The Parliamentary Under-Secretary at the Ministry of Justice (Lord Bach) submitted an Explanatory Memorandum on the Commission's proposal on 25 March, together with a covering letter of the same date.

3.16 Under "Policy Implications" the Minister rehearses the reasons for which the Government supports legislation in this area, leading to its decision to opt into the Member State proposal. We have reported on these extensively. He does not, however, explain why the Commission has made a rival proposal, simply saying that "a situation in which there are two simultaneous proposals on the same subject matter has not arisen before". In addition, he is concerned that consideration of the Commission's proposal in Council will slow down on the adoption of a Directive in this field. He is not convinced that the Commission's proposal is needed in order to "address the points the Commission has identified as requiring further attention", but unfortunately he does not go on to enumerate what those points are. He anticipates that all of the Commission's concerns will be addressed on the basis of amendments to the Member State initiative proposed by the European Parliament. The Government will therefore monitor the progress of the Commission's proposal before deciding whether to opt into it as well as the Member State proposal.

3.17 On the substance of the proposal the Government will need to give further consideration to the references to the Charter in the recitals. On Article 2, the Government explained in its Explanatory Memorandum of 30 December on the Member State initiative that it would support even clearer wording regarding a suspect's right to interpretation of communications with legal counsel, and the Government is therefore reflecting on the Commission's drafting. The Government supports the possibility of some form of challenge or review, and is considering the wording of Article 2(4). In Article 2(5) the Government is currently of the view that this might not be the most appropriate measure in which to consider the needs of those with speech impediments. The Government is considering whether the requirements in Article 3 are consistent with the common law and also considers that some of the terms seem open–ended. The Government's position on Article 4 will depend on its assessment of Articles 2 and 3. The Government is content with the principle underlying Article 5 but is reflecting on how it might be implemented in practice. The Government is broadly content with Article 6, and will consider the reference to the Charter. The Government will consider the obligation in Article 7(2), and the implementation timetable.

Conclusion

3.18 **We thank the Minister for his Explanatory Memorandum, but it fails to address the all-important question of why the Commission has tabled a competing proposal. The Minister says that he is not convinced that the Commission's proposal is needed in order to "address the points the Commission has identified as requiring further attention", but he does not enumerate what those points are. Without these, we are none the wiser as to why the Commission is apparently seeking to displace a Member State proposal. We would like to hear from the Minister on this in time for our meeting on 7 April.**

3.19 **The Commission's action also raises an important question of policy on which the Minister's Explanatory Memorandum is silent. Article 76 TFEU gives the Member States and the Commission a shared right of initiative in the field of judicial cooperation in criminal matters and police cooperation. If Member States propose legislation in this field, does the Minister think that it is acceptable for the Commission to propose competing legislation, as in this case? And does it have the power to do so under Article 76? Or can Article 76 be interpreted to mean that once a proposal has been made by either a group of Member States or the Commission, a further proposal on the same subject matter is pre-empted? Alternatively, it may be the case that the Commission has made its proposal knowing that it will never reach the statute books, but with the intention of providing the European Parliament with good source of amendments to the Member State proposal. If this is so, does the Minister think the Commission's approach abuses the principle of a shared right of initiative? We ask these questions because of the likely level of legislative activity in this field in the future. Again, we would be grateful to hear from the Minister for our meeting on 7 April.**

3.20 **In the meantime, the Commission's proposal is kept under scrutiny.**

4 Trade in services: compensatory adjustments under the General Agreement on Trade in Services

(28546) 8121/07 + ADDs 1–17 COM(07) 154	Draft Council Decision on the conclusion of the relevant agreements under Article XXI GATS with Argentina, Australia, Brazil, Canada, China, the Separate customs territory of Taiwan, Penghu, Kinmen and Matsu (Chinese Taipei), Columbia, Cuba, Ecuador, Hong Kong China, India, Japan, Korea, New Zealand, the Philippines, Switzerland, and the United States on the necessary compensatory adjustments resulting from the accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Austria, the Republic of Poland, the Republic of Slovenia, the Slovak Republic, the Republic of Finland, the Kingdom of Sweden to the European Union

Legal base	See below
Department	Business, Innovation and Skills
Basis of consideration	Minister's letters of 25 June 2007, 13 March 2009 and 23 March 2010
Previous Committee Report	HC 41–xxi (2006–07), chapter 12 (9 May 2007) HC 19–xi (2008–09), chapter 7 (18 March 2009)
To be discussed in Council	See below
Committee's assessment	Legally important
Committee's decision	Cleared (decision reported on 9 May 2007)

Background

4.1 All Members of the World Trade Organisation (WTO) have entered into legal commitments under the WTO's General Agreement on Trade in Services (GATS) to guarantee a level of market access for service providers from other WTO members in certain specified sectors. Article XXI of GATS requires those WTO members wishing to vary or remove commitments to enter into consultations with other members which consider themselves adversely affected, with a view to offering appropriate compensation in the form of other commitments in other services sectors.

The current document

4.2 The enlargements of the Community to 15, and then 25, Members, and the need to bring the GATS commitments of those new Member States into line with the Community's existing commitments, meant that some of the commitments already entered into by those Member States had to be removed, and negotiations subsequently took place between the Community and the 17 WTO Members which claimed to be adversely affected. This draft Decision, which the Commission put forward in March 2007, seeks the Council's approval to the outcome of those negotiations.

4.3 We noted in our Report of 9 May 2007 that this was the first time that the GATS Article XXI process had been used, and the Community's approach in this case therefore set an important precedent. We were told that the UK supported the Commission's view that the Community should conclude a substantive package of compensation in order to demonstrate that WTO commitments cannot be withdrawn lightly, and regarded the outcome of these negotiations as balanced.

4.4 However, the Government also drew attention to the fact that the Commission had cited Articles 133(1) and (5)EC as the legal base for the draft Decision, and had effectively argued that it has exclusive competence in all areas covered by the Agreement, whereas the UK (and other Member States) considered that, where issues such as education are referred to, Article 133(6)EC provides that competence is shared, and that the common accord of Member States is required. It therefore took the view that, in such cases, Article 133(6) should be cited as an additional legal base, and that the Decision needed to notify the consent of the Member States to be bound by the Agreements in areas where they share (or have exclusive) competence.

4.5 Since the measures proposed did not in themselves appear to be controversial, we cleared the document, but we commented that we shared the Government's view that the matters covered by these measures were not all within the exclusive competence of the Community, and that accordingly Article 133(6) should also be cited as the legal base. On the assumption that the UK (along with other Member States) would be raising this issue, we asked the Government to let us know how this question of competence was resolved.

4.6 We subsequently received from the Government a letter of 25 June 2007, indicating that Articles 71 and 80(2)EC, together with Article 300(3)EC, should be included in addition to Article 133(6), as some of the measures in question related to transport. However, as these changes were being firmly resisted by the Commission, and required unanimity among Member States, which might not be forthcoming, we decided to await further developments before reporting to the House.

4.7 This was followed by a letter of 13 March 2009 saying that the Council had since agreed unanimously that the legal base should be extended to include Articles 71, 80(2), 133(6) and 300(3), but that, as mixed competence agreements such as this require Member States to complete their own internal procedures before ratification can take place, the draft Decision had yet to proceed beyond COREPER.

4.8 We were also told that the Commission had challenged the Council's action, and had asked the Court of Justice for a ruling. That was now awaited, but, in the meantime, the UK had intervened in support of the Council. In noting this further information in our Report of 18 March 2009, we said we would be interested to hear in due course the outcome of the Court's consideration.

Minister's letter of 23 March 2010

4.9 We have now received a letter of 23 March 2010 from the Minister for Trade, Investment and Small Business at the Department for Business, Innovation and Skills (Lord Davies of Abersoch). He says that the Court issued its Opinion on 30 November 2010, the day before the Treaty of Lisbon entered into force, noting that it had been asked

to consider whether, under the terms of the (existing) Treaty, the Commission could enter into the EC-25 Agreements alone or whether Member States should also be parties in their own right. He says, that, in its Opinion, the Court agreed with the Council and the Member States

- that the EC-25 Agreements were international agreements within the scope of Article 300 of the EC Treaty;
- that practical considerations were not relevant to the question of Community competence;
- that Agreements must be concluded jointly by the Community and the Member States if they contain provisions that fall within the specific sectors set out in Article 133(6) — it is not necessary for the agreement wholly or predominantly to deal with those sectors;
- that the final paragraph of Article 133(6) acts as an exception to Article 133(5) and provides that agreements relating to trade in transport services do not form part of the Common Commercial Policy;
- that the EC-25 Agreements contain substantive provisions relating to the sensitive service sectors listed in Article 133(6) and transport services; and
- that, for these reasons, the EC-25 Agreements could not be concluded by the Community alone and needed to be concluded jointly with the Member States.

The Minister also points out, since the Treaty of Lisbon, which has made significant changes to the scope of the Common Commercial Policy, entered into force the day after the Court delivered its Opinion, the outcome has in some respects already been overtaken. He adds that the Commission is currently considering how to proceed in light of these changes, and that the Government will keep us updated on developments.

Conclusion

4.10 **We are grateful to the Minister for this further information, and we have noted the latest position, which does not of course affect our earlier clearance of the proposal.**

5 EU-Republic of Korea Free Trade Agreement

(31430)	EU-Republic of Korea Free Trade Agreement
—	
—	

Legal base	See para 5.1
Department	Business, Innovation and Skills
Basis of consideration	EM of 24 March 2010
Previous Committee Report	None, but see footnote 6
To be discussed in Council	April 2010
Committee's assessment	Politically important
Committee's decision	Cleared

Background

5.1 In April 2007, the Council authorised the Commission to open negotiations with the Republic of Korea, with a view to concluding a Free Trade Agreement (FTA). According to the Commission, those negotiations finished last summer, and the agreement which was initialled on 15 October 2009, will now need to be signed by the Commission on behalf of the EU, by the Member States, and by the Republic of Korea. The Commission says that it aims to propose the signature of the Agreement to the Council in April 2010, but, although the text is in the public domain, there is as yet no official document. The Government expects a consolidated version of the text to accompany the Commission's proposal for a Council Decision to authorise signature, and it has in the meantime submitted an Explanatory Memorandum, in order to enable scrutiny to take place before the Easter adjournment and the dissolution of Parliament prior to the General Election.

The current document

5.2 The Government says that the FTA delivers on the negotiating directives approved by the Council in 2007, and has been negotiated in parallel with a Framework Agreement[6] which aims to enhance cooperation between the EU and the Republic of Korea in a range of areas, including economic development, sustainable development, education, culture, justice and security, with the two Agreements together establishing a fully coherent modern framework for bilateral relations between the two parties covering economic, trade and political cooperation.

5.3 The Government adds that this Free Trade Agreement is a flagship FTA under the Global Europe Strategy launched by former Commissioner Mandelson in 2006, and is the most ambitious agreement yet negotiated by the EU, breaking new ground, for example in sustainable development commitments, and that it sets the bar high for FTAs with other

6 (31167) 15710/09: see HC 5–iv (2009–10), chapter 12 (15 December 2009).

negotiating partners at a similar level of development. As regards specific aspects of the Agreement, it says that:

- the *liberalisation of Korean tariffs on industrial goods* will save EU exporters about €1.2 billion in duties annually, half of which will happen as soon as the Agreement enters into force;
- almost half of *Korean tariffs on agricultural goods* will be liberalised, saving EU exporters a further €380 million;
- the *safeguard measures* will provide effective protection to EU and Korean industry without undermining the benefits which an ambitious FTA will bring to business;
- the commitments relating to *technical barriers to trade* should make the trading environment in Korea more predictable, helping to avoid uncertainty and increase business confidence, a further reassurance for business being that the dispute settlement process in the FTA will provide an alternative to the World Trade Organisation (WTO) Dispute Settlement Understanding, even in relation to the most difficult problems;
- the *sanitary and phytosanitary standards* reaffirm the intention to meet WTO standards in this area, and will give UK exporters extra assurance that they will not suffer from any rules which Korea might enforce going beyond those standards;
- the provisions on *trade in services* go beyond the as yet unratified US-Korea FTA, so providing a level playing field for EU and US suppliers in the Korea market;
- commitments on *payments and capital movements* ensure the free movement of private payments between EU and Korean citizens, and the free movement of management finance and commercial transactions;
- the provisions on *government procurement* are fully compliant with the obligations of the EU and Korea under the WTO General Procurement Agreement;
- the Agreement contains clear commitments to EU and international standards on *intellectual property*, which will help to provide clarity for innovative and creative businesses trading in Korea, with some elements falling under EU competence and others within that of Member States;
- the provisions on *competition* recognise the importance of free and undistorted competition to trade relations, and ensure that competition laws in the EU and Korea will be applied in a way which prevents the benefits of trade liberalisation from being eliminated by anti-competitive business conduct or transactions;
- the chapter on *transparency* is compliant with the WTO Agreement, and highlights the need for a clear, efficient and predictable regulatory environment, especially for small businesses;
- the *sustainable development* chapter is ambitious compared with other such agreements, and includes a well laid out mechanism for considering civil society views, sets up an independent committee of experts to oversee the relevant impacts

on the Agreement, and highlights the fast dismantlement of tariffs for environmentally friendly goods, with almost all such goods having duty free access within three years of the Agreement's entering into force.

The Government's view

5.4 In his Explanatory Memorandum of 24 March 2010, the Minister for Trade, Investment and Small Business at the Department for Business, Innovation and Skillsis (Lord Davies of Abersoch) says that the UK, along with a range of business stakeholders (including the Confederation of British Industry), strongly supports the swift implementation of this Agreement, which could deliver benefits of around £500 million to the UK economy, as well as boosting growth and creating jobs. He adds that a further incentive for early implementation would be to have the Agreement in force before the US-Korea FTA, so as to give EU companies first mover advantage. He also points out that the Agreement will deepen the economic and commercial ties between the EU and Korea, a country with which it already enjoys good relations, and which is an important player within the G20 (where it will assume the Presidency in 2010).

5.5 As regards specific aspects of the Agreement, he comments that:

- a headline achievement for the UK is the removal of tariffs on key export products, such as pharmaceuticals, electronics, cars and car parts, and whisky (total exports of these products to Korea in 2008 amounting to £808 million);
- although the dismantling of tariffs will increase competitive pressures on the EU automotive industry, these reductions will be phased in slowly, with critical safeguards in place, and exporters in the UK automotive sector could benefit significantly from Korean acceptance of EU standards across almost all areas;
- tariff reductions on agricultural goods (such as poultry and pork products) will save UK exporters considerable costs, whilst those on Scotch whisky will reduce from 20% to zero over three years;
- the UK will also benefit from across-the-board Korean commitments on services, particularly financial and other business services (where trade in 2008 was worth £540 million);
- UK exporters will face reduced administrative burdens.

Conclusion

5.6 **We are grateful to the Government for drawing this Agreement to our attention, and, in the absence of an official text, for highlighting its main elements. As with the wider Framework Agreement between the EU and Korea on which we reported on 15 December 2009, this is clearly an important measure which we think it right to draw to the attention of the House. Having said that, we see no reason at this stage to hold it under scrutiny, and we are therefore clearing it.**

6 International climate policy post-Copenhagen

(31406) 7438/10 + ADD 1 COM(10) 86	Commission Communication *International climate policy post-Copenhagen: Acting now to reinvigorate global action on climate change*

Legal base	—
Document originated	9 March 2010
Deposited in Parliament	11 March 2010
Department	Energy and Climate Change
Basis of consideration	EM of 24 March 2010
Previous Committee Report	None
Discussed in Council	See para 6.13 below
Committee's assessment	Politically important
Committee's decision	Cleared

Background

6.1 According to the Commission, the international dimension has always been an essential part of the EU's climate change ambition to keep the increase in temperature, as compared with pre-industrial levels, to below 2^0C, and it says that the EU has therefore always been at the forefront of international action against climate change, being on track to comply with its 2008–12 Kyoto commitments, and having adopted ambitious targets for 2020, including a commitment to reduce its greenhouse gas emissions by 20% (or 30% as part of a corresponding overall commitment by other developed and developing countries). The Commission adds that the EU has been a strong supporter of the UN process, and that the outcome of the Copenhagen conference in December 2009 fell well short of its ambitions, but it notes attempts are now being made to achieve a set of concrete action-oriented decisions in Cancun at the end of this year, followed by the adoption of a legally binding agreement in South Africa in 2011. It has therefore sought in this Communication to set out a strategy which will help maintain the momentum of the global efforts to achieve that outcome.

The current document

6.2 The Commission recalls that the main outcome of the Copenhagen conference was an agreement among a representative group of 29 Heads of State and Government on the "Copenhagen Accord", which it says reflected the EU's objective of limiting the temperature increase to 2^0C, requested developed countries to put forward their emission reduction targets, and invited developing countries to put forward appropriate action by 31 January 2010. It adds that the Accord also provided a basis for regular monitoring, reporting and verification of those actions; contained a commitment to significant funding for climate change action, together with a related institutional framework; and gave guidance on issues such as reducing emissions from deforestation, technology and

adaptation. It also says that, although the conclusions of the conference merely "took note" of the Accord and did not comprise a robust and legally binding agreement, more than 100 submissions to date by both developed and developing countries — many of them including targets or actions — demonstrate a broad and still growing support for the Accord, as well as a clear determination of a majority of countries to step their actions on climate change.

6.3 Looking ahead to the next steps, the Commission says that the EU should continue to pursue a robust and effective international agreement, and that its fundamental objective remains a legally-binding agreement under the United Nations Framework Convention on Climate Change (UNFCCC), which in turn requires the EU to re-focus its efforts. In particular, it suggests that;

- As regards the *UN process*, where a range of preparatory meetings are being organised ahead of the conference in Cancun, the aim of those meetings should be to identify gaps in the current negotiating texts and address issues neglected in the Accord (such as the evolution of the international carbon market, reducing emissions from international aviation and maritime transport, and agriculture), as well as bringing into the formal UN negotiating process the developed country targets and developing country actions submitted under the Accord. It says that the EU's objective for Cancun should therefore be a comprehensive and balanced set of decisions to anchor the Accord into the UN negotiating process, and it adds that, whilst the EU is ready to adopt a robust and legally binding agreement in Cancun, the substantial differences which remain mean that a more step-by-step approach may be necessary.

- As regards the *position of third countries*, the Commission suggests that the Copenhagen negotiations clearly demonstrated that progress in the UN is conditional on the willingness of countries to act, and that an active outreach programme by the EU, aimed at obtaining a better understanding of the positions, concerns and expectations of its partners on key issues, and at explaining the EU's own objectives, will be essential. It says that it will, in close conjunction with the Council, seek to achieve convergence on action-oriented decisions to be agreed in Cancun, it also being important that the EU should speak with one voice, that outreach activities should take place at all levels and bring in all important stakeholders, involving bilateral as well as multilateral meetings, and that there should be a willingness by all parties to move forward.

- As regards the *reductions required to get global greenhouse gas emissions on the pathway needed to achieve the 2^{0}C objective*, the Commission says that, whilst the Kyoto Protocol remains the central building block, its key shortcomings will have to be addressed. In particular, it notes that, since Kyoto currently covers only 30% of emissions, it cannot alone deliver this objective, this being possible only if the US and other major emitters from the developing world (including Brazil, China, India, South Korea, Mexico and South Africa) contribute their share. Also, current pledges by developed countries (ranging from 13.2% to 17.8%) are in any case insufficient, and need to be increased to 25–40%. It adds that the situation is exacerbated by two further weaknesses — the banking of surplus emissions from

the Kyoto Protocol's commitment period for 2008 to 2012 into future commitment periods, and the need to amend the accounting rules for land use, land-use change and forestry (LULUCF) emissions from developed countries.

EU action proposed

Europe 2020

6.4 The Commission suggests that the most convincing leadership which the EU can show is to become the most climate friendly region in the world, a course which it says is in the EU's self-interest. It points out that the Europe 2020 strategy makes sustainable growth a priority, noting that the EU is committed to achieving by 2020 a 20% reduction in emission levels compared with 1990, moving to a 30% reduction if the conditions are right. It says that it will therefore prepare ahead of the European Council in June an analysis of the practical policies needed to achieve a 30% reduction, and that it will thereafter develop an analysis of the milestones needed to achieve the agreed objective of 85–90% by 2050, as part of the developed countries' contribution to reducing global emissions in that year by at least 50% below 1990 levels. It adds that this analysis will include the ambition level for 2030, reflecting the contributions from key emitting sectors, including energy production and consumption and transport, and set out appropriate strategies for these sectors consistent with the 2020 strategy. It also says that any such action will need to have a strong focus on policies to accelerate innovation and the early deployment of new technologies and infrastructure, creating a competitive edge for European companies in key sectors.

Implementing the Copenhagen Accord

6.5 The Commission suggests that the broad support for the Copenhagen Accord demonstrates the political will from the majority of countries to start action now, and that by far its biggest achievement is the fact that, by the end of January 2010, developed and developing countries, representing more than 80% of global greenhouse gas emissions, have put forward targets and actions. However, it says that their overall ambition level is hard to assess, and that, even if the weaknesses already identified were to be closed, the targets proposed by developed countries (including the even higher conditional pledges) do not come close to the 25–40% reductions required by 2020, adding that, so far, only the EU has adopted the legislation needed to guarantee delivery of its 2020 target, and that there is much uncertainty about the content and timing of the action likely to be undertaken by developing countries. Consequently, the Commission says that the negotiations should now focus on the clarification of these pledges, and how they might be achieved.

6.6 The Commission goes on to point out that the most difficult negotiations in Copenhagen related to the strengthening of the arrangements in the Kyoto Protocol as regards monitoring, reporting and verification, with transparency being the key to progress. It says that one of the priorities must be to anchor the compromises in the Copenhagen Accord in the UN process, but that transparency must not be limited to the reporting of emissions, the most important point being how countries implement their targets or actions. In particular, it stresses the need for robust, transparent and predictable accounting rules which make it possible to assess performance properly. In the meantime,

it says that it proposes to embark on regional capacity building programmes for interested developing countries to develop the capabilities in these areas.

Fast-start funding

6.7 The Commission notes that the Copenhagen Accord provides for fast-start support to developing countries of some $30 billion for the period 2010–12, with a balanced allocation between mitigation and adaptation. It points out that the European Council in December 2009 set a yearly contribution of €2.4 billion by the EU and its Member States for that period, and that swift implementation of this is essential both to the EU's credibility and to enhancing the capacity of many developing countries to design and implement effective policies. The Commission adds that the EU must engage with other donors and recipients to ensure coordination of the funding agreed in Copenhagen, and that fast-track actions could include capacity building for integrating development and poverty reduction strategies, capacity building in the area of mitigation, pilot projects for sector-wide carbon market mechanisms, pilot projects for reducing emissions from deforestation in developing countries, and technology cooperation. It also suggests that such funding must be well targeted to different regions, and build on, and take account of, existing initiatives. The Commission stresses the need for the EU's own efforts to be coordinated, and says that it is ready to take on a role in this area. In particular, it proposes to work with the ECOFIN Council, to establish a joint EU regional capacity building programme to pool and channel funding, complementing existing EU financial programmes, and to ensure transparency through a bi-annual progress report.

Long-term finance

6.8 The Commission recalls that, in the Copenhagen Accord, the EU and other developed countries committed to jointly mobilise $100 billion (€73 billion) a year by 2020 for mitigation and adaptation action in developing countries. It suggests that this could come from a wide range of sources, including the international carbon market (which, if designed properly, could deliver up to €38 billion a year by 2020); international aviation and maritime transport, building on the existing commitment under the EU's Emissions Trading Scheme for all aviation auction revenues to be used for climate change measures; and international public funding in the range of €22–50 billion a year by 2020, with the EU contributing a fair share. It also believes that the future UN High-Level Panel on Finance and the High-Level Advisory Group on Climate Change Financing should explore how these sources can be effectively used for financing future climate actions, with public finance focusing on areas which cannot be adequately financed by the private sector or used to leverage private investments. However, it cautions that the international dimension of long-term finance is only part of the picture, and that developing countries, and particularly the economically more advanced, must also contribute to the overall effort.

The international carbon market

6.9 The Commission says that a well-functioning carbon market is essential for driving low-carbon investments and achieving global mitigation objectives in a cost-effective manner, whilst also generating important financial flows to developing countries. It goes on to suggest that such a market should be built by linking compatible domestic cap and

trade schemes, with the goal being to develop an OECD-wide market by 2015, and an even broader one by 2020. It notes that the EU has proposed new sectoral carbon market mechanisms as an interim step towards the development of (multi-sectoral) cap and trade systems, in particular in the more advanced developing countries, which it says can provide a more comprehensive price signal and generate credits on a greater scale. It says that, in addition, the Clean Development Mechanism (CDM) will continue after 2012, but must be reformed to improve its environmental integrity, effectiveness, efficiency and governance, and should over time increasingly focus on the least developed countries, where the EU should seek common ground with the US and other countries in order to ensure a coherent approach.

The Government's view

6.10 In her Explanatory Memorandum of 24 March 2010, Minister of State for Energy and Climate Change (Joan Ruddock) says that, whilst this Communication has no formal implications for UK policy, it has informed discussions within the EU, and she expects the forthcoming Spring European Council in particular to outline the EU's strategy for 2010, although this will continue to crystallise throughout the year in the run up to Cancun. She says that the overall strategy for Cancun outlined in the Communication is in line with UK objectives, and that the Government sees the pledges in the Accord as a very significant raising of ambition compared with the situation only a few months ago, and that, if delivered in accordance with countries' highest intentions, could provide a credible pathway to achieving the 2°C goal. The UK would support the view that the UN negotiations should now focus on clarification of pledges and discussions of how overall ambition can be increased.

6.11 As regards individual aspects of the Communication, the Minister comments:

- that it is line with UK objectives from a low carbon economy perspective;
- that the UK welcomes the analysis provided on the Kyoto Protocol, and looks forward to seeing the outcome of the Commission's work in this area: in particular, the issues identified by the Commission as requiring particular focus (the treatment of surplus emissions in future commitment periods, and land use, land-use change and forestry (LULUCF) accounting rules) are amongst those which the UK believes would need to be resolved if a second commitment period were to be considered;
- that the UK is pleased that the Communication reiterates the public finance commitment by the EU, and is also supportive of progress on a green fund;
- that, on monitoring, reporting and verification, the Commission highlights the importance of anchoring the Copenhagen Accord into the UN process, and usefully emphasises the need for capacity building for interested developing countries (although she says that the UK is still reviewing the best institutional arrangements for a regional capacity building programme).

The Minister also notes that the Communication highlights a number of issues which are not dealt with in the Accord, but which now need to be picked up in the international

negotiations, and she comments that the proposed strategy on carbon markets is in line with UK thinking.

6.12 Finally, she identifies a number of elements in the document which are not completely in line with UK thinking. For example:

- the UK is considering the suggestion that the Commission should take on a facilitative role on fast-start finance, and is also considering the statement that from 2012 the EU should make a single global offer on finance;
- it believes that finance should be additional to official development assistance (ODA);
- whilst it agrees that the EU should speak with a united voice, it notes that the Commission has advocated a stronger negotiating role for itself, and it would not want to see a change to the current approach to the negotiations, which allows the EU to draw on its best talent.

6.13 The Minister concludes by saying that, as this is not a legislative proposal, there is no formal timetable, but she notes that the ideas in the Communication were to be discussed in the Environment Council on 15 March, and in the run up to the European Council on 25–26 March.

Conclusion

6.14 **Although this document deals with a subject of obvious political interest, it is essentially an attempt by the Commission to take stock of the state of play on the climate change negotiations following the Copenhagen conference in December 2009, and to suggest ways in which the EU's position can be taken forward in preparation for the next conference to be held in Cancun at the end of this year. However, it is principally concerned with the negotiating process this would entail, rather than the substance of any such deal, where the Commission has in the main re-stated the existing EU position on such issues as emission reduction targets and funding, whilst stressing the importance of it engaging both with other developed countries and with the developing countries in order to implement the so-called Copenhagen Accord. Consequently, although it is obviously right that the Communication should be drawn to the attention of the House, it does not appear to us to raise any new issues requiring further consideration at this stage, given also the extent to which its overall thrust appears to be in line with the UK's approach (though we note the Government's view that the Community's strategy is likely to crystallise during the course of the year). We are therefore content to clear the document.**

7 Interim Economic Partnership Agreement between the European Community and its Member States and the South African Development Community States

(a) (29973) 13314/08 + ADDs 1–13 COM(08) 562	Draft Council Decision on the signature and provisional application of the Interim Economic Partnership Agreement between the European Community and its Member States and the South African Development Community States
(b) (29979) 13386/08 + ADDs 1–13 COM(08) 565	Draft Council Decision concluding the Interim Economic Partnership Agreement between the European Community and its Member States and the South African Development Community States
(c) (31357) 6822/10 COM(10) 57	Draft Council Decision on a EU position within the EC-South Africa Cooperation Council on the amendment of the relevant provisions and Annexes to the Trade, Development and Cooperation Agreement (TDCA) between the European Community and its Member States and the Republic of South Africa to align certain tariffs with those applied to the EU products by Botswana, Lesotho and Swaziland in the Annex 3 of the EU-SADC interim Economic Partnership Agreement

Legal base	(a) and (b): Articles 133, 181 and 300 EC; QMV; co-decision (c) Articles 207 TFEU; QMV; —
Document originated	23 February 2010
Document deposited	1 March 2010
Department	International Development
Basis of consideration	Minister's letter and EM of 17 March 2010
Previous Committee Reports	HC 5–i (2009–10), chapter 9 (19 November 2009), HC 16–xxxi (2007–08), chapter 5 (15 October 2008), HC 19–vii (2008–09), chapter 7 (11 February 2009) HC 19–xxi (2008–09), chapter 5 (24 June 2009); also see (29043) 14498/07 and (29155) 14968/07: HC 16–xxi (2007–08), chapter 13 (14 May 2008)
To be discussed in Council	April 2010
Committee's assessment	Politically important
Committee's decision	(a) and (b) Cleared (decision reported 11 February 2009); further information requested (c) Cleared

Background

7.1 The Economic Partnership Agreement (EPA) negotiations with the African, Caribbean and Pacific (ACP) group of countries, which began in 2002, aimed at redefining the trade regime between the two groups of countries, thereby replacing the long-standing Lomé system of preferential access to the European market for the ACP from 2008. The EPAs are intended to be in conformity with WTO rules, which require that barriers to trade be dismantled on both sides, introducing an element of reciprocity into trade relations between the EU and the ACP states for the first time. This gave rise to concern that extensive market opening in these countries to the EU could create strong adjustment pressures, while European suppliers would be only marginally affected by free market access for ACP goods and services. The deadline for negotiation was 31 December 2007.

7.2 The Commission's aim was always "full" EPAs — which include provisions on trade-related areas, trade-related rules and trade in services and include appropriate links to development cooperation, as well as trade in goods — in accordance with what is outlined in the Cotonou Agreement and the Commission's negotiating mandate. But not all of the six ACP negotiating regions were likely to conclude a full EPA by the set deadline; so, for these regions, the Commission decided to pursue basic "trade in goods agreements", which provide for duty free/quota free access and simplified Rules of Origin.

7.3 Our earlier Reports set out our consideration of the process in greater detail.[7] The most recent concerned two Council Decisions: the first, authorising the signature, on behalf of the Community, and provisional application of an Agreement between the EC and its Member States on the one hand, and the South African Development Community (SADC) EPA states on the other; and the second authorising the formal conclusion of the Agreement.

7.4 "SADC EPA states" refers to Namibia, Botswana, Lesotho, Swaziland and Mozambique, i.e., countries within SADC that have completed interim EPA negotiations. Of these, the first four are members, along with South Africa, of the Southern African Customs Union (SACU). In this Agreement, for some purposes the "SADC EPA states" act collectively and for others they act individually.

7.5 The Commission and SADC EPA states initialled the Interim Economic Partnership Agreement (IEPA) on 23 November 2007, which enabled their inclusion in the EPA Market Access Regulation adopted by the Council of Ministers on 20 December 2007 (which provides for duty-free, quota-free access for all SADC EPA states' exports to the EU, commencing 1 January 2008).

7.6 The Commission issued these proposals together as they both concern the formalities necessary to agree formally and give effect to the same international agreement, namely the Agreement establishing an Interim Economic Partnership Agreement between the EC and its Member States and the SADC EPA states (the IEPA). The two step process is not unusual — the EC Treaty expressly allowed the Community to apply international agreements provisionally, prior to their formal conclusion, as the formal conclusion process can be lengthy.

7 See headnote.

Previous consideration

7.7 The details of the IEPA are set out in our Report of 15 October 2008. In his accompanying 10 October 2008 Explanatory Memorandum, the then Parliamentary Under-Secretary of State at the Department for International Development (Mr Gareth Thomas) said that the UK had consistently stated that EPAs should help provide a strong framework for long term development, economic growth and poverty reduction, and had centred its policy on the principles set out in the DFID/DTI Position Paper of 2005.[8]

7.8 The Minister said that this Agreement broadly aligned with these principles, which included the belief that: ACP countries should be able to decide the scope of issues covered within their IEPA; they should have flexibility over their market opening; EPAs should provide them with duty and quota free market access into the EU with improved Rules of Origin; they should benefit from effective safeguards to protect their markets when required; and EU partners should provide ACP countries with effective development assistance to benefit from new trade opportunities while ensuring aid is not made conditional on signing an EPA. The initialling of this 'goods-only' agreement had thus enabled SADC EPA states to secure market access into the EU while allowing more time to work with other African neighbours to negotiate a regional EPA covering other trade issues such as services.

7.9 The Minister noted a number of positive features. But he also noted a number of concerns raised by the SADC signatories and South Africa — SACU's biggest and most influential member, who had chosen not to initial the IEPA — which he intended to pursue in the Development Working Group. These included some measures not required for WTO compatibility (e.g. MFN clause and standstill clause), what he regarded as an over-ambitious timetable regarding commitments to broaden the scope of the Agreement (on services and investment) and the potential damage to the aim of regional integration through South Africa's non-participation. He said that he would monitor these and lobby the Commission as necessary. Given these concerns and the fact that discussion on the concluded SADC IEPA had not been held so far in the Working Groups, he thought it possible that he might need to come back to the Committee with further developments and advice. The Committee nonetheless drew all this to the attention of the House, because of the widespread interest in the EPA process, and also to the attention of the International Development Committee, so that they might be aware of the elements of the EPA and the Minister's concerns; and in the meantime retained the documents under scrutiny.[9]

The Minister's letter of 29 January 2009

7.10 The Minister provided the following update:

Regional Integration issues — Border administration:

— as South Africa is not party to the IEPA, there were concerns over regional integration, the most pressing relating to the mis-match in tariffs between the SADC states and

8 Which is reproduced at the Annex to chapter 1 of HC16–i (2007–08) of (7 November 2007).

9 See headnote: HC 16–xxxi (2007–08), chapter 5 (15 October 2008).

SACU. The main challenge to maintaining coherent regional trade regimes was to harmonise tariffs between South Africa and other countries in SADC. The Commission had presented South Africa with a range of options that would enable this and dialogue was ongoing.

Regional Integration issues — Content:

— EPA rules on sourcing of materials meant that inputs from South Africa which fell under the exclusion list could not be used in goods exported to the EU from SADC. The Commission had informed him that these items were not indefinitely excluded. However, regional governments said there was not yet clarity on dates and how future sourcing of inputs from South Africa would be managed. He was monitoring the situation closely and would, if necessary, push for greater flexibility from the Commission.

Country Government Views:

— Angola, South Africa and Namibia were the only governments in the region to express opposition to the terms of the Interim EPA. Botswana, Lesotho and Swaziland had been generally supportive but had expressed concerns about the impact of the Interim EPA on regional integration;

— Namibia had signalled its intention to sign but had also raised concerns, some of which echoed those of South Africa. Recent Commission updates said that progress had been made on the most contentious issues. On balance, it appeared that Namibia was likely to sign, but with the expectation that their concerns would be addressed in the move towards a regional EPA;

— engagement with South Africa was ongoing, but progress had been slow in the light of "current domestic pressures"; the Minister would do all he could to encourage both the Commission and key negotiating partners to reach agreement on outstanding issues.

Future Regional Engagement:

— the Trade Commissioner was to visit the Southern African region in February and the Commission planned to hold a seminar in early 2009, once the Interim EPA had been signed, to promote constructive discussion with countries in the region on difficult or sensitive issues that were not fully resolved within the Interim EPA but were to "be seriously considered in the regional agreement."

7.11 In sum, the Minister described the SADC region as complex and containing countries with quite divergent interests; while a number of concerns had yet to be resolved, structures were in place to work towards their resolution.

Our assessment

7.12 Though it was plain that there had been little, if any, concrete progress regarding any of the Minister's major concerns, we felt that there were at least indications that the Commission was beginning to address them, and it would not be possible for them to do

so were the IEPA to remain unsigned. We therefore cleared the documents, and again drew this to the attention of the International Development Committee, and asked the Minister to write before the summer recess with a further update.[10]

7.13 The Council Decisions were subsequently endorsed, with a list of desiderata concerning subsequent discussions with the SADC countries, by the European Parliament in its resolution of 25 March 2009,[11] and adopted by the Council on 24 April 2009.

The Minister's further letter of 11 June 2009

7.14 The Minister set out the then position as follows:

State of play of the Interim EPA

— the visit by the then Trade Commissioner Ashton to the SADC region had been positively received, following which agreement was reached on issues including export taxes, infant industry safeguards, quantitative restrictions, free circulation of goods and tariff alignment to preserve the SACU;

— the Interim EPA was signed on 4 June by Botswana, Lesotho and Swaziland. Mozambique was expected to sign shortly, and Namibia was expected to sign towards the end of 2009;

— following these discussions, the Commission produced two Joint Declarations and the legal text of the Interim EPA; the former were intended to give assurances to the SADC signatories that specific modifications would be made to the Agreement. The first Declaration set out the position on tariff alignment, such as that the tariffs under the SADC EPA align with those of the South African Customs Union; the second set out the commitment to regional integration and the region's commitment to concluding the full EPA negotiations;

— the new legal texts, to be included in the full EPA, would cover the areas referred to above, where agreement had been reached, which meant that the agreed changes detailed in these legal texts did not change the terms of the Interim EPA text, but only became effective once the full EPA was signed.

Namibia's position

— Namibia had requested that the legal text detailing changes to be included in the text of the full regional EPA be included as an addendum to the Interim EPA; the Commission could not give such assurances, as the Interim EPA would have to be re-submitted to the European Council; Namibia had cited this as the main reason for not signing;

— while it appeared that Namibia would not sign in the short term, the EU was an important market for its agricultural exports (especially beef and grapes), and failure to

10 See headnote: HC 19–vii (2008–09), chapter 7 (11 February 2009).

11 See http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P6-TA-2009–0179+0+DOC+XML+V0//EN for the full text of the European Parliament resolution.

sign the EPA could ultimately lead to the Commission revoking Namibia's Market Access Regulation (which provides countries that have signed an EPA provisional duty-free, quota-free access to the EU); discussions were ongoing.

7.15 The Minister concluded by saying that he would continue to support the SADC region in its ambition to sign the full regional EPA and "encourage the Commission to be as development focused and transparent as possible in its negotiations with SADC states."

Our assessment

7.16 We thanked the Minister for this further information, which we felt was reassuring as far as it went. But we found it odd that he made no mention at all of South Africa, and asked for a further update in the autumn, to include an indication of where South Africa — a key factor — then was in the equation.

7.17 In the meantime, we again reported this further information to the House because of the widespread interest in these issues, and for the same reason again drew it to the attention of the International Development Committee.[12]

The Minister's further letter of 8 November 2009

7.18 In this third letter, the Minister of State at the Department for International Development (Mr Gareth Thomas) provided an update on the most recent developments within the region and outlined South Africa's position, as follows:

State of play of the Interim EPA

— Botswana, Lesotho and Swaziland signed the Interim SADC EPA on the 4th June, and Mozambique signed shortly afterwards on the 15th June. Namibia is yet to sign;

— there had been no change in Namibia's position and none is expected before Namibia's presidential and parliamentary elections, due to be held on 27th and 28th November 2009. The Commission is prepared to review the situation post-election;

— South Africa and Angola had not initialled the Interim SADC EPA and were therefore not expected to sign an Interim EPA.

State of play of the full EPA

— discussions towards the full regional EPA covering all seven SADC countries (Botswana, Lesotho, Namibia, Swaziland, South Africa, Mozambique and Angola) were progressing with negotiations taking place over the services and investment chapters;

12 See headnote: HC 19–xxi (2008–09), chapter 5 (24 June 2009).

South Africa

— Negotiations towards the full EPA included South Africa, notwithstanding its expressed reluctance at signing a full EPA; meanwhile, South Africa continued to export to the EU under the Trade, Development and Cooperation Agreement (TDCA);

— South Africa had raised concerns that the EPA jeopardised regional integration by generating two trading regimes in the region, the SADC EPA and TDCA; the Commission had responded by making changes to the SADC EPA so that its tariffs were aligned to the TDCA;

— the Minister supported these steps to align tariffs and help preserve regional integration;

— at the 10–11 September 2009 EU-South Africa Summit, South Africa noted further concerns which included the Most Favoured Nation clause, Definition of Parties and Rules of Origin, and had agreed to participate in a trade meeting chaired by Botswana to try to resolve these concerns;

— DFID had also commissioned research to analyse the costs and benefits to South Africa of signing the SADC EPA as opposed to remaining under the TDCA, the results of which he expected to be received by January 2010, and which would be shared with all parties.

7.19 The Minister again concluded by saying that he would "continue to encourage the Commission to be as development focused and as flexible as possible in its negotiations with SADC states."

Our assessment

7.20 We once again thanked the Minister for this further informative update.

7.21 For the same reasons as before, we both reported it to the House and drew it to the International Development Committee.

7.22 Notwithstanding the Commission's and others' efforts, the whole basis of a regional EPA, interim or full, remained uncertain so long as South Africa's position remained likewise. We therefore asked the Minister for a further update before the Easter recess.

The Minister's letter 17 March 2010

7.23 In his letter, the Minister of State at the Department for International Development (Gareth Thomas) provides the following update:

State of play of the Interim EPA

"Botswana, Lesotho and Swaziland signed the Interim SADC EPA on 4 June, and Mozambique signed shortly afterwards on 15 June. South Africa and Angola have not initialled and are therefore not expected to sign the Interim EPA.

"Namibia initialled the interim SADC EPA, but remains reluctant to sign. There has been little progress recently. In December, I met with the Minister of Trade and Industry for Namibia, the Rt Hon Hage Geingob, and my officials have raised with the European Commission issues mentioned by him as concerns. These include the Most Favoured Nation (MFN) clause, which obliges both the EU and the ACP nations to extend to each other any more beneficial terms they extend to another major trading economy. I am writing to the Rt Hon Hage Geingob to keep him informed of developments.

"More broadly, the European Commission hosted a seminar on the 1–2 March in Maputo, Mozambique, to discuss the practical implications of the SADC interim EPA for the private sector. I understand that the seminar was well attended and I welcome the commitment of the private sector in Mozambique to engage with the opportunities created by the EPA.

State of play of the full EPA

"The Full Regional EPA is intended to cover all seven SADC countries (Botswana, Lesotho, Namibia Swaziland, South Africa, Mozambique and Angola). Discussions towards the Full EPA are progressing with negotiations taking place over the services and investment chapters.

South Africa

"South Africa remains reluctant to sign an Economic Partnership Agreement (EPA) with the EU, preferring to remain with its current trading arrangement, the Trade, Development and Cooperation Agreement (TDCA).

"I have previously mentioned that South Africa had raised concerns that the EPA could jeopardise regional integration by generating two trading regimes in the region, the SADC EPA and TDCA. The UK consistently supported the Commission and South Africa in seeking to align the two tariff regimes and help preserve regional integration. I am pleased to say that the Commission has now responded by aligning 53 tariff lines in the TDCA and SADC EPA and a proposal has been issued to this effect.

TDCA/SADC EPA Study

"We have now received the results of this study.[13]

"Key findings included that:

- "Economic costs to South Africa signing the EPA would be low
- "The EPA could boost regional trade with South Africa's neighbours

13 Which, the Minister says, is available at http://www.acp-eu-trade.org/library/library_detail.php?library_detail_id=5244&doc_language=Both.

- "Most Favoured Nation clause was highlighted as the only significant reason for South Africa to object to signing

"As a result of the findings, which reinforce what I have heard in meetings with ministers from the SADC region, I have raised the issue of MFN with the Commission and my officials are pushing for increased flexibility in this key area.

"We are actively disseminating the study, through a number of avenues including our High Commissions in South Africa and Botswana. The UK also hosted a seminar in Brussels on 4 March to discuss the research and delegates included representatives from the Commission, other Member States, NGOs and the European Parliament.

"I discussed the importance of EPAs with the new Trade Commissioner, Karel De Gucht, in February, at my first meeting with him in his new role. I remain fully committed to ensuring EPAs are development friendly and will continue to work with the Trade Commissioner and other Member States to achieve this."

The Council Decision

7.24 The document sets out the proposal referred to by the Minister, to amend the TDCA to align 53 tariff lines with the Interim SADC EPA.

7.25 In his Explanatory Memorandum of 17 March 2007, the Minister recalls concerns raised by South Africa that the interim SADC EPA would disrupt the SACU common external tariff — because 53 tariff lines on EU imports differed between the interim SADC EPA and the TDCA and would cause difficulties to the free circulation within SACU of the products covered by those tariff lines — and says that this amendment will address these concerns by aligning the two tariff regimes.

7.26 He explains that the alignment will be done in different ways depending on the tariff line: of the 53 tariff lines that are to be aligned:

- 49 tariff lines will be liberalised by 2015;
- the remaining four tariff lines will be frozen at 2007 TDCA tariff rates and for the time being there will be no further liberalisation.

These amendments to the TDCA will, the Minister concludes, mean that all 53 lines will face the same tariffs in both the SADC EPA and the TDCA.

The Government's view

7.27 The Minister says that the Government has "consistently supported steps being taken by the European Commission and South Africa to align tariffs and help preserve regional integration", and continues as follows:

"This proposal to amend the TDCA to align 53 tariff lines with the Interim SADC EPA will solve the most pressing issue related to the mis-match in tariffs between the SADC states and SACU.

> "Aligning these TDCA tariffs to those of the interim SADC EPA will mean that South Africa is liberalising these lines at a slower rate than originally foreseen in the TDCA. This will benefit South Africa because it will mean the region will operate with a coherent set of tariffs with Europe, facilitating the free circulation of products within SACU, preserving the SACU tariff coherence and ensuring clarity, long term economic predictability and legal certainty for economic operators."

Conclusion

7.28 **We are grateful to the Minister for this further information, which we once again report to the House because of the widespread interest in trade and development in southern Africa.**

7.29 **South Africa remains the key. The Minister is endeavouring constructively to remove obstacles towards South Africa's full participation in the EPA process. The measures embodied in this latest Council Decision would appear to be a further step in the right direction. We now clear the Council Decision.**

7.30 **Looking ahead, we should be grateful if the Minister would continue to update the Committee on any further significant developments in the SADC, both with respect to South Africa and generally.**

8 European Investment Bank lending in non-EU countries

(a)	
(31410)	Commission Report on operations carried out under the EIB external
7275/10	mandate in 2008
+ ADD 1	
COM(10) 74	
(b)	
(31364)	Mid-term Review of the European Investment Bank's External
—	Mandate 2007–2013
—	

Legal base	—
Document originated	4 March 2010
Deposited in Parliament	12 March 2010
Department	International Development
Basis of consideration	EM of 23 March 2010
Previous Committee Report	None; but see (30361) 5449/09, (30509) 8051/09: HC 19–xxiv (2008–09), chapter 7 (15 July 2009)
Discussed in Council	To be determined
Committee's assessment	Politically important
Committee's decision	Cleared; further information requested

Background

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

8.2 It offers four main services to clients:

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

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

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

— Venture Capital.

8.3 The EIB is active both inside and outside the European Union. According to its website, the majority of EIB lending is attributed to promoters in the EU countries (about 90% at present) supporting the continued development and integration of the Union; while outside the Union, EIB lending is governed by a series of mandates from the European Union in support of EU development and cooperation policies in partner countries — in the enlargement area in southern and eastern Europe; in the Mediterranean Neighbourhood; in Russia and the Eastern Neighbourhood; in the African, Caribbean and Pacific (ACP) countries; in South Africa; in Asia; and in Latin America.[14]

8.4 In 2009 the Committee considered a further Council Decision concerning the Community guarantee to the EIB for operations in non-EU countries under its current External Lending Mandate (ELM). It was originally adopted by the Council in December 2006 to cover the renewal of the ELM that expired on 31 January 2007, and was reported on twice by the Committee. On the latter occasion, the Committee noted that importance of value added to the ELM mandate renewal.

8.5 At that same meeting, the Committee also considered an assessment of an EIB "regional fund": FEMIP (Fund for Euro-Mediterranean Investment and Partnership). Agreement had been reached on improvements that — if effectively implemented — should enable FEMIP better to achieve its key objective of SME development, with two clear targets — doubling the private sector percentage of FEMIP lending, and more effective cooperation from partner governments, particularly with regard to the issuing of bonds in local currencies. There, as here, a mid-term review, with outside expert participation, was planned for 2010. In both instances, the Committee suggested that a way should be found of involving the Court of Auditors — they being extremely experienced in assessing the effectiveness of the Community's development assistance work.

8.6 Subsequently, in February and April 2009, the Committee considered an improved version of the Council Decision. This had resulted from an action brought by the European Parliament whereby the ECJ had ruled that it should originally have been adopted on the basis of Articles 179 EC (Development Cooperation) and 181(a) EC (Economic, Financial and Technical Cooperation with Third Countries) as opposed to Article 181(a) EC only. The Minister of State at the Department for International Development (Mr Gareth Thomas) said that the main practical difference was that the new legal basis would be adopted as a co-decision of the Council and the EP; the Decision would also now enable the Government "to emphasise its policy of promoting an EIB that focuses on the development impact of its operations (particularly in terms of the value they add), rather than the quantity." But he had one serious reservation: the EP proposal to bring the mid-term review forward would not give the reviewers adequate time, as the process had only recently begun. He and other Member States were pushing for the review to report back by April 2010; that the "transitional" arrangement be regarded as being valid until December 2011; and that the new Commission proposal be presented as soon as it was able to take account of the findings of the mid-term review in 2010. So, although clearing the

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

Decision,[15] the Committee asked the Minister to inform the Committee of his as-yet-uncompleted endeavours to rein in the EP and ensure that the next EIB mandate benefited from a proper evaluation of its present one.

8.7 Later in April, the Committee also drew attention to its views on all this in connection with a Court of Auditors Special Report on the effectiveness of the banking measures that formed part of the €8.7 billion MEDA programme, which was replaced in 2007 by the almost €12 billion European Neighbourhood Partnership Instrument/Programme.

8.8 Then, in July 2009, the Minister was able to report what he described (in our view rightly) as a good outcome, which would ensure that the next ELM mandate was informed by reviews of both the present mandate and the FEMIP, overseen by a group of "Wise Persons" that includes a senior DFID official. As well as welcoming this, the Committee also:

- looked forward to hearing from him in due course about the outcome of the reviews and the "Wise Persons'" report;
- continued to hope that, in some way, the extensive experience of the Court of Auditors in assessing this activity could also be brought to bear on the review process (proposed by the Committee, the Minister having reported in April that he had been unable to make much headway);
- took this opportunity to remind the Minister of its expectations concerning any review or evaluation of the ENPI;
- again made the point that the common denominator of all this activity was to ensure the efficient, economical and effective use of almost €12 billion of EU taxpayers' money.[16]

The Commission Report

8.9 This report from the Commission to the European Parliament and Council on operations carried out under the EIB's external mandate is made pursuant to Article 6 of Decision No. 633/2009/EC, which requires that the Commission shall report annually to the European Parliament and the Council on EIB financing operations.

8.10 The report reviews the EIB's operation in 2008 under the ELM, provides a summary of operations funded with the EIB's own resources (i.e. at the Bank's own risk) and describes the cooperation between EIB, the Commission and other International Financial Institutions (IFIs).

8.11 EIB lending in the regions covered by the Decision, remained stable at around €5.5 billion (£4.9 billion) in 2007 and 2008. EIB lending under the Mandate reached €4 billion (£3.6 billion) in 2008. However in Eastern Europe and Russia, planned investment projects suffered from the consequences of the financial and economic crises and there was slow progress on implementation. EIB lending at its own risk amounted to €1.5 billion (£1.33

15 Which was in due course adopted as Decision No. 633/2009/EC.

16 See headnote: (30361) 5449/09 and (30509) 8051/09: HC 19–xxiv (2008–09), chapter 7 (15 July 2009).

billion) in 2008, compared to €1.9 billion (£1.7 billion) in 2007. Own risk operations in Pre-Accession countries increased by 23%, with 98% of operations being implemented under the EIB Pre-Accession Facility: Turkey was the largest recipient with 82% of lending under this facility, followed by Croatia with 12% and Serbia with 6%. The focus of EIB activity was on private sector operations, with SMEs representing 64% of total commitments.

8.12 EIB operations under this Decision should support relevant EU external policy, e.g. energy security and the protection of the environment. The energy sector was the largest recipient of EIB loans in 2008 with 34% of total financing. Transport (rail, road, port and urban transport infrastructure) represented 29% of total lending — 71% of such loans were granted in Turkey.

8.13 In his Explanatory Memorandum of 23 March 2010, the Minister of State at the Department for International Development (Mr Gareth Thomas) notes that the Decision recommends that the Commission and the EIB ensure that their policies are more compatible; that both institutions signed a Memorandum of Understanding defining the terms of this enhanced cooperation: and that both are already cooperating in financing arrangements where EIB financing is mixed ("blended") with EU Budgetary resources. The Minister cites the Western Balkans as an example, where Commission grants have been blended with loans from the EIB, the European Bank for Reconstruction and Development, Member States and others in the Western Balkans Investment Framework. The Minister also draws attention to the establishment of the Neighbourhood Investment Facility, which he says had been set up to mobilise additional funding for infrastructure projects by providing grant support for lending operations of European IFIs.

8.14 With regard to cooperation with International Financing Institutions: the EIB pursued its cooperation with other IFIs and European bilateral institutions in 2008 under the ELM, its own risk facilities and the Cotonou Agreement. The share of EIB loans co-financed with other IFIs or European bilateral institutions, in terms of volume, represented 55% of total commitments under the Decision in 2008 compared with 42% in 2007.

The Government's view

8.15 The Minister welcomes the closer co-operation of the EIB with the European Commission, International and European Finance, and European Development, Institutions. However, referring to the recent midterm review of the EIB's ELM (which we deal with below), the Minister says that there remains more to be done in this regard:

> "HMG supports the midterm review's call for even closer collaboration with IFIs and EDFIs as well as the greater coherence between the EIB mandate and high-level EU objectives, focusing on sectors of EIB comparative advantage in support of EU policies.
>
> "HMG also welcomes increased evidence of the blending of EU grants and EIB loans through relevant financing arrangements. However, the operation of these arrangements needs to be compatible. HMG supports the midterm review's call for an early study of the existing blending schemes to define the most effective structure for delivering the best value for money."

The Mid-term Review

8.16 The document is a communication from the Steering Group of "Wise Persons" appointed by the EIB Board of Governors, who were tasked with preparing a mid-term report on the European Investment Bank's external mandate under Article 9 of Council Decision No 633/2009/EC.

8.17 The size of the ELM was set at €27.8 billion (£24.8 billion). This included a €2 billion (£1.78 billion) optional mandate to be decided by the European Parliament and the Council. The primary objective was to provide the basis for the Parliament/Council decision as to whether to release the optional mandate for the period from 2010; also whether to make other amendments to the mandate; and how to ensure maximum added value and efficiency in EIB's operations. It looked at all aspects of EIB lending outside Europe, and was informed by an independent evaluation.

8.18 The "Wise Persons" recommended:

- A streamlined EIB mandate with high-level objectives for all regions to enhance the coherence of EIB external activities, and focusing on EIB's comparative advantage in support of EU policies while leaving room to meet beneficiaries' requirements;
- Enhancing EIB's contribution to EU development cooperation objectives, in particular by focusing on areas such as climate change, economic infrastructure and local private sector development;
- Releasing the optional mandate of €2 billion (£1.78 billion) in support of the fight against climate change, including adaptation;
- The range of financial instruments be expanded to include guarantees, more technical assistance, concessional finance (in particular to support development) and equity, provided that the EIB is able to access the necessary grant funds;
- The European Commission and the EIB should co-operate early enough in the EIB lending process to maximise opportunities for project co-financing by blending grants and loans;
- EIB and other IFIs should cooperate wherever justified with joint co-financing;
- In the longer term, consideration should be given to options for further leveraging of the strong EIB capacity to raise funds in global capital markets. The "Wise Persons" explored two alternatives, to be seen as building on its earlier recommendations with regard to the creation of an EIB entity and an EU platform for development cooperation:
    a. The creation of a "European Agency for external financing", integrating the external financing activities of the EIB and the investment-related ones of the Commission in support of EU policies in all countries outside the EU.

b. The creation of a major European financing body, integrating the relevant means of the Commission, the EIB and the EBRD, to form a "European Bank for Cooperation and Development".

The Steering Group recommends the formulation of an independent working group to explore these options in more detail.

The Government's view

8.19 The Minister fully supports continued EIB lending outside the EU and says the Report includes a number of useful recommendations:

> "In particular we, and most Member States, support streamlining the mandate to a single set of objectives and improving EIB's cooperation with the Commission. There is a clear need for the EIB to have a greater role in shaping Commission country strategies and EIB policy to reflect those strategies."

8.20 The Minister then continues as follows:

> "HMG can broadly support the release of the optional mandate of €2 billion (£1.78 billion) in support of the fight against climate change, providing the EIB can guarantee effective utilisation of the extra funds. However, this should not be seen as precedent for higher external lending levels in the next financial perspective.
>
> "HMG sees little justification in considering the longer term options for revising the structure of the EIB and we are particularly opposed to the idea of an EU Development Bank (or Agency). To be workable, these options would require substantial additional capital from Member States or the EU Budget, which is unrealistic in a fiscally constrained environment. There are also substantial governance complications — not least the issue of how non-EU shareholders (from the EBRD) would be reflected in the make-up of an EU Bank or Agency.
>
> "There may be merit in the recommendation of a subsidiary, but HMG remains to be convinced. As suggested by the wise persons, this proposal would need to be backed by a full and detailed feasibility study on which basis member states could properly assess the costs and benefits of such a solution. It could take up to 2 years to review and create a subsidiary (if it was deemed that this was the desired outcome). At present, the majority of Member States are unconvinced by the subsidiary or any of the longer term options."

8.21 With regard to the recommended introduction of a "Blending Platform" as a mechanism to improve the coordination and blending between EIB loans and grants, the Minister describes this as "a helpful idea that could lead to more efficient outcomes", but also says that "the Bank would need to be clear what the optimal model and governance would be."

8.22 The Minister also states that there needs to be greater co-operation between the EIB, the Commission and other IFIs. He suggests that this could be achieved through the sharing of local offices, particularly with the EU Delegations.

8.23 He also sees a need for more to be done to improve EIB and EBRD's relations: "We will work with both Banks to review the existing Memorandum of Understanding in order to establish a smoother relationship going forward."

8.24 Turning to the *Financial Implications*, the Minister says:

> "Budgetary implications of agreeing the extra €2 billion are likely to be minimal if not non-existent — with any impact an indirect result of having to provision the EU Guarantee Fund (which backs much of the EIB's external lending) from the EU Budget.
>
> "The longer-term structural reform options (i.e. an EU Development Bank or Agency) could well have significant financial implications and we do not support these options, nor do we expect them to find support from other Member States.
>
> "The subsidiary proposal (a short-term option) could result in additional costs for Member States. We will assess this risk in due course if a feasibility study is conducted by the EIB.
>
> "None of the other short-term recommendations have any financial implications."

8.25 Finally, on the Timetable, the Minister says that:

— the Commission plans to draft the new regulation in April for adoption by Co-decision;

— there is no date set for adoption but the existing Mandate expires in October 2011;

— there may be a non-legislative orientation debate in the Economic and Financial Council on 18 May;

— on 8 June there will be legislative deliberation at the EIB Board of Governors meeting and ECOFIN.

Conclusion

8.26 **The position on the conditional additional €2 billion would appear to be more mixed than might have been hoped for: no significant financial implications, but attracting only the Minister's broad support for a specific area of activity, and even then suggesting a lack of confidence in the Bank's capacity to use the extra funds effectively. With this in mind, we note that the Minister makes no mention of any review of the Bank's achievements under the FEMIP (see paragraph 8.5 above), and ask him to let us know what has happened here.**

8.27 **The Minister's views on the other main proposals range from the mildly positive — e.g., the recommended introduction of a "Blending Platform" — to the plainly negative — "particularly opposed to the idea of an EU Development Bank (or Agency)". He also wants a streamlined EIB mandate with a single set of objectives and improved EIB cooperation with the Commission, with a greater role EIB in shaping Commission country strategies and EIB policy reflecting those strategies.**

8.28 **Though he does not say so specifically, we presume that these are the positions that he will be taking in the discussions on the new regulation, and that they will be reflected in it, as and when it emerges, and is submitted for scrutiny.**

8.29 **In the meantime, we now clear the documents.**

9 Carbon dioxide emissions from new light commercial vehicles

(31093) 15317/09 + ADDs 1–2 COM(09) 593	Draft Regulation setting emissions standards for new light commercial vehicles as part of the Community's integrated approach to reduce CO_2 emissions from light-duty vehicles

Legal base	Article 175EC; co-decision; QMV
Department	Transport
Basis of consideration	Minister's letter of 24 March 2010
Previous Committee Report	HC 5–iv (2009–10), chapter 5 (15 December 2009)
To be discussed in Council	See para 9.7 below
Committee's assessment	Politically important
Committee's decision	Cleared

Background

9.1 Because of the large (and increasing) contribution which carbon dioxide from vehicles makes to overall emissions of greenhouse gases, the Community has taken a number of measures to address this issue. These include voluntary agreements with European, Japanese and Korean manufacturers aimed at reducing the level of such emissions from new cars, in addition to which the European Council has endorsed a target of 120g/km by 2012, whilst the Commission's Energy Efficiency Plan[17] said that it would if necessary propose in 2007 legislation to ensure that target is achieved.

9.2 The Commission duly put forward in December 2007 a draft proposal[18] — since adopted as Regulation (EC) No 443/2009 — specifying that the average specific emissions of new passenger cars should not exceed 130g/km[19] as from 2012, and this was followed in October 2009 by the current document which proposed a corresponding restriction in relation to light commercial vehicles. The proposal would set a mandatory target of 175g/km for vehicles of category N1[20] from 2014 (with 75% of a manufacturer's

17 (27944) 14349/06: see HC 41–ii (2006–07), chapter 8 (29 November 2006).

18 Category M1, as defined in Annex II of Directive 2007/46/EC, with a mass not exceeding 2,610kg.

19 The remaining 10g/km would be achieved by a range of other measures.

20 As defined in Annex II of Directive/2007/46/EC, with a reference mass not exceeding 2,610 kg.

registrations being taken into account in 2014, 80% in 2015, and full compliance required from 2016), and there would also be an overall longer-term target of 135g/km for 2020, subject to a review before 1 January 2013 to confirm its feasibility. Consideration would also be given before then to the feasibility of extending the measure to N2 and M2 vehicles,[21] which had been excluded from the proposal as sufficient carbon dioxide data was not available.

9.3 More specifically, the proposal would;

- set individual targets for manufacturers according to the so-called "utility" of their vehicles (which in practice is proportional to their mass);
- enable manufacturers to apply these targets to the average of the emissions for all new cars they register in the Community in each calendar year, and to credit up to 7g/km for new off-cycle emission-saving technologies (such as low-energy headlights) towards the targets;
- allow super-low emitting vans to be counted as multiples[22] of their actual sales, so lowering the manufacturer's recorded emissions and encouraging the development of these vehicles;
- allow different manufacturers to form, for a period up to five years, a pool, which would be treated as if it was one manufacturer for the purpose of determining compliance with the targets;
- require a manufacturer which fails to meet its target to pay an excess emissions premium, with the proceeds being considered as revenue for the Community budget; and
- provide for estimations of emissions from multi-stage vehicles involving different manufacturers to be reached from those of whole vehicles made by the base manufacturer.

Certain categories of "special purpose" vehicles, such as emergency vehicles, or those with wheelchair accessibility, would be exempted from the proposals, and smaller, independent manufacturers registering fewer than 22,000 new light commercial vehicles a year would be able to apply to the Commission for a lower target, provided this was consistent with its technical potential to reduce its carbon dioxide emissions.

9.4 As we noted in our Report of 15 December 2009, the Government supports the Commission's intention to legislate, and considers that the proposal is justified on subsidiarity grounds in relation to both environmental protection and the internal market, adding that it explicitly identifies areas of national competence (such as taxation) as complementary actions which individual Member States could take to reduce emissions. Our Report also recorded the Government's comments on specific aspects of the proposal, including the emission target levels and dates; the derogation for small-volume

21 N2 vehicles are small lorries designed for the carriage of goods, and having a gross mass between 3500kg and 5000kg, whilst M2 vehicles are minibuses with more than eight seats and with a gross mass less than 5000kg.

22 A multiple of 2.5 would be used in 2014, and 1.5 in 2015.

manufacturers; "pooling"; the definition of utility; the treatment of multi-stage vehicles; and penalties.

9.5 We commented that, although the proposal is based to a substantial extent on an earlier proposal relating to cars (and now enacted in Regulation (EC) No 443/2009), it represented a further stage in the Community's attempts to limit carbon dioxide emissions from light duty vehicles, and we therefore thought it right to draw it to the attention of the House. That said, we noted that the Government would be producing an Impact Assessment in the context of its public consultation, and we said that we would consider the document further when that Assessment was available, holding it under scrutiny in the meantime.

Minister's letter of 24 March 2010

9.6 We have now received from the Minister of State at the Department for Transport (Sadiq Khan) a letter of 24 March 2010, enclosing an Impact Assessment which has been prepared as part of the Government's consultation, which runs until 10 June 2010. This suggests that the annual cost of the proposal as it stands (arising from the introduction of fuel-saving technology, and the additional noise, other atmospheric pollution and additional infrastructure needs which would arise if reduced fuel costs should lead to an increase in the mileage driven) could be between £92 million and £183 million, whilst the annual benefits (arising from reduced emissions of carbon dioxide and from a reduction in driving costs resulting from greater fuel efficiency) could be between £195 million and £221 million. The Assessment also analyses the impact if an attempt were made to negotiate certain changes — for example, deferring the full application of the 175g/km target from 2016 to 2017 and 2018, reducing and/or deferring the long-term target of 135g/km, using a different parameter to define vehicle utility, and seeking a different penalty regime) — the broad effect of these being to reduce both the costs and benefits as compared with the Commission's proposal (though in each case there would continue to be a net benefit).

9.7 The Minister also says that a number of Working Party meetings have been held on the proposal, but that there has been little progress towards a commonly-agreed text. There was also an exchange of views at the Environment Council on 15 March, when many delegations broadly supported the proposed long-term target of 135g CO_2/km to be met in 2020, although the UK strongly supports the need to subject this target to a review and thorough Impact Assessment by 2013. The Minister says that the Spanish Presidency sees this dossier as a priority, and that it is possible it may seek to achieve a general approach at the Environment Council on 21 June, although the proposal's complexities mean that this may not be possible. He adds that discussion has also begun recently in the European Parliament, with an initial exchange of views in the Environment, Public Health and Food Safety Committee, and a Plenary first reading currently scheduled for October/November.

Conclusion

9.8 **As we noted in our Report of 15 December 2009, this proposal relating to light commercial vehicles is similar in form and intention to the measure applying to cars (and now adopted as Regulation (EC) No 443/2009). The Government has also made it clear that appropriate action regarding the transport sector is a central element of the**

strategy which it — and the EU — is pursuing to reduce emissions of carbon dioxide. It now seems clear from the Impact Assessment which the Minister has provided that, notwithstanding the uncertainties inherent in figures of this kind, the proposal (and any likely variation of it) is expected to produce a net benefit. In view of this, we see no over-riding reason to keep the document under scrutiny, and we are therefore clearing it.

10 Value added taxation

(30406) 5985/09 COM(09) 21	Draft Council Directive amending Directive 2006/112/EC on the common system of value added tax as regards the rules on invoicing

Legal base	Article 113 TFEU; consultation; unanimity
Department	HM Treasury
Basis of consideration	Minister's letter of 29 March 2010
Previous Committee Report	HC 19–ix (2008–09), chapter 4 (4 March 2009)
Discussed in Council	16 March 2010
Committee's assessment	Politically important
Committee's decision	Cleared

Background

10.1 Council Directive 2001/115/EC, the Invoicing Directive, introduced common Community rules on VAT invoices, thought necessary for the single market to function properly. The Invoicing Directive has been incorporated into Council Directive 2006/112/EC, the VAT Directive, Article 237 of which says "The Commission shall present, at the latest on 31 December 2008, a report and, if appropriate, a proposal amending the conditions applicable to electronic invoicing in order to take account of future technological developments in that field".

10.2 In that report, published in January 2009, the Commission took the opportunity to discuss wider issues perceived as weaknesses in VAT legislation. Thus the Commission discussed not only technological developments in e-invoicing and VAT obstacles to promoting e-invoicing but also:

- measures to further simplify, modernise and harmonise VAT invoicing rules, covering issue of an invoice, invoice details and storage of invoices;
- measures to help tackle VAT fraud, covering chargeability of tax on intra-Community supplies and right of deduction; and

- other simplification measures, covering cash accounting.[23]

10.3 On the basis of that report the Commission suggested the need for further legislation, as proposed in this draft Directive. The draft Directive would:

- address the varied application of the VAT rules on e-invoicing across the Community, a current deterrent to its widespread acceptability to and use by businesses. This is to be achieved by allowing businesses to send electronic invoices under the same conditions as they would send paper invoices and, in particular, by removing from Member States the option to require use of an advanced electronic signature or electronic data interchange;

- address variations in application of the current invoicing rules across Member States, in order to simplify matters for businesses and to enable them to take advantage of options such as self-billing and summary invoices. The provisions concern mainly the conditions for issuing an invoice, the content of VAT invoices and the storage of invoices;

- enhance anti-fraud measures by complementing provisions in a draft Directive and draft Regulation,[24] primarily concerned with the shortening of the timeframe for recapitulative statements.[25] The proposal would create a single date on which tax becomes chargeable, being the date of the chargeable event as determined by the time of the supply. By requiring an invoice to be issued by the 15th day of the month following the chargeable event, the invoice would remain the principal document evidencing intra-Community supply;

- enhance anti-fraud measures by requiring the customer to hold an invoice in order to exercise the right to deduct input tax in all cases where the supplier is required to issue an invoice — at present in certain cases, such as reverse charge transactions, the customer is not obliged to hold a valid invoice in order to exercise the right to deduct. But the proposal would not prevent Member States from allowing a right of deduction, subject to other evidence, when a valid invoice is not available; and

- enable all Member States to offer the cash accounting scheme[26] as an option to SMEs with a turnover falling below a threshold, to be determined by them but no higher than €2.00 million (£1.80 million) — the UK and some other Member States currently operated this scheme by way of derogation.[27]

10.4 When we considered this proposal, in March 2009, we noted both the Government's positive view of the e-invoicing and cash accounting aspects of draft Directive and its caution about the proposed anti-fraud and more general invoicing measures. We asked, before considering the document further, to have information about:

23 (30407) 5991/09: see HC 19–ix (2008–09), chapter 4 (4 March 2009).

24 (29570) 7688/08: see HC 16–xx (2007–08), chapter 5 (30 April 2008), HC 16–xxviii (2007–08), chapter 5 (22 July 2008) and HC 16–xxxi (2007–08), chapter 11 (15 October 2008).

25 Suppliers provide information in recapitulative statements about what they have supplied to whom in other Member States. In the UK they are known as EC Sales Lists.

26 The scheme enables SMEs to account for VAT on the basis of cash payments made or received, rather than on an invoice date basis.

27 (28040) 16810/06: see HC 41–ii (2006–07), chapter 17 (29 November 2006).

- the outcome of the Government's discussions with UK business about the proposed measures;
- the Government's impact assessment; and
- in due course, developments in negotiation of the proposed legislation.

Meanwhile the document remained under scrutiny.[28]

The Minister's letter

10.5 The Financial Secretary to the Treasury (Mr Stephen Timms) now says that the Government's discussions with UK business about the proposed measures have been carried out informally during negotiation of the proposed legislation. On the interplay between the views of UK business and the negotiations, the Minister reminds us first of the intention to address the varied application of the VAT rules on electronic invoicing across the EU, a current deterrent to its widespread acceptability and use by businesses, by removing the options that enabled Member States to require the use of an advanced electronic signature or electronic data interchange. He comments that this would enable businesses to be free to send electronic invoices under the same conditions as they would send paper invoices, an approach which the Government and UK business supports.

10.6 Turning to the part of the draft Directive concerning the VAT rules on invoicing more generally, where the aim is to remove some inconsistencies in the current rules, the Minister says that:

- this was mostly uncontroversial and supported by UK business;
- one aspect, however, was opposed by the exempt sector, including in particular financial and insurance businesses;
- this was a provision making it compulsory for all businesses to issue VAT invoices for all supplies, including those exempt from VAT, in contrast to the present situation which allows Member States to release businesses from that obligation in respect of exempt supplies made in their territory;
- this option applies in the UK, so the proposed provision had a potential negative impact on these exempt sectors, as it would have increased their administrative burdens substantially; and
- the finance and insurance sectors were able to provide a solid body of evidence to demonstrate that and the Government was therefore able to pass this information on to other Member States to help inform the negotiation process.

10.7 On that part of the draft Directive concerning measures to combat VAT fraud, the Minister reminds us that the Government remained to be convinced of the arguments for including fraud measures within this set of proposals, which were predominantly for the benefit of business. He then says that:

28 See headnote.

- in the event UK business made strong representations about the way the proposed shortening of the timeframe for recapitulative statements would work in practice;
- there were two principal objections to this proposed change;
- first, as drafted, the provision would also impact on the treatment of domestic invoices — while businesses could accept that there was a rationale for a change with regard to intra-EU supplies, they could see no sense in changing the current treatment Member States apply to invoices within their territory;
- the second objection was a practical one — most businesses do not keep a record of the chargeable event and, indeed, in some cases it can be rather difficult to tie down; and
- such a rule was potentially unworkable and would impose unnecessary additional burdens — by contrast, a rule based on the date of invoice could work, was practical and would not impose unnecessary additional burdens.

10.8 The Minister then reminds us, in relation to the aspect of the draft Directive enabling all Member States to offer the cash accounting scheme as an option for SMEs below a certain turnover threshold, that this is already applied in the UK (and some other Member States) by derogation and comments that it is important to UK SMEs that this continues.

10.9 Turning to the actual development of the negotiations on the proposed Directive the Minister tells us that:

- initial discussions commenced under the Czech Presidency in the first half of 2009, based on the original Commission draft;
- the Swedish Presidency continued the discussions during the second half of 2009, based on its compromise texts;
- more recently the Spanish Presidency made the matter a VAT priority, produced a large number of texts and held many meetings in quick succession over recent weeks;
- five such texts moved away from the Commission's proposal for facilitating the take-up of electronic invoicing, changed the approach to the obligation to invoices for exempt supplies and did not address the practical issues raised by UK business in relation to domestic invoices; and
- from the Government's perspective, none of these texts were wholly acceptable, given the valid concerns UK business had raised.

10.10 The Minister says that the Government therefore continued to press for substantial improvements to the draft Directive and finally, on 12 March 2010, a sixth text emerged which:

- retained, for electronic invoicing, the principles that the Commission aspired to and would enable businesses to be free to send electronic invoices under the same conditions as they would send paper invoices;

- would therefore help provide the right sort of environment for greater take up of electronic invoicing in the future and potentially reduce business burdens across the EU;
- included an option to enable a Member State to remove the obligation to issue VAT invoices for exempt supplies made in its territory;
- introduced a mandatory provision to remove the obligation to issue VAT invoices in respect of cross border exempt finance and insurance supplies within the EU;
- included the fraud provision, but without an impact on domestic treatment;
- changed the rules for cross-border supplies so that they would be based on the date of invoice and thus more practical from a business perspective; and
- provided the legal base for the Government to continue to operate the cash accounting scheme, once the UK's existing derogation runs out at the end of 2012.

10.11 The Minister then says that:

- the Presidency presented this text of the draft Directive to the ECOFIN Council for agreement as a general approach;
- the Council, on 16 March 2010, agreed the general approach, with inclusion in the text of a review clause which would require the Commission to assess (based on an independent economic study) the effectiveness of the new rules on electronic invoicing by 31 December 2016;
- given that this text so closely reflected the Government's negotiation priorities and the very real risk that any further delay would potentially put hard won gains at risk, it accepted the general approach, as did all other Member States; and
- following some final tidying up of the text, the Government expects the draft Directive to go forward to a future Council, possibly on 8 June 2010, for adoption.

10.12 The Minister encloses with his letter an impact assessment based on the most recent text of the draft Directive. This shows that there would be no additional costs for the Government or UK business and that UK business would benefit annually, over the first five years, from a reduced administrative burden worth between £0.9 million and £8.5 million.

10.13 Finally the Minister says:

> "While it is regrettable that the scrutiny procedures were not completed I hope that you can understand why the UK accepted the general approach, given the circumstances."

Conclusion

10.14 **We note that the text of this draft Directive, to which the Government has agreed, meets its own objectives and those of UK business and so we clear the document.**

10.15 **However, we are concerned about the clear breach of the scrutiny reserve resolution occasioned by the Government's participation in the general approach on the draft Directive. We note the Minister's account of the intensive discussions in the final stages of Council negotiations but find unacceptable both:**

- **the lack of any indication that the Government's negotiators attempted to assert the parliamentary reserve; and**
- **the unapologetic and rather throwaway comment of the Minister about non-completion of scrutiny procedures.**

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

Department for Environment, Food and Rural Affairs

(31408) 7267/10 + ADD 1 COM(10) 75	Draft Council Decision concerning the approval, on behalf of the European Union, of amendments to the Convention on Future Multilateral Cooperation in the Northwest Atlantic Fisheries.
(31418) 7505/10 COM(10) 88	Commission Communication: An assessment of the link between the IMO Hong Kong Convention for the safe and environmentally sound recycling of ships, the Basel Convention and the EU waste shipment regulation.

Foreign and Commonwealth Office

(31428) — —	Draft Council Decision on EU activities in support of the Arms Trade Treaty, in the framework of the European Security Strategy.

Government Equalities Office

(31413) 7370/10 COM(10) 78	Commission Communication — *A Strengthened Commitment to Equality between Women and Men: A Women's Charter* — Declaration by the European Commission on the occasion of the 2010 International Women's Day in commemoration of the 15th anniversary of the adoption of a Declaration and Platform for Action at the Beijing UN World Conference on Women and of the 30th anniversary of the UN Convention on the Elimination of All Forms of Discrimination against Women.

Department for International Development

(31358) 6892/10 —	Special Report No. 18/2009 — *Effectiveness of EDF support for Regional Economic Integration in East Africa and West Africa*.

Department for Transport

(31412) 7359/10 COM(10) 65	Draft Regulation amending Directive 2009/42/EC on statistical returns in respect of carriage of goods and passengers by sea.

HM Treasury

(31434) 7830/10 COM(10) 107	Draft Amending Budget No.1 to the general budget 2010 — Statement of Revenue and Expenditure by Section — Section I — Parliament.
(31435) 7831/10 COM(10) 108	Draft Amending Budget No. 2 to the general budget 2010 — Statement of Revenue and expenditure by Section — Section III — Commission — Section VI — European Economic and Social Committee — Section VII — Committee of the Regions.

Formal minutes

Wednesday 30 March 2010

Members present:

Michael Connarty, in the Chair

Mr David S Borrow
Mr James Clappison
Jim Dobbin
Mr David Heathcoat-Amory
Keith Hill

1. Scrutiny of Documents

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

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

Paragraphs 1.1 to 11 read and agreed to.

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

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

[Adjourned till Wednesday 7 April at 2.30 pm.

Standing order and membership

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

a) to report its opinion on the legal and political importance of each such document and, where it considers appropriate, to report also on the reasons for its opinion and on any matters of principle, policy or law which may be affected;

b) to make recommendations for the further consideration of any such document pursuant to Standing Order No. 119 (European Standing Committees); and

c) to consider any issue arising upon any such document or group of documents, or related matters.

The expression "European Union document" covers —

i) any proposal under the Community Treaties for legislation by the Council or the Council acting jointly with the European Parliament;

ii) any document which is published for submission to the European Council, the Council or the European Central Bank;

iii) any proposal for a common strategy, a joint action or a common position under Title V of the Treaty on European Union which is prepared for submission to the Council or to the European Council;

iv) any proposal for a common position, framework decision, decision or a convention under Title VI of the Treaty on European Union which is prepared for submission to the Council;

v) any document (not falling within (ii), (iii) or (iv) above) which is published by one Union institution for or with a view to submission to another Union institution and which does not relate exclusively to consideration of any proposal for legislation;

vi) any other document relating to European Union matters deposited in the House by a Minister of the Crown.

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

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

Current membership

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