HOUSE OF LORDS SESSION 2002–03
20th REPORT

SELECT COMMITTEE ON
THE EUROPEAN UNION

GOVERNMENT RESPONSES: REVIEW OF SCRUTINY; EUROPOL'S ROLE IN FIGHTING CRIME; AND EU RUSSIA RELATIONS

Ordered to be printed 29 April 2003

PUBLISHED BY AUTHORITY OF THE HOUSE OF LORDS
LONDON – THE STATIONERY OFFICE LIMITED

£7.50

HL Paper 99

TWENTIETH REPORT

By the Select Committee appointed to consider European Union documents and other matters relating to the European Union.

ORDERED TO REPORT

GOVERNMENT RESPONSES: REVIEW OF SCRUTINY; EUROPOL'S ROLE IN FIGHTING CRIME; AND EU RUSSIA RELATIONS

The Committee publishes as necessary Government responses to our reports. Three such responses to reports made this session are printed here. All three of these reports are due to be debated in the House of Lords shortly.

CONTENTS: GOVERNMENT RESPONSES

APPENDICES

APPENDIX 1

HOUSE OF LORDS SELECT COMMITTEE ON THE EUROPEAN UNION
SESSION 2002–03: FIRST REPORT

REVIEW OF SCRUTINY OF EUROPEAN LEGISLATION
GOVERNMENT'S RESPONSE

The Government welcomes this review which was prompted by the report of the Group on the Working Practices of the House of Lords, chaired by the Lord Privy Seal and Leader of the House, Lord Williams of Mostyn. We congratulate the Committee on its comprehensive survey of the issues surrounding scrutiny of European legislation. The review is, of course, timely. It coincides with the Convention on the Future of Europe which is looking at the role of national parliaments in the EU's decision-making processes. Moreover, it follows hard on the heels of a parallel review by the European Scrutiny Committee of the House of Commons to which the Government responded last October, published by the Committee as their Second Special Report, 2001–02, HC 1256.

The Government is pleased to acknowledge the impact that the reports of the Committee have had over the years, both in helping to shape the Government's own policy positions and in influencing opinion in Brussels. The Government is keen to assist the Committee in maintaining the impact of its reports. Our responses to the Committee's recommendations below are framed with that objective in mind.

160. *National parliamentary scrutiny of EU legislation has a clear constitutional purpose and to that end entails (paragraphs 12–13):*

- The accumulation, presentation and summary of relevant material, including information, statistics, explanation and analysis.
- The provision of information to the House and to the public as a contribution to transparency.
- Drawing the attention of the House, the Government, European institutions and the public to significant matters contained within that information and in particular making recommendations—"focusing the debate".
- Contributing to the law-making process by detailed analysis of draft texts, by exposing difficulties and proposing amendments.
- An examination of the Government and its role in agreeing European legislation and, as part of that process, compelling the Government not only to think through what it is doing or has done but sometimes to account for it.
- An examination of the Commission and the policies it formulates.

The Government agrees that a purposeful and effective system of parliamentary scrutiny of EU business should indeed be a process of rigorous examination and analysis with a view to ensuring that those responsible are accountable to Parliament for their actions. In particular, it is right that scrutiny should extend beyond the examination of specific proposals for EU legislation, to include a consideration of policy development within the EU at an early stage. Much of this has to do with providing more explanation, both for Parliament and for the public, and so increasing awareness of the purpose and likely impact of EU policies and placing EU legislation within a wider context.

161. *Our inquiries can be of value both on legislative proposals and on early discussion documents but we endorse the near unanimous view of our witnesses that we should aim to work at the earliest possible stage in the policy making cycle (paragraphs 29–30).*

162. *Contributing to a climate of opinion forming is a key way in which we can have an impact, by analysing issues and presenting a range of evidence combined with our own conclusions on it (paragraph 140).*

As we have repeatedly stressed, scrutiny by the Committee is most effective, and influential, the earlier it takes place. The Committee will have more influence if it considers issues as early as possible in the process, and ideally before opinion formers in Brussels have fully formulated their own ideas. Upstream examination of eg the Commission's annual legislative and work programme is just one way of doing this, which is why the Government deposited it for the first time last year, and will continue to do so.

Reliance on definitive texts, which by their nature are often only produced late in the decision-making process, reduces the practical influence of the Committee and the impact of its work. The Government has

of course given an undertaking to consider points raised by the Committee at any point in the negotiating process. But left to the last moment, or wielded as a delaying device, scrutiny by any national parliament can be viewed in Brussels more as a procedural requirement than a substantive contribution to the policy debate.

163. *For the scrutiny reserve to be working "properly", it is first necessary for the Committee not to maintain the reserve unnecessarily: to do so would weaken the Government's negotiating position and devalue the reserve. But it is also essential that the Government does not override it without good cause (paragraph 63).*

164. *A mandatory scrutiny system would not work under UK circumstances (paragraph 70).*

The Committee helpfully recalls, and the Government agrees, that a mandatory system would force the Government to negotiate for British interests in Europe with one hand tied behind its back (as many believe the Danish scrutiny system effectively ties its Government's hands) putting it at a negotiating disadvantage relative to other Member States in the Council.

As Lord Williams told the Committee on 8 October 2002, the Scrutiny Reserve exercises an important discipline on the Government. The Government does not override the Reserve lightly. It devotes considerable resources to ensuring that the override is used only as a last resort option in exceptional circumstances. Its record in this respect, though capable of improvement, is respectable. In 2002, over 1,200 documents were deposited. The reserve was overridden in 71 cases, 28 of which occurred when the House was not sitting. Whenever a scrutiny override takes place, the responsible minister accounts for it to the Committee or the House, as required by the Scrutiny Reserve Resolution. Nor are we complacent about the number of overrides. For example, the European Secretariat of the Cabinet Office now seeks to identify dossiers that may present timing difficulties, and to help manage the scrutiny process to minimise the risk of an override.

Recommendations Addressed to the Government

165. *The Government should always draw to the Committee's attention any matters under discussion or consideration by the Commission which might merit detailed scrutiny when a proposal comes forward. Such an early warning system would greatly assist us (paragraph 31).*

The Government will do what it can, principally by liaising with the Clerks of the Committee. The Committee's task should also be helped now that the Commission and other institutions have readily-accessible websites which provide direct access to information both about what they have done and what they are planning to do.

166. *It continues to be essential that the right documents are deposited by the Government in good time (paragraph 63).*

Electronic receipt of documents from the Council Secretariat has significantly speeded up the process of depositing documents. We calculate that on average the Committees now receive documents some two weeks earlier. We are not aware of any cases where the "right documents" are not being deposited. Where there is doubt, the decision on whether to deposit is discussed and agreed with the Clerks.

167. *Subject to final agreement with the Commons (which has made a similar proposal), the following categories of document need no longer be deposited for scrutiny, although we would wish to see the same arrangements made to keep us informed as are proposed by the House of Commons (paragraphs 51–54):*

(1) Community positions on rules of procedure for various Councils and Committees, including those established under Association Agreements;

(2) Proposals to extend Common Positions imposing sanctions (without making substantive changes) in pursuance of UN Security Council resolutions;

(3) Proposals for making minor changes to lists of people or organisations subject to restrictive provisions in existing measures;

(4) Draft Council decisions relating to decisions already made in Association Councils or Committees;

(5) Reappointment of members to EU organisations;

(6) Proposals for legislation concerning the administration of community tariff quotas.

168. *We support the consolidation of all transfers of appropriations into a single report (paragraph 50).*

We are grateful for these changes, and the Government will of course provide the Committee with quarterly consolidated lists. But in a situation where the Committees are already stretched by examining over 1,200 deposited documents each year, the Committee might also look at a list system for dealing with routine documents which do not impact on UK policy or legislation (eg those on anti-dumping measures and on derogation requests from other Member States under the Sixth VAT Directive or from customs duties). On

many of these, the Committee has hardly, if ever, expressed an interest. If quarterly consolidated lists are not acceptable to the Committee, the Government will want to consider other mechanisms given that the standard EM template is poorly suited for these sorts of documents. The Government hopes that the Lords and Commons Committees will take urgent steps to reach a common view on which categories of document are to be deposited and how.

Separately, we have been in touch with both Committees about the handling of a range of JHA documents including recommendations, resolutions and various Europol documents; we hope to reach agreement soon on their handling.

We welcome the Committee's initiative in asking for the reporting of all budget transfers including amounts over €25 million to be brought together in a single quarterly report.

169. *The Government should submit an EM on the Commission's Overview document of the Preliminary Draft Budget at the earliest possible opportunity, preferably by the middle of May. The Government should also quickly update the Committee by Ministerial letter after the various stages of the annual Budget cycle rather than waiting to draft an EM once they have received the official translated texts (paragraphs 80, 82).*

We likewise welcome proposals for further streamlining the flow of budget documents, building on improvements already implemented by agreement with the Committees. We have on occasion provided an EM on the Commission's overview document and are happy to provide this annually as a matter of course. We shall also be pleased to build on existing practice for Ministers to write to the Committees to report on budget developments by extending these arrangements to cover the outcome of the European Parliament's second reading.

170. *We find it disappointing that Ministers might be prepared to agree laws in Council without having determined how they are to be implemented in the UK. We therefore recommend that the Government's proposals to implement a particular piece of legislation be set out in more detail in the initial EM. The fullest possible explanation needs to be given on the implementation of EU legislation on matters concerned with Justice and Home Affairs (paragraph 47).*

171. *More generally, the EM should as a matter of course state whether primary or secondary legislation is envisaged and if the latter under which power. An indication should be given of the factors which lay behind the decision. Furthermore, where the powers in section 2(2) of the European Communities Act 1972 are intended to be used, the Government should indicate whether the affirmative or negative procedure is envisaged and the reasons why (paragraph 47).*

As Lord Williams wrote to the Committee on 18 November 2002, the Government will give as much indication of how it intends to transpose legislation as it is possible to do at the time of sending an EM. But it is not possible to provide a definitive description. We can only provide our best assessment on the basis of the proposal as it stands at the time.

172. *EMs should give fuller information on the devolution implications of a proposal; on any proposed creation or extension of the powers of a Comitology committee; and a fuller account of the policy implications for the UK. There should also be a section on any potential human rights issues and the Government should consider whether the Minister signing the EM should make a statement of compatibility with the Human Rights Act 1998, as happens with primary legislation (paragraph 48).*

By noting the responsibility of one or more Ministers from the devolved administrations for the subject matter covered by the document, an EM indicates that responsibility for transposing the measure falls to those devolved administrations in their respective regions. Draft EMs on matters that are devolved are always prepared in consultation with the relevant Devolved Administrations.

It is a principle of good governance that those who are to be required to implement legislation should be consulted on its content. In the EU context, the Government and the Devolved Administrations have argued in the Convention that the European Commission should consult implementing authorities at the pre-legislative phase. The Government believes this should include direct consultation with regional and local authorities on relevant policies, as the Subsidiarity working group has recommended.

We shall of course draw attention to the proposed creation or extension of the remit of a comitology committee. We refer the Committee to our response at paragraph 203.

Where human rights issues arise, the EM will of course draw attention to them in the section on legal implications. The Government will in future offer a preliminary view on the compatibility of the proposal with the 1998 Human Rights Act. The EU is in any case, by virtue of Article 6(2) of the TEU, committed to respect fundamental rights as guaranteed by the European Convention on Human Rights.

173. *All EMs—which are the Minister's evidence to Parliament—should be signed. Those categories of document currently subject to an unsigned EM should instead be accompanied by a short form EM, as at present, but with a signature (paragraph 49).*

The Government appreciates that the Committee wishes to be reassured that a Government Minister has read and approved the terms of any EM. Equally, the Committee will understand that Ministers take responsibility for all the actions of their Departments. If, in the interests of speed and efficiency, a Department wishes to communicate with the Committee by means of a private secretary's signature on behalf of his/her Minister or by an unsigned EM where no policy implications need to be recorded, then the Government hopes this will satisfy the Committee. Ministers accept that they remain answerable to the Committee for the content of any EM. Such is the volume of documents, now passed electronically from Brussels, and the number of recipients of EMs (some 80 at present), that the Government intends to move without delay to a system of electronic distribution of both EU documents and EMs.

174. *We would welcome proposals from our Government to ensure better provision of information on matters subject to the co-decision procedure at its various stages (paragraph 35).*

We have been in correspondence with the Commons Scrutiny Committee on this issue and were awaiting the present report to see whether the Lords Committee had further proposals of its own to make. We believe improvements can be made to the procedures for scrutinising proposals subject to co-decision, facilitating more effective and timely scrutiny by the Committees. Given, however, that the timetable for handling dossiers under co-decision is not in the government's gift, we hope the Committees will accept that less formal means of bringing them up to date with developments will need to be employed. It makes no sense, for example, for the Committee to continue their reliance on the Commission's opinions on amendments proposed by the European Parliament since these, despite being a treaty obligation, serve no practical purpose. Waiting for them merely results in unnecessary delay. The Government will come forward with considered proposals.

175. *There should be a review, co-ordinated by the Cabinet Office and taking place say every six months, of those cases when the scrutiny reserve has been overridden and giving reasons why. This information should be reported to Parliament (paragraph 76).*

The reasons for any override will of course be set out in a letter from the relevant Minister, and the Government readily accepts the Committee's right to investigate the circumstances surrounding each occasion, including by calling on the responsible Minister to account in person to the Committee. The Government is happy to provide the Committees every six months with a list of occasions when the scrutiny reserve has been overridden during the previous period.

176. *The Government should review the importance of EU subsidiary legislation, and what its significance is in practice. The Government should inform the Committee on a regular basis of any significant proposals (paragraph 90).*

The Convention is considering the issue of implementing legislation. The Government is accordingly reviewing its approach on the basis of the ideas put forward in the report of the Simplification working group. The Government committed itself in 1998 to enabling the Scrutiny Committees to examine particularly significant proposals such as those referred to the Council or of such political or practical significance that they might cause Ministers to be concerned if they were to learn of them first in the newspapers. Departments have since been reminded of this and the Committee Clerks have on occasion been asked for guidance on whether a proposed measure might be of interest to the Committees. A particular difficulty arises from the fact that proposed measures are generally not made available to member states more than a few days before the relevant comitology committee meets to consider them (and never more than 14 days). The Commission's habit is to change its proposals right up to and during the committee meeting. Moreover, the role of member states in comitology committees is not to decide but to give advice on the merits of the proposed measure. These factors present obvious difficulties for scrutiny by national parliaments. That is why the Government is open to the suggestion, put forward by the Convention working group on simplification, to give the European Parliament a formal right of oversight of the most contentious measures. We refer the Committee also to our response at paragraph 203.

177. *Where a proposal is moving quickly through the legislative cycle we will more regularly ask government officials to be available at short notice to assist the Committee in matters of explanation and elucidation (paragraph 42).*

The Government is happy for the Committee to invite officials to be available to provide technical help and informal advice on the meaning and purpose of proposals.

178. *We will expect responses from Ministers within ten working days to letters sent by our chairman on behalf of the Committee and its Sub-Committees and we will where necessary follow up delays by way of Questions for Written Answer (paragraph 146).*

The Government agrees that it is unacceptable for letters to go unanswered for long periods. We shall strive to respond to letters from the chairman within ten working days. However, responding to complex matters may take longer. In that case, we shall send a holding reply.

179. *Our reports should receive a Government response within six weeks of publication (paragraph 150).*

The Government acknowledges the importance of responding in a timely fashion. This will be within two months of publication of the report if possible—a demanding timescale that compares favourably with the 6-month deadline for responding to reports from other Committees of the House.

RECOMMENDATIONS ADDRESSED TO THE CONVENTION ON WHICH THE GOVERNMENT SHOULD RESPOND

180. *Greater openness in the Council will facilitate faster scrutiny by national parliaments. Abolishing the six monthly cycle of presidencies could help too by avoiding the "end of term" rush to decision, provided that other artificial deadlines are not built in (paragraph 41).*

The Government supports the Committee's recommendations. The UK was instrumental in securing the reforms agreed at the Seville European Council to bring greater transparency to the work of the Council of Ministers when it is legislating. We continue to press our partners for further moves to make the Council more open and transparent. The Government welcomes the recognition by the Committee that the six monthly rotating Presidency will be unsustainable in an enlarged EU. That is why the Government is amongst those looking at ways of reforming the current system to make it more coherent and effective. We believe that this would help to minimise the "end of term" rush. One possibility might be "Team Presidencies" lasting, say, two and a half years. But we are open to other proposals that would achieve the same objective.

181. *The Convention should consider a revision of the co-decision procedure to allow a greater opportunity for national parliamentary scrutiny. When conciliation is triggered, the relevant documents (from the Commission, Parliament and the Council) should be issued publicly and submitted to national parliaments which would have four weeks to consider them before the Conciliation Committee can meet (paragraph 35).*

The Government notes that the Convention working group on simplification concluded that codecision works well in general. Moreover, the Convention working group on the role of national parliaments made no reference to the need to increase the time available for scrutiny of codecided dossiers approaching conciliation. The conciliation phase is intended to encourage the two sides of the legislature, Council and European Parliament, to reach agreement rather than to introduce issues that have not already been explored at first or second reading stage. That is why the treaty requires the Conciliation Committee to be convened within six weeks. The Government is happy to facilitate the provision of relevant documents to the Committees in Westminster prior to the convening of the Conciliation Committee. As the Committee notes, this would not be designed to permit national parliaments to play a direct role in the passage of legislation or to delay procedures. Accordingly, it would not be appropriate to deposit such documents formally.

182. *The Convention should consider whether the European Parliament's procedures could be strengthened by setting up an equivalent of our committees which scrutinise (or will scrutinise) Statutory Instruments; by strengthening the work of their existing committees in scrutinising comitology legislation; and by giving consideration to a procedure analogous to our negative and affirmative resolution procedure (paragraph 91).*

The Government is attracted to these ideas for strengthening the European Parliament's procedures for scrutinising implementing measures adopted under comitology. The Convention is examining the issue of comitology. However, reform in this area—which is for the European Parliament itself to initiate and implement—will naturally depend on the extent to which the Parliament is accorded formal powers under the treaty to scrutinise such measures.

183. *Scrutiny of the impact of legislation would be greatly enhanced if the European Parliament was obliged to produce a cost analysis of the effect of its own proposed amendments to EU law and we call on those responsible for Treaty amendment to ensure that such a procedure is introduced (paragraph 95).*

The Government agrees that the European Parliament and Council should carry out impact assessments of their amendments. So we welcome the current draft of an Inter-Institutional Agreement on better regulation which commits the institutions to making impact assessments of all significant amendments introduced at first reading and in conciliation. It also commits them to elaborating a common methodology

for such assessments. We are working to encourage rapid agreement on this so that assessments start flowing as soon as possible. We think it sufficient for such commitments to be underpinned by the rules of procedure of each institution.

Recommendations Addressed to the House on Which the Government Should Respond

184. *To maintain effective parliamentary scrutiny of EU legislation, our Committee, acting on a recommendation from one of our Sub-Committees, should have the right to require that the Government secure a positive resolution from the House as a whole in order to lift a scrutiny reserve being maintained by our Committee because of significant outstanding policy concerns. We do not envisage this power being exercised other than exceptionally (paragraphs 71–2).*

The Government disagrees with this recommendation which it believes to be incompatible with the purpose of scrutiny set out in paragraph 13 of the Committee's report. As paragraph 19 of the report says, "our system does not require the Government to agree with our views before the Reserve is lifted: the requirement is merely that the process of scrutiny is complete." Scrutiny is not intended to be a device to force the Government, or even the Council as a whole, to agree with the Committee and so to modify its policy (paragraph 60). That is what an obligation to secure a positive resolution from the House as a whole, providing the opportunity for the House to block for an indefinite period, would amount to. It would be in practice not far removed from a mandatory scrutiny reserve.

Where a unanimous vote in the Council was required under treaty, it would allow one part of a national parliament in one Member State to bring EU decision-making to a halt. Where qualified majority voting applied, it would leave the UK powerless to act in the national interest in the Council. It would also give inappropriate power to the Committee. One effect might be, as the Committee acknowledges in paragraph 70, to encourage greater Government interest in the composition of the Committee.

No such power has been sought in the Commons. Indeed, the Commons European Scrutiny Committee explicitly rejected a statutory reserve. The Commons Committee asked only for evidence from a Minister to the Committee when an override appeared unjustified. We have accepted this recommendation. (Commons European Scrutiny Committee Thirtieth Report 2001–02 paragraph 53–4, and Second Special Report paragraph 17)

The purpose of the scrutiny reserve is to give the Committee enough time to do its work. Significant outstanding policy concerns should be expressed in the Committee's report, not by a refusal to lift the reserve. The Government therefore looks forward to the Committee's thinking on the practical proposals contained in the report of the Convention working group on the role of national parliaments.

185. *In those cases where a Minister overrides a reserve the Minister should come to Parliament and give an explanation by way of Ministerial Statement (paragraph 74).*

The Scrutiny Reserve Resolution provides that a Minister responsible for an override

> "should explain his reasons—
>
> (a) in every such case, to the European Union Committee at the first opportunity after reaching his decision; and
>
> (b) in the case of a proposal awaiting debate in the House, to the House at the opening of the debate on the Committee's Report."

In cases therefore when a debate is pending, what the Committee seeks is already provided for. In other cases, reasons are currently given by letter from the Minister to the Chairman of the Committee. In the spirit of the recommendation, the Government will give its reasons by Written Answer if this is felt to be a better discipline on Ministers (by making them more visible to the House and to the public) than correspondence with the Committee. This would require amendment of the Resolution, which of course is a matter for the Procedure Committee. Ministers are also, of course, prepared to give evidence to the Committee.

But we cannot accept that every override should trigger a mandatory oral Ministerial Statement to the House. It would have the perverse effect of devoting prime parliamentary time to items of EU legislation which have already been agreed. It is open to any member to raise a particular override on the Floor of the House by any of the usual means (Starred Question, Topical Question, Unstarred Question etc); yet we have no record that this has ever happened.

186. *The Scrutiny Reserve Resolution needs to be amended to take account of all forms of agreement, including provisional agreements, in the Council (paragraph 75).*

The Government has done its utmost to assuage the Committee's concerns on this point. In particular, we have sought in the Council to clear up the use of terms such as provisional agreement, although we are often at the mercy of the Presidency in this respect.

The Convention working group on national parliaments considered this issue in its report last October. It concluded, *inter alia*, that:

> "the six week period currently applicable [for scrutiny of original proposals but not subsequent amendments] was sufficient as a general rule for parliaments to be able to make their views known to governments, provided that they receive information rapidly";
>
> "no preliminary agreements should be acknowledged in the Council, working groups and Coreper, in the course of this six-week period";
>
> "a reserve put forward by a member state in the Council that has its origin in the position or the awaited position of the national parliament concerned, should prevent the said member state from taking part in an agreement on the proposal within the Council. This would not prevent a decision in the Council when decisions are taken by qualified majority, if that is reached without the member state concerned.";
>
> "the working group recognises the need to maintain a provision regarding exceptions on the grounds of urgency";
>
> "parliamentary scrutiny reserves should be given a clearer status within the Council's rules of procedure. Such reserves should furthermore have a specified time limit, so as not to unnecessarily block the decision procedure;"
>
> "the Council's rules of procedure [should] provide for a clear week to elapse between a legislative item being considered at Coreper and the Council."

Against this background, the Government sees little purpose in amending the Resolution. The Government has given a commitment that it will not override the scrutiny reserve lightly, and that it will abide equally by the spirit of the reserve. If a Presidency, basing itself on the principles outlined above, is determined to record some measure of agreement in the Council, and the Government judges that the national interest is best served by its taking a decisive stance in favour of or against that agreement, then the Government will be forced to override the reserve.

The Government disagrees with the conclusion in paragraph 75 of the report that the term "agreement" be defined to include a "general approach". As the Government has explained, most recently in the debate on Provisional Agreement in the House of Lords on 14 October 2002, a "general approach" does not equate to an agreement since it does not mark the end of a negotiation. The Government has made clear to its EU partners that in reaching a general approach it reserves the right to reopen the substance of the text at a future date. However, the ability to reach a general approach is a vital negotiating tool, allowing the Government to reserve the UK's position without having to block the progress of negotiations in the Council.

187. *Scrutiny of secondary legislation implementing EU legislation is weak and needs to be strengthened. In addition to the work already undertaken by the Delegated Powers and Regulatory Reform Committee in scrutinising the delegation of powers, the scrutiny of delegated legislation implementing EU law should be a key task of the House's proposed new committee on Statutory Instruments. We will do all we can to assist the new committee, including making Sub-Committee Chairmen available to give evidence where necessary (paragraphs 96–97).*

This is a matter for the Liaison Committee, when it considers the new Committee's remit and resources, and for the new Committee itself.

188. *Subject to the availability of a sufficient number of Members with the relevant expertise, we see a prima facie case for increasing the number of our sub-committees (even if that means smaller Sub-Committees or Members serving on more than one Sub-Committee). We do not wish to see a change to the rotation rule but would welcome a wider pool of names coming forward (paragraphs 104–105).*

This is a matter for the Liaison Committee. The Government would observe only that more sub-committees will mean more reports, and more demands for time for debate. We consider the Committee's recommendations concerning debates below, and we suggest ways to make more parliamentary time available for them. If the number of debates is to rise, then it will become more important to explore these possibilities.

189. *We will propose to the Liaison Committee a plan for restructuring our Sub-Committees' work. This will be based on a practical assessment of the requirements for scrutiny in different policy areas. We note that our Sub-Committee structure would need to be expanded to nine to match more closely the formations of the Council of Ministers. Such an arrangement would, however, not cover the areas of Law and Institutions currently covered by Sub-Committee E which we would not wish to lose. In the meantime, Sub-Committee C will take on External Affairs (currently with A) and international development (paragraph 106).*

This is a matter for the Liaison Committee.

190. *The House should hold a general debate on European affairs within one month of every European Council (paragraph 109).*

The Government welcomes debate on EU matters, and the recent record of the House of Lords in this respect is good. In this Session so far, the House has held three debates on reports of the EU Committee, plus a debate on the Convention on the Future of Europe on a Government motion, all in "prime time".

We note that the Procedure Committee, in its 5th Report in July 2002, called for more debates on select committee reports and general topics to be held in "prime time", and has written this call into the Companion to Standing Orders. Within the constraints of parliamentary time, we are making every effort to meet this objective.

The procedural changes in the House of Lords are however still very new, and it is too early to judge their full impact, or to make further commitments as to the allocation of time on the Floor of the House. We also have to have regard to the other competing demands for parliamentary time.

We note however the suggestion, floated by the recent House of Lords Group on Working Practices, chaired by the Leader of the House, and not ruled out by the Procedure Committee, that the House of Lords might consider holding debates on general topics in Grand Committee. This might be a way forward for the debates which the Committee has in mind. We note also the possibility of holding such a debate in the form of a 90-minute Unstarred Question at the end of business.

Holding such a debate in Grand Committee would require procedural changes which would have to come through the Procedure Committee. Holding it in "Unstarred Question" time would require no special measures.

191. *Our reports should be debated within eight weeks of publication although on occasion a longer or shorter timeframe may be required (paragraph 150).*

The Government noted in its response to the recommendation in paragraph 179 that we would respond to reports within two months, if possible. We would support the suggestion that reports be debated within two weeks of the publication of the Government's response, so far as it lies with us, provided that, as suggested above, debates take place either in Grand Committee, or in the 90 minutes sometimes available for an Unstarred Question at the end of business.

This position is consistent with that taken by the Procedure Committee (HL Paper 148 2001–02 paragraph 25): "We recognise that other reports, in particular European Union Committee reports on documents subject to a scrutiny reserve, might still have to be debated outside prime time because they might need to take place urgently at short notice in order that the reserve can be lifted."

We note that the Committee consider a "dinner break Unstarred Question", limited to one hour, too short in most cases. We accept this, though we note as they do that there are exceptions.

As noted above, holding such debates in Grand Committee would be a matter for the Procedure Committee. Holding them in "Unstarred Question" time would require no special measures.

This recommendation, and the previous one, raise issues for the usual channels. We have set out here our own preliminary views, and we will listen to the debate. In the light of the debate, we undertake to initiate discussions through the usual channels to see whether changes can be made.

192. *We urge better planning of our debates, and more advance notice. The lack of a clear timetable announced in advance hampers the Government at the negotiating table: not knowing when the scrutiny reserve will be lifted by debate is a disadvantage for UK Ministers in the Council (paragraph 151).*

The Government agrees that better planning and more advance notice are desirable. If debates take place either in Grand Committee, or in the 90 minutes sometimes available for an Unstarred Question at the end of business, then better planning and more advance notice will be possible.

If the Committee insist on "prime time" in the Chamber, then they must accept the two to three week horizon to which such time is allocated.

193. *The opportunities provided by the new pattern of sittings (and by the greater use of Grand Committees on bills) should be explored and exploited to ensure better time for our debates (paragraph 153).*

The Government accepts that, as part of the package of reforms to its working practices agreed in July 2002, the House expects more debates on select committee reports and general topics in prime time (Procedure Committee 5th Report 2001–02 paragraph 25). It is too early to see whether this aspect of the package is working as intended. We note that reports of the European Union Committee are not the only contenders for any "prime time dividend".

194. *The House should review the current Wednesday debates: does having two balloted debates rather than just one really make the best use of prime time? Consideration should be given to a regular time-limited slot for our debates on Thursday mornings (paragraph 153).*

The Government is open to the possibility of reorganising Wednesdays so as to make time to debate Committee reports. This is a matter for the usual channels, unless it affects the arrangements for Balloted Debates, which are a matter for the Procedure Committee.

The House is currently getting used to the new shape of Thursdays. In our view it is too early to put additional pressure on the new system by ear-marking certain Thursday mornings for one particular class of business.

Resources

195. *We are pleased to note the suggestion from the Leader of the House that vigorous and powerful revision and scrutiny require the House to "will the means" over the coming months. We expect the House to deliver the resources required to fulfil this commitment (paragraph 135).*

The Government notes that this is a matter in the first instance for the Liaison Committee (which allocates resources among Committees) and the House Committee (which allocates the House's budget).

The House is not cash-limited. If a case is made for additional resources, HM Treasury will consider it on its merits and in the context of the public expenditure situation at the time.

196. *We will consider further what support we can offer to, and expect from, the valuable National Parliament Office in Brussels, currently staffed by the House of Commons (paragraph 135).*

The Government notes the Committee's intention.

197. *The House should equip a Committee Room for video-conferencing by Lords Committees (paragraph 111).*

This is a matter for the Administration and Works Committee.

Recommendations We Will Implement

198. *We have begun to scrutinise the Commission's Annual Work Programme. We will consider further the suggestion for national parliamentary scrutiny of the Council's strategic agenda (paragraph 30).*

The Government is pleased that the Committee has begun to scrutinise the Commission's annual legislative and work programme. The Government welcomes the Committee's interest in scrutinising the Council's strategic agenda.

199. *We will enhance our scrutiny of the EC Budget by concentrating our efforts at an early stage in the budgetary cycle. Sub-Committee A will continue to consider in detail any changes to the overarching legal framework within which the annual Budget is set. Sub-Committee A will therefore take oral evidence from the Government on an annual basis before the first reading of the Budget in the Budget Council and thereafter we will publish a short report. The major spending decisions will also remain a focus of rigorous scrutiny for all of our Sub-Committees. The Sub-Committees will continue to scrutinise in detail proposals for legislation that have budgetary implications and will follow closely negotiations on such proposals at Council meetings (paragraphs 78, 80).*

The Government agrees that in order to make scrutiny of the EC budget relevant and timely, it is appropriate to shift the focus of scrutiny to the most important financial issues for the EU. We stand ready to provide oral evidence.

200. *We continue to monitor the work of the Convention on the Future of Europe, and the output of its Working Groups. We propose to examine in a separate report proposals on the role of national parliaments and on subsidiarity emerging from the Convention. The Convention's conclusions on subsidiarity may lead to new tasks for national parliaments. We are willing to take on additional work in these and other areas (paragraphs 4, 40, 85, 106).*

The Government is, of course, pleased that the Committee expresses its willingness to take on the additional work that would arise out of the proposals from the Convention working groups on subsidiarity and national parliaments. We have, for example, pushed hard in the Convention for national parliaments to

be able to convey early on in the legislative process their views on the compliance of a legislative proposal with the principle of subsidiarity. We hope that the Committee will appreciate the efforts we have made to secure this advance, overcoming significant resistance.

201. *We reinforce the importance of the sift process, which we consider works well provided that proper EMs are deposited. A Sub-Committee is not precluded from examining a document cleared on the sift. We will examine the criteria used for sifting documents at the later stages of the legislative cycle (paragraphs 35, 57–59).*

The Government welcomes this recommendation. We too appreciate the sift process as an efficient system for clearing from scrutiny those routine and uncontentious documents that are most unlikely to interest the Committee. While mindful that the sift process depends on the provision of proper EMs, and that clearance in the sift does not preclude subsequent examination of a document, we find this a useful mechanism particularly for managing fast moving Council business through the scrutiny process. We are grateful to the Chairman of the Committee for conducting a sift at times when the House is in Recess.

However, from our perspective, some of the advantages of the sift are dissipated by the uncertainty surrounding the handling of documents that are sifted for examination. The Sub-Committees do not routinely meet on a weekly basis; indeed, their schedule of meetings may not permit examination of a particular document for several weeks. Of course, the volume of business may not justify each Sub-Committee meeting on a strict weekly basis. So the Government would like to suggest that the Committee consider introducing a fast-track procedure permitting the early scrutiny of documents on which, for objective reasons beyond the Government's control, we need to take a clear, decisive and early position in the Council of Ministers. It would be for the Committee to decide how to do this. And no doubt safeguards would be required to ensure the procedure was used only exceptionally and for genuinely deserving cases. But we feel strongly that, for the UK to maintain credibility with our partners in the Council, a procedure is required to enable scrutiny of politically important documents to take place and be concluded within days rather than weeks.

202. *We will ensure that every report takes into account an analysis of the cost impact assessments, based on scrutiny of figures from the Government and the Commission when they are available and giving a clear statement when they are not. This will, however, require us to commission additional advice, as it is not work we ourselves could undertake without detracting from our existing scrutiny (paragraph 95).*

The Government shares the Committee's concern to enhance the rigour of cost and impact assessments of proposed legislation. That is why we are putting pressure on the Commission to deliver on the commitments it has made in its Better Regulation Action Plan, with respect to providing credible impact assessments when proposals are tabled. We are also applying pressure on the Commission to consult with those responsible for implementing proposed legislation. This issue is being debated in the Convention. Moreover, an Inter-institutional Agreement on better regulation is being negotiated which we hope will improve the care paid by both Council and European Parliament to the regulatory aspects of their amendments. The Government's own procedures require a regulatory impact assessment to be produced when inter-departmental clearance of a policy stance on an EU proposal is sought. And the Government is committed to attaching an impact assessment to its EMs.

We are convinced that the more consultation and effort goes into producing decent impact assessments on the part of all involved, the better EU legislation will become. That said, we are sure that the Committee will accept the inherent difficulty in producing a domestic impact assessment of someone else's proposal, particularly before the precise intent of a proposal has been exposed during the negotiating process. Differences of assessment, say, as between the Commission's expectation of future costs and our own, are in practice very hard to reconcile.

203. *We will examine most keenly any proposal to delegate power under the comitology procedure (paragraph 89).*

The Government refers the Committee to its response above at paragraph 172. We welcome the Committee's intention to scrutinise any proposal to delegate power under the comitology procedure. The Commission reports that 3,490 draft decisions were put to comitology committees for an opinion in 2001. Of these, 10 were referred to the Council and none were found to be of interest by the European Parliament. This suggests, in broad terms, that the comitology procedures work well. The vast majority of implementing measures are not politically controversial. There is a legitimate issue concerning the degree of scrutiny they ought to be subject to by the Council and EP, and this is being examined in the Convention. But most practitioners anticipate that an enlarged European Union will require more framework legislation and more delegation of detailed implementing measures. For our own part, we welcome this, not least for the flexibility it will allow in implementation. Moreover, the issue of how powers are to be delegated and how those powers are to be governed (ie which type of comitology procedure is to be used) has frequently been the most difficult

issue to resolve as between the Council and the European Parliament in legislation adopted under the co-decision procedure. It would be unfortunate were the Committee to seek to limit the Government's negotiating flexibility on this issue.

204. *We will hold more regular scrutiny with Ministers on the general issues coming before Council. In particular, Sub-Committee C will in future invite Ministerial evidence on the outcome of every General Affairs Council. We will make greater use of techniques such as videoconferencing to get round some of the practical problems of hearing busy witnesses (paragraph 111).*

The Government notes this recommendation. We have already taken steps to provide a Ministerial letter reporting the outcome of meetings of the GAERC.

205. *Questioning of witnesses must be based on the best possible use of information and make the best use of the time we spend with them. Where necessary, at least the relevant Government officials need to be examined during scrutiny of individual legislative items, even if these are not the subject of a full inquiry. Sub-Committees need to limit the amount of time spent on oral evidence and cross-examining witnesses, to ensure that adequate time is made available for other work (paragraphs 110,112).*

The Government notes this recommendation, and recalls the value of informal advice which officials are able to provide to the Committee, as suggested in response to paragraph 177 above.

206. *We will seek to devote the necessary time and resources to following up our previous work. This could take the form of periodic reviews of our recommendations before proposals are implemented (paragraph 86).*

The Government notes this recommendation.

207. *The suggestion for general review of European legislation is not one we can usefully undertake, without a major disruption of our scrutiny work (paragraph 86).*

The Government notes this recommendation.

208. *The integration of substantive policy into European scrutiny is a strength of our Sub-Committee system, which must be maintained (paragraph 102).*

The Government agrees.

209. *While European scrutiny is enhanced by the involvement of those with a range of policy specialism and expertise, we are not complacent about the expertise of our Members. Many members of the House have been appointed because of their expertise in particular areas but that expertise needs to be kept up to date. We accordingly consider that it is of positive benefit to those conducting scrutiny of specific legislative items that they have also conducted in depth inquiries into general policy (paragraphs 102–3, 113).*

The Government notes this view.

210. *We believe that our Sub-Committees, which examine sectoral policy issues in the European context, provide a model for a national parliament wishing to scrutinise European legislation in depth and on the basis of genuine expertise. There is, in our view, a weakness in any system which confines "European scrutiny" to a small group of specialists. There is a danger that scrutiny is conducted in a purely mechanistic way with Members not having the time to do more than draw attention to matters which they think are important (paragraph 103).*

The Government notes this view.

211. *In order to ensure that the Sub-Committees continue to operate in the most effective way possible, they will continue to take into account cross-cutting scrutiny undertaken by the Select Committee. This will in turn help the Select Committee to inform the planning of the work by the Sub-Committees (paragraph 114).*

As noted in its response to paragraphs 201 and 212, the Government hopes that the Committee might look again at how the timetables and agendas are set for its Sub-Committees so that these mesh with and can be adapted to suit the ever-changing flow of business in the Council. Alternatively, the Committee might consider establishing a fast-track procedure for handling documents that are moving quickly through the Council.

212. *We are confident that the revised the sitting times of the House will not adversely affect our scrutiny (paragraph 115).*

The revised sitting times of the House will undoubtedly help with scrutiny of issues that come to the Council in September and October, a period where in the past the Government has been forced to override the scrutiny reserve. However they may cause problems for scrutiny of business coming to the Council in July. The month of July, of course, marks the start of a new Council Presidency, and Presidencies do not necessarily indicate how they intend to timetable their business until they assume the chair.

In order to ensure that national parliamentary scrutiny is effective and taken seriously by all those involved in adopting legislation in Brussels, it would be helpful if the Committee were able to convene and give its opinions at any time that the Council of Ministers is convened, that is in every month except August. It is unhelpful in Council negotiations to have to place a scrutiny reserve on a dossier because the relevant Committee has not met to consider it. To a large extent, this problem is manageable through forward planning, but not completely so. In our view, this reinforces the need for something on the lines of the fast-track mechanism suggested in response to paragraph 201.

213. *We will consider further the opportunities for greater openness in our meetings (paragraph 116).*

The Government notes this recommendation.

214. *On balance the arguments advanced do not persuade us of the need for a joint European scrutiny committee of the Lords and Commons. The different scrutiny systems in the two Houses complement each other and should continue (paragraphs 123, 127).*

215. *We nevertheless make recommendations for more joint working and warmly welcome Jimmy Hood's commitment to collaboration and working together. We will take up with the Commons Committee the question whether the balance of work between the two Committees is appropriate. We will also examine ways by which we can use and build on their scrutiny work in conducting our own. We will, in particular, consider with the Commons the case for a joint meeting after each European Council to allow the two Committees to exchange views on the future planning of work on the basis of the agenda set by the European Council. We will also consider practical means for joint dissemination of our views, where they coincide, to increase our impact (paragraphs 123, 128–9).*

The Government is grateful to the Committee for giving some thought to the idea, floated by the Leader of the House of Lords among others, of establishing a single European Committee of the two Houses. There would undoubtedly be difficulties in fusing the work of the two existing Committees, as the Commons European Scrutiny Committee concluded in their own recent review of the scrutiny system (30th Report, HC 152-xxx). These might be overcome in a way that preserved the complementarity that current arrangements allow and which we commended in our response to that report (HC 1256). Experience of the Standing Committee established to oversee the work of the Convention on the Future of Europe highlights, for example, the advantages that would accrue from jointly taking evidence before or after European Councils (or indeed other formations of the Council of Ministers). It also points to the value of Westminster being able to feed a single view into ongoing discussions in Brussels. If the Convention and subsequent IGC result in national parliaments having a right to opine on whether proposed legislation meets the subsidiarity principle, new arrangements will need to be devised.

The Government welcomes the Committee's readiness to envisage more joint working with the Commons Scrutiny Committee, including through formal concurrent meetings to take evidence. The Committee and the House may wish to revisit the issue of a single committee once the outcome of the Convention is known.

216. *The question whether MEPs should have further rights of access to our Parliament is not one that we are qualified to address. This would be a matter for the House itself. We undertake to ensure that relevant UK MEPs have the opportunity to give evidence to our inquiries, and that the outputs of our work are communicated directly to them (paragraph 132).*

The Convention working group on the role of national parliaments noted the usefulness of networking and regular contacts between national parliaments and the European Parliament to help foster a greater understanding and involvement of national parliaments in the activities of the EU. It also suggested a more systematic approach to cooperation between national parliamentary committees and European Parliament committees. It proposed a common window for debates in national parliaments involving MEPs, Commissioners and Government Ministers. We look forward to the Committee's comments on these ideas.

The Government is strongly of the view that it would be beneficial to enhance day-to-day links between Westminster and UK Members of the European Parliament. These are not as close as they could or should be, to the detriment of our national debate about and the UK's influence in the EU. The Government recognises that formal joint meetings between the Committees of the UK Parliament and those of the European Parliament, or indeed any other parliament, would be a radical departure and might throw up some problems, not least in respect of the extent to which proceedings of such meetings would attract parliamentary

privilege. Nevertheless, the Government hopes that the House authorities will examine whether these problems can be overcome since the advantages would be considerable. We also believe that the Committee should in any case give serious and early consideration to more and closer joint working including informal meetings to discuss matters of mutual interest. It would only enhance the effectiveness of our national scrutiny arrangements and of Westminster's ability to help shape EU legislation if the Committee were to draw on the EU expertise of MEPs. Other Select Committees, not just those dealing directly with EU affairs, might also seek power to invite EP Committees to meet jointly with them when inquiring into matters that have an EU bearing. At the same time, and while recognising the pressures on the Parliamentary estate, the Government believes improved access to Westminster for UK MEPs visiting in a scrutiny capacity should be secured.

217. *We are happy to share our experience with any other parallel national parliamentary body among the current Member States or the incoming countries. We will take evidence from a number of national parliaments (including bicameral parliaments) whose scrutiny systems are well developed, to see what we can learn from their work (paragraph 133).*

The Government encourages the Committee in its wish to develop links and share experiences, best practice and information with its counterpart committees in other national parliaments. As the Convention working group on the role of national parliaments has noted, existing mechanisms for exchange are not used to their full potential.

218. *We urge all our members to make more use of unstarred questions, Question Time (and the new topical questions) to raise matters of concern on the floor (paragraph 154).*

The Government notes this recommendation.

Administrative Matters

219. *We endorse the practice whereby all our letters are signed by the Chairman of the Select Committee, regardless of which Sub-Committee has been considering the issue. This provides a single focus for our work (paragraph 108).*

The Government notes this recommendation.

220. *We work on the assumption that letters, once sent, are presumed to be public and can therefore be released to the press and interested parties (paragraph 146).*

The Government notes this recommendation.

221. *We will ensure quicker and more regular publication of significant correspondence (using the internet) in addition to the twice-yearly published volume (paragraph 146).*

The Government notes this recommendation.

222. *We will make more use of letters to follow up scrutiny issues raised by proposals which come forward after a major inquiry (paragraph 146).*

The Government notes this recommendation.

223. *We will increase efforts to foster a culture of respect for scrutiny in Whitehall, including the holding of regular sessions of evidence from senior civil servants responsible for European policy (paragraph 146).*

The Government notes this recommendation. Formal appearances before the Committee by senior officials will continue to be subject to the approval of Ministers.

224. *We propose that regular digests of significant scrutiny by correspondence be made freely and publicly available (paragraph 147).*

The Government notes this recommendation.

225. *Our reports should be presented to have the most impact. There is no necessary correlation between the shortness of a report and its focus. Internal improvements to the layout and presentation of reports are underway. We have nevertheless considered how in practice a focused and readable report can actually be produced. To this end we will aim to ensure that all our substantive reports accord with standards set out in this report (paragraphs 142, 145).*

The Government notes and welcomes this recommendation.

226. *We will produce an annual report from the Committee, giving an account of our activity, drawing attention to any problems in the scrutiny process and outlining key emerging issues in a short and punchy document produced in time for the debate on the Queen's Speech (paragraph 155).*

The Government notes this recommendation.

227. *We will look at administrative questions such as finding ways to improve the availability and accessibility of our work by means that Members of the House actually notice, namely through their party whips, the Crossbench notices and the Forthcoming Business document (paragraph 156).*

The Government notes this recommendation.

228. *We will discuss further the public provision of information including via the redesigned website (www.parliament.uk) (paragraph 158).*

The Government notes this recommendation.

229. *We will consider with the Information Officer for Select Committees how publicity and information provisions on our work may be enhanced. In addition we would wish to see copies of our reports made as freely and easily available as possible by the House (paragraph 159).*

The Government notes this recommendation.

CONCLUSION

230. *This report raises many issues requiring further work to implement recommendations over the coming year. We will review and follow up the responses given to our recommendations. We will ensure that we continue to scrutinise the work of the Convention and relevant developments arising in that forum. In the meantime we make this Report to the House for debate.*

APPENDIX 2

EUROPOL'S ROLE IN FIGHTING CRIME (5TH REPORT, 28 JANUARY 2003, HL PAPER 43)

I am writing in response to Sub-Committee F's report on *Europol's Role in Fighting Crime*. I would like to thank the Committee for its work in preparing such a detailed and useful report on the Danish Presidency's proposals to amend the Europol Convention, and other issues of major significance to the organisation's future. The Committee has drawn on an extensive range of written and oral evidence in conducting its enquiry, and I am grateful for the balanced and thorough report it has produced.

The Government views Europol as a key element in an effective system at EU level to combat and prevent serious and organised cross-border crime. We are committed to seeing Europol provide an outstanding service in support of the law-enforcement operations of Member States. The UK is one of Europol's most significant supporters, both financially and in terms of sharing with it relevant intelligence and expertise, and our law-enforcement agencies have also been amongst the most effective in utilising Europol's capabilities. We will continue to play our full part in making sure that Europol lives up to our highest expectations. Our view is that Europol should be aiming to develop into an international centre of excellence for the sharing and analysis of criminal intelligence.

In striving to achieve this vision for Europol we recognise that there are a number of key challenges and issues that need to be addressed, which we will be focusing on in future meetings with our EU partners:

— Legislative framework—if Europol is to add real value to Member States' own operations it needs a settled mandate and a firm, but flexible legal base. A clearly defined remit is vital to ensure that Europol remains focused on the most pressing activities that require its involvement. But we also need to ensure that Europol's legislative framework is flexible enough to allow it to respond rapidly to new crime threats, and it may be necessary to consider adopting alternative legal instruments to achieve this.

— Prioritisation of activities—it is important that Europol has a clear sense of purpose and focuses on the crime threats that are of greatest importance to the EU Member States. Europol must demonstrate that it is meeting the priorities identified by its Management Board, which in turn should reflect the priorities of the EU Justice and Home Affairs Ministers in creating an area of freedom, security and justice.

— Corporate governance and accountability—better and clearer business planning is needed to underpin Europol's efforts. Organisational flexibility and innovation will be vital in the coming years for Europol to adapt effectively to the challenges of enlargement and a rapidly changing international scene. The Management Board in particular has an important role to play in ensuring that Europol delivers in the interests of the Member States. Accountability could be improved though clearer and more comprehensive reporting of performance and results, and we are committed to ensuring that Europol delivers tighter financial management and greater value for money for the Member States' contributions.

— Data exchange—intelligence is the lifeblood of Europol. The UK has an excellent record for providing Europol with a high quality flow of intelligence, and we will continue to play our full part. However, if the organisation is to reach its full potential we need a greater commitment from all Member States to contribute to, and benefit from, Europol's intelligence gathering and analysis capabilities. We need to find strategies to address this issue, for example though more proactive marketing by Europol and national units to raise its profile amongst national law-enforcement authorities. Initiatives to increase the sharing of intelligence must however be balanced with adequate safeguards to protect the personal data rights of EU citizens.

Overall the Government is satisfied with the current version of the proposed amendments to the Europol Convention, which provide useful progress on many of these issues, by providing more flexibility for Europol and improving its effectiveness, openness and accountability. Following the meeting of the Justice and Home Affairs (JHA) Council last December, where a general approach was reached, the intention now is that the amendments to the Convention will be adopted later this year, possibly at the JHA Council meeting in June. The proposals however will be subject to consideration of the forthcoming opinion of the European Parliament, and of the requested further opinion of the Joint Supervisory Body, which the UK considered important and successfully pressed to be obtained. This second opinion was deposited for scrutiny on 27 March, and we will be providing a full explanatory memorandum in due course. In reaching a general approach last December, we made it clear to the Presidency that the UK Government reserves the right to re-open the text on the basis of unresolved significant concerns.

While offering broad support to the Presidency during the course of negotiations, the UK has worked hard on a number of specific points to optimise the outcome. I appreciate the Committee's detailed and balanced analysis of these issues, and welcome the support offered for the Government's approach on many of the points of discussion. I have responded to each of the Committee's specific conclusions and recommendations below, and hope this will provide a helpful update on developments and a satisfactory explanation on the points of concern raised.

I am copying this letter to Lord Grenfell, Chairman of the European Union Committee, to Jimmy Hood MP, Chairman of the European Scrutiny Committee, to Simon Burton, Clerk to the European Union Committee, to Dorian Gerhold, Clerk to the European Scrutiny Committee, to Tony Rawsthorne, Clerk to Sub-Committee F (European Union Committee), to Les Saunders (Cabinet Office) and to Joanne Harrison, Departmental Scrutiny Co-ordinator.

Bob Ainsworth

GOVERNMENT RESPONSE TO THE EUROPEAN UNION COMMITTEE'S 5TH REPORT ON *EUROPOL'S ROLE IN FIGHTING CRIME*

1. Europol's Remit

Defining Europol's remit

The Committee concluded that "we welcome the abandonment of the proposal to define Europol's remit solely by reference to "serious international crime" and reversion to a definition close to that currently in the Convention" (paragraph 16).

> "The definition of the remit is less important in its own right than as a means of ensuring that Europol's tasks are clearly defined so that:
>
> — there is a shared understanding throughout law enforcement agencies across the Member States of what Europol is responsible for; and
>
> — Europol does not engage in matters that do not require its involvement" (paragraph 17).

We very much agree with the Committee's view that Europol must have a clearly defined remit. This is necessary to ensure that all of the EU's law-enforcement agencies share an unambiguous understanding of Europol's role and competencies, and will help to keep the organisation focused on the tasks that specifically

require its involvement, where it can add real value. A clearly defined remit prevents disputes and confusions resulting from differences of interpretation, and is a vital starting point to promote effective co-operation between the Member States. Consequently the Government welcomes the revised proposals for amending Article 2 of the Europol Convention, which, as the Committee notes, is very close to the existing text in this respect. This should guarantee that Europol's mandate continues to be precisely defined by reference to specific types of serious international crime, which must involve an organised criminal structure.

The Committee notes that "if further clarification is required, there would be advantage in including a reference to the UN Convention to help interpret 'organised crime'" (paragraph 16).

We agree that there should be merit in adopting for the Europol Convention the definitions of organised crime provided in the UN Convention on Transnational Organised Crime. This would help to provide a more specific and clear interpretation, which accession and other third countries would also already be aware of. We did in fact press for the inclusion of such definitions during negotiations, but at no point did we receive any support for this view. Consequently we did not consider that we should hold out for this given that the existing definition in Article 2 of the Europol Convention has proved to be workable in practice, with no evidence that it is an impediment to effective co-operation.

The Committee suggests that "it would be desirable to clarify the meaning of 'suspicion' in the new text" (paragraph 16). The Government was also concerned about the reference to "suspicions", and successfully pressed for compromise language. The current draft of the Danish proposals (Council document 13254/2/02 EUROPOL 76 REV 5) now includes in Article 2 the following qualification for Europol's remit:

> "where there are factual indications or reasonable grounds for believing that an organised criminal structure is involved".

This wording is more precise than "suspicions that an organised criminal structure is involved", and in practice "reasonable grounds" would almost always be founded on objective indications of the involvement of an organised criminal structure. The Government accepts the view put forward in the negotiations that this modified wording may in limited circumstances provide a more certain basis for Europol's enquiries. If, contrary to initial expectations, the enquiries showed that an organised crime element was not present, then they would not be continued. This slight modification to the definition of Europol's remit provides a degree of extra flexibility, but does not affect its meaning.

Prioritisation of activities

The Committee recommends that "it is also essential, as the Minister acknowledged, that there should be effective prioritisation of Europol's tasks to avoid it becoming over-burdened. The Europol Management Board has a key role in identifying Europol's priorities and measuring performance against them. The draft Decision calls on the Council, on a proposal from the Management Board, to prioritise action in relation to specific forms of crime (Article 2(1)). It will be important that good use is made of this provision" (paragraph 17).

It is the strong view of the Government that Europol must concentrate on a limited number of priority crime threats, rather than attempting to tackle all of the activities in its extensive remit. This is essential to avoid spreading its resources too thinly across an overly ambitious range of tasks, and will ensure that it can focus on delivering real results for the member States with value for money. This is why we pressed hard in negotiations for the Presidency to include provisions in the amended Convention on the prioritisation of Europol's activities. Our success in this will ensure that Europol is more accountable to the Management Board for its performance in meeting the most pressing needs of Member States, and will reinforce the Management Board's responsibility for scrutinising Europol's delivery in the interests of its members. The UK will continue to push strongly in future Europol Management Board meetings for these requirements and responsibilities to be fully met.

2. The Role of National Units

The Committee concludes that "we support the Government's view that the Europol national units should remain the sole liaison bodies between Europol and national authorities and that provision should not be made, as the draft Decision proposes, for Europol to communicate directly with "other competent authorities" (paragraph 22).

"The safeguards sought by the Government would all be desirable, but in our view, it would be preferable to retain the existing system of communication with Europol exclusively through the national units" (paragraph 24).

"We cannot support the case for extending access to the Europol Information System more widely. The current exclusive right of interrogation by central national units provides the best guarantee of effective data protection" (paragraph 26).

The role of the national units in co-ordinating exchanges of information between competent authorities and Europol was the subject of intense discussion between the Presidency and Member States. It became clear that discussion between the Presidency and Member States. It became clear that the majority of delegations

supported the current revised proposal to amend Article 4 of the Convention, whereby each Member State would be able to decide for itself whether direct contact is appropriate for its own competent authorities. This would be subject to conditions determined by the Member State in question, including the prior involvement of the national unit. The UK successfully pressed for additional safeguards to be put in place, requiring that Member States only allow direct contact with designated competent authorities, and that information exchanged directly must be copied simultaneously to the national unit. The proposed amendment to Article 9 of the Convention, allowing competent authorities to directly query the Europol Information System, is also subject to the requirement that the authorities be designated by the Member States. The result of queries will only indicate whether the requested data is available on the Europol Information System, and further information can then only be obtained through the national units.

The Government is content with these proposals as they now stand, and we believe that these changes will bring an element of order to what might otherwise have been unworkable arrangements. The requirement for contemporaneous involvement of the national units in direct exchanges will enable them to maintain an up-to-date overview of the information flowing to and from Europol. The designation arrangements will control which competent authorities are authorised to contact Europol directly or query the Europol Information System, and will provide the assurance that those which do so are acting under the laws and procedures of the Member State in question. It is necessary to find a balance between the need for Member States and Europol to co-operate effectively and quickly, and the need to maintain the clarity and coherence of the co-operation. Taking into account that relations between each national unit and its own country's competent authorities are a matter for the internal arrangements of each Member State, the Government is satisfied that the above compromise proposals are acceptable. The Joint Supervisory Body, in its further opinion on the revised amendments to Article 4, likewise concludes that "sufficient safeguards are in place for decent processing of data and the controllability of this processing".

3. Europol and Euro Counterfeiting

"The Committee urges all the parties concerned to ensure that Europol and OLAF co-operate in protecting the EU from the effects of counterfeiting the Euro and that the best possible use is made of the resources of both organisations" (paragraph 30).

Europol has already been tasked to act as the central co-ordinating unit for the sharing and analysis of information relating to Euro counterfeiting, and the Government supports the proposed amendment to Article 3 of the Convention to reinforce this role. We agree absolutely that there needs to be effective co-operation between Europol and the European Antifraud Office (OLAF) in the fight against the counterfeiting of the Euro, and it is important that there should be no unnecessary duplication of effort. This is best assured pragmatically in the Europol Management Board, where the European Commission—which has responsibility for OLAF and will be briefed by it—has observer status. The UK will play its full part in supporting efforts to improve co-operation between OLAF and Europol.

The Committee will be interested to note that a co-operation agreement between Europol and the Commission was signed in February 2003, to enable the sharing of strategic information (not including personal data), such as situation reports and threat assessments[1]. Part of the agreement is an annex, which specifies the co-operation between Europol and OLAF regarding the fight against Euro counterfeiting. This should provide the formal base necessary to clarify the respective roles of the two agencies, to ensure an effective and efficient working relationship.

4. Parliamentary Scrutiny of Europol's Work

While Europol must remain accountable, first and foremost, to the Member States of the European Union, through the Europol Management Board, the Government recognises the important role that both the European and UK Parliaments play in scrutinising Europol's work. The Scrutiny Committees of both Houses in particular play a key part in this process.

Parliamentary oversight of Europol's work is appropriate for two reasons. First, Europol's core work as the EU's criminal intelligence agency is the collection, analysis, processing, and transmission of personal data. National parliaments have an important role in ensuring that due care is taken to protect EU citizens' privacy and rights in the treatment of personal data. Second, in view of the significant contributions that the UK makes to Europol's budget, Parliament also has a role in overseeing Europol's work to ensure that the organisation is delivering adequate value for money and that the Government's spending is justified.

Oversight of Europol's activities by the European Parliament

The Danish Presidency's proposals to amend the Europol Convention included, in a revised version of Article 34 of the Convention, a number of measures to increase the European Parliament's oversight of Europol. These included, importantly, the obligation to consult the European Parliament on certain specified

[1] Agreements between Europol and other EU bodies are only subject to the approval of the Europol Management Board, and are not a matter for the Council to consider. The Europol-Commission agreement was therefore not deposited for scrutiny.

matters such as relations with third States. These revisions to the Europol Convention mark a clear enhancement of the European Parliament's role in scrutinising Europol's work, which the Government welcomes.

In the longer term, and given the recommendations in the final report of Working Group X "Freedom Security and Justice" within the Convention on the Future of Europe, legislative proposals linked to Europol are likely to be subject to the co-decision process. This proposal, should it be agreed, would significantly enhance the European Parliament's ability to influence discussions of legislative instruments relating to Europol.

Oversight of Europol by national parliaments

As outlined above, national parliaments have a vital role to play in the oversight of Europol's work. Through the process of domestic parliamentary scrutiny of EU business the UK Parliament is fully involved in scrutinising legislative proposals on Europol's work.

The idea of a joint committee of members of the European and national parliaments to oversee Europol was first suggested by the Commission's Communication on Democratic Control of Europol of March 2002. This idea was included in early versions of the Danish proposals to amend the Europol Convention, but was not included in the version upon which a general approach was reached last December.

The Committee concluded that "we recommend that the Government press for the idea of a joint committee of Members of national parliaments and the European Parliament to be re-instated" (paragraph 40).

The proposed amendment to the Europol Convention to set up such a joint committee was removed early on in negotiations because the Convention, as secondary European legislation, has no power to establish parliamentary committees involving either national or European parliaments. Only primary European legislation—the European Treaties themselves—has the power to establish formal parliamentary committees of any kind. The Government does not oppose in principle the concept of a joint parliamentary committee to scrutinise Europol, but this idea would have to be pursued informally, possibly building on the existing "Parlopol" mechanism.

The Government values the role of national parliaments in scrutinising Europol's work, and has been fully involved in discussions on this in the context of the Future of Europe debate. The final report of Working Group X "Freedom, Justice and Security" concludes that national parliaments should continue to lay an important role in overseeing current third pillar EU work, including Europol, and we wholeheartedly agree with this view. The Government would therefore not oppose the development of inter-parliamentary mechanisms of supervision of Europol, should provision be made for it in a new Treaty.

5. Community Funding of Europol

Regarding discussions during the Danish Presidency on the Commission's proposal for a Council Decision "on the financing of certain activities carried out by Europol in connection with co-operation in the fight against terrorism" (document 11702/02 Europol 60), the Committee concluded that: "there are telling practical reasons for resisting the proposal for Community funding of some of Europol's activities, which would also be inconsistent with its status as a Third Pillar body. The Government should resist future attempts to change the basis of Europol's funding" (paragraph 44).

The Government agrees that clarity about Europol's funding source is important. We are not opposed to the principle of Europol being financed by the Community budget. It is the concept of a mixed model of funding—which would have been established should the Council have agreed to the aforementioned Council Decision—which the Government considers inappropriate. Such a mixed model of funding could lead to an obligation for Europol to report both to the Europol Management Board and to the European Commission, leading to a highly undesirable dual system of accountability and possible distortion of Europol's priorities. This is why the UK opposed the Council Decision that aimed to establish a legal base for Europol to take up an offer of €5 million from the Community budget.

It should be clarified though that Europol's status as a third pillar body does not preclude it from being financed by the Community budget. Article 41(3) of the Treaty on European Union establishes that operational expenditure for the implementation of third pillar activities should be charged to the Community budget, unless the Council unanimously decides otherwise. The reason that Europol remains funded directly by the Member States is that Article 35 of the Europol Convention explicitly indicates that this should be the case. If the Europol Convention were to be amended or replaced by a Council Decision (or equivalent legal instrument), there is no requirement for the funding regime to remain intergovernmental.

Should Europol's funding source be transferred to the Community budget, the Government's priority would be to define clearly how Europol's budget be spent. We would wish to ensure that Europol's work remains focused on the areas that the UK considers to be priorities in the fight against cross-border crime in the EU.

6. Europol's Overall Role and the Implications of the Convention on the Future of Europe

The Committee concludes that "Europol has a crucial role to perform in combating serious organised crime, but it is at present essentially a role supporting national law enforcement authorities. If, as some have advocated, a fully operational role were proposed for Europol, this would be a very significant change, for which there should be a different legal basis, which could then be the subject of a major debate across the EU. It is important that Europol should not develop a major operational role simply as a result of a succession of relatively small changes to its remit" (paragraph 31).

This is an important point made by the Committee, and is absolutely in line with the Government's view. We are content that none of the proposed amendments to the Convention change the fundamental role of Europol, which is to support, principally through the sharing and analysis of intelligence, Member States' own operations in preventing and combating serious forms of international organised crime. Although provisions for Europol to support joint investigation teams involving two or more Member States were agreed last year, this support would only be in a technical and advisory capacity. Europol officers do not have any coercive or operational powers, and there is broad support from EU Member States that this should remain the case. We do not wish to see Europol developing its own investigative powers at this stage, and would prefer to see efforts focused on making more of a success out of the responsibilities it already has.

The Committee's report highlights the relevance for Europol of the work being done in the context of the Convention on the Future of Europe, and in particular in Working Group X "Freedom Security and Justice". The final report of the Working Group proposes that Europol should be given a specific legal base that would clarify its central role in the framework of EU police co-operation. The report underlines that "this legal base should not be open ended It would rather indicate the direction of possible developments and pose basic limits to such developments". The report also notes that "the provision should make clear that any operational action involving Europol would need in any event to be carried out in liaison and in agreement with the Member State(s) concerned and ht coercive measures would always have to be carried out by competent Member State officials". It is therefore made clear that Europol should not develop into an operational police force, and the Government strongly supports this approach.

As the Committee notes any developments towards a major operational role must be preceded by a major debate across the EU, and should be based on fundamental legislative change rather than a gradual accumulation of powers. We accept however, that at some point there may be calls from parts of the EU for Europol to be granted at least limited investigative functions of its own, for example in relation to Euro counterfeiting. Any such proposals would have to be carefully considered, with full involvement of national parliaments, but for the moment the UK's view is that Europol should focus on providing an outstanding service in support of Member States' law enforcement agencies, rather than looking to take on new responsibilities.

7. Data Protection Issues

Transmission of data to third countries

"The Committee hopes that the Joint Supervisory Body will continue to be closely involved with the preparation of agreements between Europol and third countries involving the transmission of personal data and urges it to adopt a robust approach to the protection of personal data in them" (paragraph 53).

The Government recognises the essential role of the Joint Supervisory Body in ensuring that there are satisfactory data protection safeguards for Europol's activities in general, and in particular in relation to agreements to exchange personal data with third countries. Europol must be able to access and exchange relevant intelligence in order to operate effectively in support of international police co-operation, but this should never be at the expense of adequate protection of EU citizens' personal data rights. The Joint Supervisory Body has an important and influential role in the independent scrutiny of third country agreements. This has been demonstrated repeatedly in the changes that have been made to a number of draft agreements in order to comply with the recommendations of the Joint Supervisory Body. We will continue to support a strong role for the Joint Supervisory Body as an independent watchdog of Europol's activities, to ensure adequate protection of personal data.

"The Committee urges the Government to ensure that any amendment to Article 18 of the Convention provides sufficient guarantees that any agreement on the transmission of personal data from Europol to a third country will be preceded by an individual assessment of data protection law and practice in the country concerned" (paragraph 54).

The Europol Convention stipulates that all agreements to share personal data with third countries must be subject to an assessment of the adequacy of the data protection regime in the third state concerned. The Government attaches great importance to this process, as a means of ensuring that in co-operating with third countries through Europol, we do not compromise the personal data protection rights that our citizens are entitled to. Regarding the earlier proposals to amend Article 18—to allow deviation from an adequate data protection regime in exceptional cases where it is absolutely necessary to safeguard the essential interests of the Member States—the Joint Supervisory Body commented that even in such cases there should always be an assessment of data protection law and practice. Consequently the latest proposals for Article 18(1)(3)

provide that in all exceptional cases involving such deviation, the Director must "consider the data protection level in the State or body in question with a view to balancing this data protection level with the interests referred to above". The Government is content with these modified proposals, and will continue to advocate that, whatever the circumstances, due regard must be given to the data protection implications of any third party agreement.

"The Committee urges the Government to ensure that any agreements with third countries fully reflect the final authorisation power of the Member State concerned, which should also extend to the choice of the authorities in the countries to which personal data is transmitted" (paragraph 55).

The Europol Convention makes it clear that any data passed to Europol by a Member State can only be communicated to a third state or party with the prior consent of the Member State concerned. The Government attaches importance to this provision, and successfully pressed the presidency to drop its earlier proposal for Article 18(4) that would have provided for prior consent for communication to the presumed. We are content with the wording of Article 18(4) as it stands, which states that "the Member State may give its prior consent, in general or other terms, to such communication; that consent may be withdrawn at any time". This provides that the Member State can choose to impose certain conditions regarding the onwards transmission of data, for example by specifying the competent authorities to which data can be passed. If the Member State has concerns about the security of data communicated to a third party it can choose to withdraw its consent at any stage. We will continue to emphasise the importance of Member States' authorisation powers in future agreements to share data with third countries.

Enabling Europol to process data as background information

"The Committee recommends that there should be a much clearer specification of what other data it is intended to process and for what type of background information, and more explicit assurance that the processing of any personal data would be subject to adequate data protection safeguards" (paragraph 58).

The Joint Supervisory Body shared some of the Committee's concerns regarding the Presidency's proposed amendments to Article 6, to enable Europol to process and use background information in its information system, and not only in connection with a specific work file. In particular the Joint Supervisory Body was concerned about the lack of clarity in the specification of what would be regarded as background information. Consequently the earlier proposed amendments to Article 6 were replaced with the following proposal for a new Article 6a on information processing by Europol:

> "In support of the execution of its tasks, Europol may also process data for the purpose of determining whether such data are relevant for its tasks, and can be included in the computerised system of collected information referred to in Article 6(1). The Contracting Parties meeting within the Council, acting with a two-third majority, shall determine conditions related to the processing of such data, in particular with respect to the access and usage of the data, as well as time limits for the storage and deletion of the data that may not exceed six months, having due regard to the principles referred to in Article 14. The Management Board shall prepare the decision of the Contracting Parties and consult the joint supervisory body referred to in Article 24."

The Government is content that these additional safeguards and specifications should ensure an adequate level of data protection and greater clarity about what background information can be processed by Europol. This view is supported by the Joint Supervisory Body's latest opinion on the revised amendments.

Time limits on the storage of personal data

The Committee notes that "unless compelling evidence is produced that the current time-limit on the storage of personal data gives rise to real practical difficulties, we recommend that it should not be increased" (paragraph 59).

The purpose of Article 21(3) is to ensure that data is not held for longer than is necessary. The Presidency's original proposal was for the time limit for storage to be increased from three to five years and for continued storage to be reviewed every three years instead of annually. Following the Joint Supervisory Body's recommendation that these proposals be reconsidered, the latest amendments reinstate the need for continued storage to be reviewed annually, while still extending the retention period to five years. The Joint Supervisory Body acknowledges in its further opinion on the revised proposals that "Europol is of the view that the existing retention period is too short to allow for the effective analysis of certain crimes, terrorism in particular. The experience of the JSB in this area leads to the same conclusion". In light of this the JSB has proposed alternative amendments to Articles 12 and 21 of the Convention, which we will need to consider in more detail, taking into account the views of the Presidency and other Member States. We hope to provide a fuller explanation and further details in due course in our Explanatory Memorandum on the JSB opinion.

Right of access to Europol documents

"The Committee regards it as important that a careful case-by-case assessment should be made of any requests for access to documents and that citizens should be clearly informed about the outcome of their requests" (paragraph 61).

We welcome the proposed new Article 32a of the Europol Convention, which will being Europol in line with the legally binding transparency rules to which other EU institutions are subject. This will require the Europol Management Board, on the basis of a proposal from the Director of Europol, to lay down rules for access to Europol documents. Clearly thee rules will need to strike a balance between the conflicting demands for openness and confidentiality. It is expected that requests for access to documents should be dealt with on a case-by-case basis, and that Europol should provide a satisfactory explanation for instances where it is judged that the need to protect sensitive information outweighs the interests of public disclosure.

APPENDIX 3

EU RUSSIA RELATIONS (3RD REPORT, 17 DECEMBER 2002, HL PAPER 29)

Thank you for forwarding me the Select Committee's Report of EU/Russia relations.

The Government supports the thrust of the Committee's findings and the Report's recommendation that the expanding EU must develop stronger political and economic relations with Russia. The Report represents a thorough and illuminating analysis of the issues at hand.

Overall, the Government agrees that the EU should "adopt a longer-term strategy towards Russia, one that will enable Europe to encourage . . . transformation and to develop a more systematic and productive relationship with Russia in the decades ahead" (page 26 of the Report, paragraph 94). The Government is actively pursuing this agenda within the EU, in collaboration with our partners and the Commission. The addition of the 10 new member states will contribute to this dynamic.

On the committee's main conclusions (as listed on page 5 of the Report), the Government's response is as follows:

Institutional Framework

The Government believes that there is indeed scope, as the Committee suggests, for further consideration of the framework of EU/Russia relations. Though a firm position has not yet been adopted by the Council, it looks likely that the EU's Common Strategy on Russia will be reviewed next year. The Council is currently considering how the Common Strategy might be made more operational and concise. When these ideas are more developed, they will of course be deposited for scrutiny in the normal manner. The EU would also seek to secure a more positive response from Moscow to any new strategy that was developed.

The Committee recommends that "There should be a single office within the Commission co-ordinating all mattes relevant to Russia" (page 5). In effect, within the Commission, DG Relex fulfils this function. The structures of the Union are such that the Council (and its Secretariat) shares responsibility for policy towards Russia with the Commission—and indeed has sole authority in certain areas of EU/Russia relations. However, the Government agrees on the need for improved EU coherence. We are optimistic that the debate on the effectiveness of EU external action in the context of the Convention on the Future of Europe will develop helpful conclusions in this regard.

EU-Russia Agreements

The Report states that "The current EU–Russia agreements are out of date" (page 5) and that the Partnership and Co-operation Agreement (PCA) with Russia "no longer fully meets demand and in practice is effectively circumvented" (paragraph 85). The Government agrees that the EU–Russia relationship is outgrowing the PCA. But the PCA remains an important and useful tool and we want to see full implementation of its provisions, particularly those outstanding on trade and economic development. Implementation of these commitments will play a vital part in the future development of a closer EU–Russia relationship. The effectiveness of the PCA's existing structures, notably the Co-operation Council, Co-operation Committee and its sub-committees, could be enhanced, but they have delivered on important issues, for example in improving co-operation on customs and border-control. The new PCA Trade Dispute Settlement mechanism, though yet to be fully tested, should speed the resolution of technical trade issues and free up the agendas of the Co-operation Council and Committee for discussion of wider EU–Russia issues. Significantly, it was within the structures of the PCA that the arrangements for Kaliningrad transit were agreed.

Nevertheless, the EU should continue to work to improve and rationalise the structures of its relations with Russia. In time, this might involve developing new arrangements. In this context, the Government has taken

note of the Committee's conclusion that ". . . the time has arrived for the entire framework for relations with Russia to be recast to take fully into account the importance of recent events for EU–Russia relations . . ." (paragraph 32). This will take time; especially negotiating any new agreement.

Improving Understanding of the EU-Russia Relationship

The Government agrees that a key element of enhancing the EU–Russia relationship will be a better mutual understanding—the Report notes that "On both sides of the EU–Russia relationship a better understanding of the other party would make for greater progress" (paragraph 45). The UK is doing a lot bilaterally through the British Council to introduce the internet, distance learning and English language teaching to areas of Russia which formerly had no access to such resources. Our EU partners and the Commission are working in a similar vein. The EU's assistance programme in Russia supports this objective through the Tempus programme. Tempus works with Russian educational structures to improve their facilities and curricula and to ensure that these better reflect the needs of a modern, European society. Tempus also provides individual mobility grants for Russian students to study in the EU and vice versa. (Tempus allocations are about €10,000,000 per year.)

The EU also helped establish a leading resource centre in Moscow with its own team of researchers, which houses all EU documents and provides important educational support. The provision of technical assistance to the government through the TACIS programme also exposes Russian officials to experts on how the EU and its member states operate in key policy areas. The Government agrees that improving understanding of Russia in the EU is also important: parliamentary exchanges (including by MEPs) and more visits by officials and experts have a role to play here (paragraph 88).

Further Recommendations

On those recommendations in the report (Part 7, pages 26–27) which are not covered by the key recommendations above, the Government's response is as follows:

The Government agrees with the committee that Environment and in particular radiological protection, is of critical importance and that closer co-operation should be encouraged (paragraph 90). The Government is actively pursuing this agenda both through the EU and other fora. Key milestones this year which must be reached to ensure progress include Russian ratification of the Kyoto Protocol, which will allow entry into force of the Treaty, and conclusion of the Multilateral Nuclear Environment Programme for Russia (MNEPR) agreement. The MNEPR Agreement in particular will set the framework for the release of over a £100,000,000 of Western donor money over the next 10 years to assist in environmental clean up and nuclear safety work in North West Russia.

The Report rightly highlights as a crucial issue in EU–Russia relations the question of Russia's accession to the WTO (paragraph 87). The Government fully agrees with the Committee that "the EU should support the goal of Russian membership of the WTO" (paragraph 21). The EU is currently doing so and has a programme of assistance specifically targeted at helping Russia meet the obligations of WTO membership. On a bilateral basis, the UK has been providing assistance with a DfID-sponsored implementation programme. Russian membership of the WTO will greatly facilitate the development of the EU–Russia trade relationship.

As the Committee rightly observes, regulatory convergence is essential for progress towards creating a genuinely free trade area (paragraph 20), as envisaged in the proposal for a Common European Economic Space (CEES) (paragraph 86). The High Level Group, which is tasked with elaborating the concept of the Common European Economic Space, will report to the Autumn EU–Russia Summit. The Government hopes to see significant progress both on WTO accession and on the CEES by the end of this year.

The Report notes that the EU–Russia Energy Dialogue will play an essential role in creating energy security for the EU in future years (paragraphs 25–31). The Government agrees and is encouraging the EU to use the Energy Dialogue with Russia to better effect, including by involving Member States more in guiding the Dialogue. However, it is for companies to agree commercial arrangements for energy supplies, including in oil (paragraph 89).

The Government also agrees with the need identified in the report for joint action against terrorism. It was for this reason that the EU and Russia adopted their joint "Action Plan on the fight against terrorism" at the EU–Russia summit in Brussels on 11 November 2002. This includes, among other things, commitments to strengthen judicial co-operation on terrorist and organised crime offences, to exchange information on terrorism issues, to sign up promptly to the relevant UN Security Council resolutions, and to work together to tackle terrorist financing.

On Kaliningrad (paragraph 91), the Government welcomes recent progress, and looks to Russia and Lithuania to work together to implement the recommendations fully. Swift and effective implementation on both sides will ensure that the future security of the border is not compromised after accession. It is the responsibility of each Schengen member state to have the mechanisms in place to police their external borders satisfactorily. This applies equally to Lithuania. However, it is worth noting in this context that none of the accession states will be full Schengen members until the evaluation process is complete, in 2006. Lithuania

and the other new members will therefore still have internal border controls with the rest of the EU until that time, completely independently of Lithuania's border arrangements with Kaliningrad.

The Government agrees with the Committee about the importance of reform of the Russian military (paragraph 92). The Government believes that the dialogue between the European Union and Russia on the European Security and Defence Policy, although at an early stage, is developing well. Topics such as methods for participation in, and consultations on, security and defence matters have become established agenda items at recent EU–Russia Summits. With growing co-ordination between NATO and the EU, we envisage that it will become even easier to ensure that the relationship of both organisations with Russia is complementary. Indeed, Russia has expressed an interest in participating in ESDP operations in the Balkans and should soon be contributing to the EU Police mission to Bosnia.

Jack Straw

APPENDIX 4

European Union Select Committee

The members of the Committee are:

Baroness Billingham
Lord Brennan
Lord Cavendish of Furness
Lord Dubs
Lord Grenfell (Chairman)
Lord Hannay of Chiswick
Baroness Harris of Richmond
Lord Jopling
Lord Lamont of Lerwick
Baroness Maddock
Lord Neill of Bladen
Baroness Park of Monmouth
Lord Radice
Lord Scott of Foscote
The Earl of Selborne
Lord Shutt of Greetland
Baroness Stern
Lord Williamson of Horton
Lord Woolmer of Leeds

Printed in the United Kingdom by The Stationery Office Limited
5/2003 851125 19585