HOUSE OF LORDS

European Union Committee

37th Report of Session 2006-07

# Remaining Government Responses Session 2004-05: Government Responses Session 2005-06

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## *The European Union Committee*

The European Union Committee is appointed by the House of Lords "to consider European Union documents and other matters relating to the European Union". The Committee has seven Sub-Committees which are:

Economic and Financial Affairs and International Trade (Sub-Committee A)
Internal Market (Sub-Committee B)
Foreign Affairs, Defence and Development Policy (Sub-Committee C)
Agriculture and Environment (Sub-Committee D)
Law and Institutions (Sub-Committee E)
Home Affairs (Sub-Committee F)
Social and Consumer Affairs (Sub-Committee G)

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The Members of the European Union Committee at present are:

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Lord Bowness
Lord Brown of Eaton-under-Heywood
Baroness Cohen of Pimlico
Lord Freeman
Lord Geddes
Lord Grenfell (Chairman)
Lord Harrison
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Lord Dubs
Lord Goodhart
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Lord Brennan
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Baroness Maddock
Baroness Park of Monmouth
Lord Scott of Foscote
Lord Shutt of Greetland
Lord Williamson of Horton

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1. The Government is expected to respond in writing to all reports from the Committee (other than purely formal reports) within two months of publication.
2. The Committee makes all Government responses available to the House and publishes them as required.
3. This report accordingly makes available, for the information of the House, those Government responses to our reports as listed on the Contents page of this Report.

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# Government Responses

## REMAINING GOVERNMENT RESPONSES SESSION 2004–05

## 12th REPORT: EUROPEAN CONTRACT LAW—THE WAY FORWARD?

### Letter from Rt Hon Baroness Ashton of Upholland, Parliamentary Under Secretary of State, Department for Constitutional Affairs to the Chairman

I am writing to formally respond to the Committee's report on "European Contract Law—the way forward". It has come to my notice that we have not formally responded until now and I am sorry that this means the response has come such a long while after the Report was published in April of last year.

*20 July 2006*

### Government's Response

I am grateful to the Committee for producing such a comprehensive report and list of recommendations which are largely in line with Government policy. I note, in particular, the Committee's concerns about any move towards harmonisation of European Contract law. The Government shares this concern and would certainly not support any move towards such harmonisation, whether on a mandatory or optional basis. The report has also, to some extent, predicted recent developments on the issue of "reprioritisation" following the Mansion House Conference by urging that the much-needed review of the acquis should not be delayed by the development of the CFR.

The importance of the involvement of stakeholders in the project is emphasised in the report. We welcomed the efforts made by the Commission to engage with stakeholders and the Government is continuing to work similarly closely with UK stakeholders, several of whom gave evidence to the Committee's enquiry, to ensure that UK interests are represented as effectively as possible in this work. Lastly, the Committee expresses some concerns about the proposed works on standard terms and conditions (STCs) and the creation of a website. The Commission has now announced that the work on STCs will not now be taken forward. I understand that this is due in part to similar concerns on the part of the Commission about how such a website would be supervised.

The Committee's enquiry into the Contract law project, which involved fairly extensive taking of evidence from a wide range of sources, and the subsequent report have both proved valuable to the Government in its dealings with the Commission as the project has progressed. A sufficient degree of clarity about the precise nature of the Commission's work has taken some time to emerge and there are still a number of important unanswered questions, particularly surrounding the nature and future function of the CFR. We will continue to take the Committee's conclusions into account as we work further with the Commission to address these issues.

#### Project Update

The Explanatory Memorandum that I tabled last October updated the Committee on a number of developments namely the Commission's first Annual Progress Report on the European Contract Law project and the Review of the Consumer Acquis, the joint UK Presidency/Commission conference held at the Mansion House last September and the subsequent conclusions produced by the Competitiveness Council. The overriding theme of the Commission progress report was the Commission's intention to reprioritise the work of the CFR so it would be more focused on feeding into the review of the consumer acquis. This was also the key message that emerged from the Mansion House conference.

Following that event, the Competitiveness Council, chaired by the UK Presidency, produced a set of conclusions on 30 November 2005. These welcomed both the review of the consumer acquis as a unique opportunity to update and modernise Community legislation in this area and also the Commission's commitment to refocusing the entire project to prioritise the review of the acquis. The Conclusions also specifically invited the Commission to come forward with a timetable re-prioritising the project. The Commission duly produced a revised timetable for Workshops throughout the early part of 2006 which concentrated on contract law issues that were directly relevant to the consumer acquis.

Vienna Conference

The conference, which was jointly hosted by the Austrian Presidency and the Commission, was the second annual event on the European Contract law project and attracted a wide range of delegates including representatives from Member States, the Commission's stakeholder network (the CFR-Net) and the academic research network that is developing the CFR and the review of the acquis.

Although the conference provided a good opportunity for useful discussion, it is clear that there is still a considerable degree of uncertainty as to what the CFR will eventually look like and how it will be used and we are continuing to work with the Commission to resolve these issues. There was, however, continued support for the review of the consumer acquis which appears to be progressing well. The Commission intend to produce a Green Paper on the review at the end of this year.

**Letter from the Chairman to Rt Hon Baroness Ashton of Upholland**

Thank you for your letter of 20 July which was considered by Sub-Committee E (Law and Institutions) at its meeting on 11 October. The Response is most welcome, not least for the news of the "reprioritisation" of the Commission's work. We are also interested to learn that the Commission has announced that work on STCs will not now be taken forward.

Whilst the substance of the Government's Response is welcome, it is regrettable that it took so long to reach us. However, we are grateful for your postscript and pleased to see that you are taking action aimed at ensuring that your Department will provide information and reply to the Committee's questions more quickly in future.

Finally, we note that the Commission is to produce a Green Paper on the review of the Consumer Acquis later this year. We look forward to receiving this and also to being kept informed of other developments relating to European contract law.

*12 October 2006*

## GOVERNMENT RESPONSES SESSION 2005–06

## 2nd REPORT: THE FUTURE FINANCING OF THE COMMON AGRICULTURAL POLICY

### Letter from Lord Bach, Minister for Sustainable Farming and Food, Department for Environment, Food and Rural Affairs to the Chairman

The Government welcomes the Report of the European Union Committee on The Future Financing of the Common Agricultural Policy (2nd Report, Session 2005–06, HL Paper 7).

Please find the Government's response enclosed herewith.

*29 September 2005*

### Department for Environment Food and Rural Affairs/HM Treasury's Joint Response

The Committee's Summary of Conclusions is repeated below, with the Government's response following in indented paragraphs in italics.

FUNDING AGRICULTURAL AND RURAL POLICY—THE EU BUDGET

The pressures on Pillar 1 will increase even as the budgetary ceiling remains static. This will place a tremendous strain on the Pillar 1 funds allocated for 2007–13. (paragraph 20) Were a reduction [to a 1% EU budget] to be agreed, it is highly unlikely that those responsible for the reduction would be prepared to accept that the necessary cuts in spending should fall only on the non-agricultural sections of the budget. (paragraph 22)

To re-open the Brussels ceiling now would be to create further instability in an already complex negotiation. We therefore do not recommend that the agreement be re-opened. (paragraph 24) On the other hand, we acknowledge the overwhelming evidence we received that spending on the single farm payment and market support measures within the enlarged EU has the potential to exceed the Pillar 1 Brussels Ceiling. (paragraph 25)

> *Response: As the Committee notes, negotiations on Future Financing are complex. The Brussels ceiling is a sensitive part of the negotiation and the Government believes the issue should be handled in the context of decisions about the EU budget as a whole, both expenditure and revenue. The October 2002 agreement was part of a package that paved the way for enlargement and for the beneficial CAP reforms which have happened since. The Government notes, however, that the ceiling was agreed as a ceiling, not a target, and was explicitly "without prejudice to future decisions on the CAP and the financing of the European Union after 2006".*[1]
>
> *The EU budget needs to be fit for purpose in the 21st century. The Government does not believe that the EU should spend 40% of its budget on the CAP, and believes Europe cannot wait 10 years or more for change. The Government has been clear that any change must take account of the legitimate needs of farming communities and happen over time. However, the Government does not believe a new Financial Perspective should be agreed that does not at least set out a process that leads to a more rational budget, and that this must allow such a budget to shape the second half of the Financial Perspective up to 2013. The Government is currently consulting other Member States on their views about the budget.*

Enlargement will be the main pressure facing the 2007–13 CAP budget. (paragraph 28). The 2004 wave of enlargement has changed the needs as well as the number of EU farmers. (paragraph 29) Enlargement will also result in increased levels of EU agricultural production, leading to further pressures on the CAP budget. (paragraph 32) The demands placed on Pillar 1 market support and intervention measures seem likely to grow significantly following accession of the CEECs. (paragraph 33)

> *Response: The Government agrees that the accession of the AC10 has increased the overall level of production in the EU (although in terms of actual data, the first round of enlargement only took place 15 months ago and therefore information on production is limited) and that this has in turn placed greater pressure on the budget. However, the Government believes that the Brussels ceilings are sufficient to cover the needs of Member States, even following the accession of Bulgaria and Romania, without the need for further budgetary increases.*

The financial discipline mechanism is a welcome measure and will prevent over-run of Pillar 1 spending. We urge the European Council to ensure that the Council of Agriculture Ministers is not allowed to alter this measure. Its effectiveness in preventing any over-run of the Pillar 1 budget must not be weakened. (paragraph

[1] Brussels European Council, 24 and 25 October 2002, Presidency Conclusions, point 12.

36) The most foreseeable reason for the financial discipline mechanism's use will be the planned accession of Bulgaria and Romania in 2007. (paragraph 37)

*Response: The Government agrees that the financial discipline mechanism is a welcome measure and that its effectiveness in preventing any over-run of the Pillar 1 budget must not be weakened. The Government is determined to ensure it functions fairly, efficiently and simply.*

It is clear to us that farmers in the EU-15 are likely, from 2007 onwards, to receive reduced single farm payments, and these will dwindle further to 2013. The European Commission must make this clear to the Council of Agriculture Ministers. (paragraph 42)

*Response: The Government agrees that, with the operation of modulation, which we strongly support, and given the likelihood that the financial discipline mechanism will need to be used, EU15 farmers are likely to receive reduced single. farm payments from 2007. The Government notes the fact that the Commission is committed to making specific proposals to Council about the Financial Discipline Mechanism under the terms of Council Regulation 1290/2005.*

It is clear to us that ceilings have been set which do not fully anticipate the demands on the 2007–13 Pillar 1. (paragraph 43) We believe the Brussels ceiling represents a missed opportunity to plan fully for the enlargement of the EU. In particular, as we have shown, due thought has not been given to the future financing of the EU agriculture sector following accession of Bulgaria and Romania. Future enlargement should be planned for much more carefully when preparing the Financial Perspective for the period beyond 2013. (paragraph 44)

We reiterate our previous recommendation that the Council should never again seek to pre-empt negotiations on the Financial Perspective by agreeing certain ceiling limits beforehand. (paragraph 45)

*Response: The Government believes that the Brussels ceilings are sufficient to accommodate the accession of Bulgaria and Romania without the need for further increases. The Government agrees that any future enlargements should be carefully planned and that the entire structure of the EU budget needs to be fundamentally reviewed in advance of the Financial Perspective for the period beyond 2013. The Government notes the Committee's recommendation about not pre-empting Financial Perspective negotiations in the future.*

## Pillar 1 Spending—Is it Justified?

The British Government are to be commended for undertaking voluntary modulation above and beyond their mandatory requirements, but it is a matter of concern that the United Kingdom is the only Member State to do this, because it is bound to raise issues of equity and distortion of the competition in the British farming community. (paragraph 48)

*Response: The Government thanks the Committee for its commendation, and is alert to the need to ensure equity whilst maximising the value for money and effectiveness of taxpayer spending. The Government will continue to argue with European partners that the best way to provide EU funding to meet rural development objectives is through transfers from the Pillar 1 budget.*

We fully acknowledge that the non-marketable services farmers provide should be recognised. Such activity justifies payment for the environmental, animal welfare and other "non production services" farmers are expected to provide to society. We are not however convinced that the single farm payment will achieve this objective in the most efficient manner. (paragraph 53)

In the long term we believe a separate fund focussed purely on achieving environmental objectives could be a more efficient way to pay farmers for their environmental contribution. (paragraph 54) Such a payment should be considered during the 2008 review, in order to be established during the 2014+ Financial Perspective. (paragraph 54)

*Response: The Government agrees that there is a case for public support for producing environmental and other benefits which the market does not deliver and has long argued, consistent with the findings of the Curry Commission, that public money should be "used to pay for public goods that the public wants and needs". The Government would welcome consideration of the best way to deliver environmental objectives from agriculture in either or both of the 2008 review and the more fundamental review of the EU budget it has proposed, as mentioned above. Consistent with the Committee's conclusions on rural development funding below, the Government believes that a review should include consideration of whether funding for such policies is most appropriately sourced at EU or Member State level. As noted in its response to the Committee's recommendation at paragraph 79, the Government sees rural development expenditure as an effective instrument for the delivery of environmental objectives from agriculture.*

We acknowledge, however, that there are benefits to the continuation of the single farm payment in the short-term. The decoupling of financial support of the agricultural sector from agricultural production requires some transitional compensation during the period when the industry is adjusting to a liberalised market from which support is being withdrawn. The Committee believes that the single farm payment can be justified only on these grounds. (paragraph 55)

The single farm payment has been the vehicle for the most radical reforms of the CAP and we commend the European Commission for this work. (paragraph 57) [However] we recommend the continued use of the single farm payment only for the 2007–13 period as a transitional tool to (i) provide stability and (ii) prepare farmers for the more market oriented and environmentally focussed future of European agriculture. (paragraph 58) We acknowledge that environmental payments should continue in recognition of the contribution farmers make to the environment. (paragraph 59)

> *Response: The Government agrees that change is needed, and that it must take account of the legitimate needs of farming communities and happen over time. The Government also agrees that the level of single farm payment should not be regarded as permanently fixed.*

It would be extremely disappointing if the benefit to farmers of receiving a consolidated single payment was negated by the time and paperwork required in applying for it. Immediate thought must be given to how this can be improved. (paragraph 60)

> *Response: The Government supports the notion of reducing bureaucracy for farmers and simplification of scheme operation. The UK has made full use of the flexibilities allowed in implementing the reforms and this has meant that there are many farmers who are new to the scheme, as well as existing farmers who are registering land for the first time. However, the establishing of entitlements in 2005 is a one-off exercise and it is planned that, for future applications, farmers will only be required to notify changes to their circumstances against (mostly pre-completed) forms.*

Following the decoupling of subsidy from production, current levels of Pillar 1 expenditure, even following reform, may not be necessary. It is clear that if the EU continues to pay out in excess of €38 billion a year for the single farm payment beyond the 2007–13 Financial Perspective period, there will still remain a major distortion in the domestic and international markets for agricultural commodities. (paragraph 61)

> *Response: The Government agrees that tackling market distortion remains a priority and that further CAP reform is necessary. While decoupling represents a major step forward (the bulk of direct agricultural support is now WTO Green Box compatible, ie considered non or minimally trade distorting) we have nonetheless argued, and will continue to argue, that direct payments should be reduced, and for public money to be more efficiently targeted on public goods.*

## Rural Development—The Rise of Pillar 2

We commend the intentions of the Commission to pull the strands of rural development into a single Regulation funded with a single financial instrument. (paragraph 68)

*Response: The Government agrees.*

It is our opinion that a review of the objectives of rural development is needed in order to clarify what that policy is trying to achieve. It is not acceptable for rural development to be used as a continuing subsidy for farmers, but instead the Commission should develop a clear rural development agenda aiming to improve economic and social development. (paragraph 79)

*Response: The Government agrees that there needs to be greater clarity on the policy objectives of rural development expenditure, and to that end aims to secure Council agreement to strategic guidelines for rural development during the UK Presidency. The Government also agrees that rural development should not be used as a form of subsidy: it should be seen and used as a mechanism for paying for the delivery of public goods. The Government does not agree that the only aim of rural development should be to improve economic and social development. It has argued for a stronger focus also on the delivery of environmental objectives.*

It is essential that rural development schemes should not be allowed to develop in such a way as to damage the environment. We believe that an expert study should be carried out to find out how far agri-environment schemes and cross-compliance overlap in order to clarify rural development, environmental and agricultural objectives. (paragraph 80)

*Response: The Government agrees that rural development schemes should not have an adverse impact on the environment. The Government has established an environmental observatory to monitor the impacts of the 2003 reforms. In line with the Government's response to the Committee's conclusions above, the Government would welcome a review which considered how cross-compliance and agri-environment schemes operate in different*

*Member States, and which offered recommendations on the best methods of delivering environmental objectives. The current principle—which the Government supports—is that cross-compliance requirements cannot be eligible for separate payments under agri-environment schemes.*

Rates of compulsory modulation were agreed under the Brussels ceilings. and will therefore exist up to 2013. The first test that is always applied to rural development measures must be that they are effective and value-for-money. Only if this test is met could we recommend a straightforward fiscal transfer into a rural development budgetary heading, without linking the funds to agricultural objectives. (paragraph 82)

*Response: The Government agrees that rural development expenditure should be effective and should deliver value for money, and looks to the Commission to examine draft programmes rigorously, against the aims and objectives set out in the EU strategic guidelines for rural development, in order to achieve this. However, the Government considers that even in cases where rural development expenditure is not fully effective in delivering public benefits, it is better for EU expenditure to be channelled towards it than to be paid in subsidies.*

The Committee received compelling evidence that rural development funding from the EU budget was only one contributory factor in United Kingdom and EU-15 rural development policies and agrees with the movement of funds towards the new Member States. As EU rural development funding is likely to remain relatively static for the EU-15 we recommend that, where possible, these countries should seek to supplement rural initiatives through their own national budget. (paragraph 86)

Her Majesty's Treasury stated that funding rural development primarily from national funds need not mean a reduction in funding. While being somewhat sceptical of this approach, we would encourage it and reinforce the view that there are real needs in the rural communities in the United Kingdom which should not be neglected. The existence of co-financing means that EU funds cannot be accessed without appropriate matching at the national level. (paragraph 88)

*Response: The Government agrees that EU rural development funding is only one contributory factor in UK rural development policies. While rural development funds have been the biggest contributor to the delivery of environmental objectives from agriculture, particularly through agri-environment schemes, they have been a relatively small element in the Government's contribution to economic and social development in rural areas. Defra now contributes over £70 million a year to Regional Development Agency expenditure for the delivery of rural objectives; and Government has a policy of ensuring that all mainstream programmes and policies are rural proofed. In addition significant levels of EU funding through the Structural and Cohesion Funds are being invested in rural areas.*

It is likely that if the net contributor Member States succeed in having the global EU budget reduced, the rural development fund will be substantially diminished. (paragraph 90) If all of this reduction were to be applied to Pillar 2, the amount of money available for rural development 2007–13 would be cut from €88.6 billion to €40 billion-a reduction of 55%. We strongly recommend that such a reduction be avoided. (paragraph 91)

*Response: The Government acknowledges the importance of adequate funding for rural development, and, amongst other things, has argued for further transfers of resources from Pillar 1 to Pillar 2. The Government notes that in the context of the overall budget proposal tabled by the Commission in July 2004, the proposed rural development budget of €88 billion would have represented a substantial increase over current levels of expenditure in the EU 25.*

We were impressed by the success of rural development funding through the LEADER approach which enables very small projects to be established. We do not believe that rural development should be included in structural and cohesion funds, but that a separate rural development heading should remain to fund small projects which we feel may be lost under structural and cohesion policy. (paragraph 98) In order to align rural development funding to new Member States' needs, we recommend that the percentage of funds directed towards Axis 3 (wider rural development) should be increased. (paragraph 99)

*Response: The Government agrees that the Leader approach can be effective at unlocking ambition, energy and inventiveness at local level and notes that the principles underlying Leader are not just relevant to EU expenditure. The Government does not agree with the argument that rural projects should not be supported through structural funds expenditure; and doubts whether having separate instruments designed to deliver similar economic and social objectives in different types of area across the EU would deliver benefits in terms of policy coherence, efficiency and value for money.*

We support the British Government's position of basing spending on need rather than past expenditure because this will ensure that disadvantaged regions in all Member States will benefit fully from rural development funding. (paragraph 101)

*Response: The Government welcomes this conclusion, although, as noted by Lord Whitty in his evidence (Q 237), we need to be clear of the difference between structural funds, which should be used in the most disadvantaged areas across Europe, and Pillar 2 expenditure, which has policy objectives which include maintenance of landscape and avoiding land abandonment.*

In our judgement it is most important that, in the 2008 review the Commission identify how rural development targets will be set and reviewed. This will be necessary in order to establish local objectives, assess the success of individual projects and avoid unjustified or fraudulent spending. (paragraph 104)

*Response: The Government agrees that there should be appropriate targets for rural development expenditure, which can be effectively assessed, and that controls are in place to avoid unjustified or fraudulent spending Each rural development programme will identify specific priorities, targets and monitoring indicators, to cover the life of the programmes, from 2007 to 2013. The Community Strategic Guidelines proposed by the Commission in July (COM (2005) 10893) and on which the UK Presidency hopes to reach agreement, should also help to provide direction and coherence to rural development expenditure.*

A major conclusion of this report is that market support and direct subsidies to farmers will become of declining importance. The restructuring of rural areas on the other hand, has become of paramount importance. This is particularly true in the new Member States and in those countries likely to join the EU during the next 10 to 15 years. (paragraph 105)

*Response: The Government agrees.*

There is a need to build on the rural development work already undertaken by the Commission. We recommend that a new European Rural Development policy, concentrating particularly on the rural poverty problems of the least advantaged areas of the EU, should be established. At the same time, all rural development schemes should pay due attention to the protection of the rural environment. (paragraph 106)

*Response: The Government would welcome consideration of this option as part of a fundamental review of the EU budget, which would also need to consider the role of Structural and Cohesion Funds in supporting development in rural areas and of other environmental programmes in protecting and enhancing the rural environment. As noted above, the Government does not see value in having separate instruments in different types of EU area aimed at delivering essentially the same economic and social objectives.*

### Global Pressures: The WTO

We commend the EU for its decision to "move" on export subsidies. The EU must do all it can to build an environment where farm production is based on market demand and not subsidy entitlement. The EU should negotiate on the basis that it will firmly commit itself to phasing out its agricultural export subsidies within a specified time frame. It will be extremely difficult to secure the agreement of other developed countries to this objective, however, that should not stop the EU from making every effort to achieve it. (paragraph 110)

*Response: The Government agrees.*

The decoupling objective of the 2003 reforms is commendable. The EU must build on this to reform the CAP fully and eliminate all market support measures. (paragraph 114)

*Response: The Government agrees, recognising that such change needs to happen over the longer term.*

We recommend that the EU should push ahead to attain a successful Doha agreement. Political will to cut subsidies and create freer trade must be met with strong action to move all EU subsidies into the Green Box by a specified date. Such action must be accomplished if the CAP is to be fully reformed. (paragraph 116)

*Response: We agree that attaining a successful Doha Development Agenda agreement is a high priority and we will do everything we can to achieve this. Securing further CAP reform and ensuring that subsidies are Green Box compatible (ie, at most, minimally trade-distorting) are linked and mutually reinforcing UK priorities.*

### Looking Ahead: The CAP Beyond 2013

We recommend that the 2008 review focus on the future of the CAP after 2013. It is essential that during the 2008 review the Commission prepares further reforms for the CAP so that it is best suited to deal with the challenges it will face during the Financial Perspective of 2014-2020. (paragraph 121)

*Response: The Government agrees.*

The likely future enlargement of the Union will be the most significant pressure on the CAP post-2013 and the strongest driver of change. (paragraph 123) If Turkey does accede to the EU during the next budgetary period, it will provide a clear impetus to have completed reform of the CAP by the end of the 2007–13 budget period. (paragraph 124)

*Response: The Government agrees that the possible accession of Turkey is another compelling reason for further reform, but believes that reform is needed in any case.*

Such reform must ensure the future CAP is fully able to meet the needs and demands of the very different rural and agricultural conditions of its many Member States. A successful Doha agreement would pave the way for the end of all market support, intervention and export subsidies. The single farm payment should be phased out and a separate environmental fund established to recognise and reimburse farmers for the non-production benefits their activity brings to society. Meanwhile, the restructuring and modernising needs of new Member States' agricultural sectors should be provided for out of a single rural development fund completely separate from any other agricultural objectives. Richer Member States should fund a higher proportion of their own rural development programmes. (paragraph 125)

Tough policy decisions will face future CAP policy-makers considering an EU of 27, 29 or even more Member States. The disparity between the agricultural needs of the EU-15 and those of new Member States is only likely to grow wider. That reason alone justifies the need for further substantial CAP reform. This must be fully considered in the 2008 review and completed in the period 2014–20. (paragraph 126)

*Response: The reforms of 2003 and 2004 have significantly reduced some of the damaging and distorting impacts of the CAP and pave the way for a more sustainable, market focussed farming industry. Nevertheless, the Government agrees that further substantial CAP reform is needed if it is to serve EU citizens most effectively. We wish to see an ambitious agreement to conclude the Doha Round, and could ourselves support an end to export subsidies by 2010. The Government believes that a fundamental review of the entire EU budget, including the CAP, is necessary, and that these recommendations would be appropriately considered in the context of such a review.*

## 5th REPORT: THE 2006 EC BUDGET

### Letter from Ed Balls MP, Economic Secretary, HM Treasury to the Chairman

I am grateful for the Committee's overall endorsement of the Government's priorities for the 2006 EC Budget negotiations. The Government continuously sought, and will continue to seek, to ensure that all proposed EU spending is assessed for the value that it adds and that total expenditure levels remain below Financial Perspective ceiling levels. I also welcome the Committee's support for the Government's ongoing efforts to secure the reform of the CAP. It should be noted, however, that while the government will always strive in Annual Budget negotiations to ensure that appropriation figures for agriculture remain realistic relative to recorded implementation rates, these negotiations do not provide the appropriate forum to discuss more fundamental reform of the CAP. This area of spending will be considered in the 2008–09 Budget Review.

I note that the Committee had concerns over the discussions we have had on the current Financial Perspective 2007–13. As you are aware, since this report was written, these negotiations have been successfully concluded. I believe the Inter-Institutional Agreement that was agreed in December 2005, was a positive outcome for the UK and the European Union. As far as the outcome of the 2006 Annual Budget negotiations is concerned, I would refer you to the update provided to your committee by my predecessor in January 2006.[2] This provides the details of the 2006 EC Budget which was finally adopted and assesses the degree to which the Government was successful in achieving its objectives.

*16 March 2007*

## 6th REPORT: COMPLETING THE INTERNAL MARKET

### Letter from Ian Pearson MP, Minister of State for Trade, Investment and Foreign Affairs, Department of Trade and Industry. Foreign and Commonwealth Office

Thank you for providing us with copies of the European Union Committee Report on Completing the Internal Market in Services, which was published on 21 July 2005.

I should like to take this opportunity to respond to the recommendations you make in the report.

[2] Correspondence with Ministers, 40th Report of Session 2006–07, HL Paper187. EC Budget 2006. Letter from Ivan Lewis MP, Economic Secretary, HM Treasury to the Chairman, 10 January 2006.

### General

The proposed Services Directive has great potential to provide a significant contribution to economic growth, competitiveness and employment in the EU. The Government strongly supports the aims of this proposal, both in opening the Internal Market and in contributing to better regulation. We believe that it will deliver significant benefits for businesses, consumers and employees here in the UK and across Europe.

During negotiations it is our goal to maximise the benefits of the Directive while ensuring that essential protections are not compromised, and we are working closely with other Member States in the Council, the European Parliament, and the Commission to achieve this.

Services comprise a vast range of diverse economic activities, often highly dynamic in nature, a vital necessity to be able to adapt to new economic circumstances and take advantage of new market opportunities. For these reasons, the Government agrees with the Committee in supporting the approach by the Commission of a horizontal framework Directive in this area.

The alternative—taking a sectoral approach—would require a large number of legal instruments and take many years to agree and implement at national level. ln addition, it would produce legal instruments that would not be able to deal with new emerging service sectors and might moreover become outdated by not being able to deal appropriately with the fast-evolving activities they set out to regulate. The result could be a mass of complex and contradictory legislation: a backward step for clarity and better regulation.

We agree with the Committee that Member States should retain the freedom to define what they consider to be Services of General Interest. We also support the Committee's view that there should not be a blanket exclusion for Services of General Economic Interest from the scope of the Directive as this would serve to deny the benefit of the Directive to providers in these sectors. By taking such a step, Member States might deny themselves the benefit of potentially better quality and/or lower cost services.

We do believe, however, that certain public services are not suited to being covered by the Directive, for example publicly funded health services. For these areas, we are seeking specific exclusions from the scope of the Directive.

### Free Movement of Services

The country of origin principle has the potential to deliver liberalisation in the services sector, creating jobs and removing unnecessary regulatory burdens on cross-border trade. However this should not lead to a compromise on UK standards for the environment, health and safety, workers, animals and vulnerable people in our society.

The Committee raises the issue of distinguishing between "establishment" and "temporary service provision", a concern shared by a number of Member States including the UK. Some work has already been done to remove uncertainties around this area, and this is continuing in Council Working Group. As the Committee notes there is a fine balance to be struck here. In seeking to provide greater legal certainty in relation to whether a provider is or is not established, there is a risk of unduly restricting the freedom to provide cross-border services as set out in the Treaty and interpreted in the case law of the European Court of Justice.

The Government agrees that many of the uncertainties raised can be answered within the text of the Directive and that further uncertainties can be dealt with during the continuing negotiations. As noted above, a search for absolute legal clarity might also lead to a substantial watering down of the liberalising effects of the Directive. In any event, as part of the implementation process, Member States will have to provide substantial guidance to providers and recipients on where they believe host regulations would apply to a cross-border service provider.

### Upholding Standards

The Government supports the view of the Committee that the country of origin principle would not lead to a race to the bottom nor to a levelling down to a lowest common denominator in terms of regulatory and protective standards.

One of the Government's top negotiating priorities for the Directive is to ensure that UK standards on health and safety are upheld in all circumstances. We are grateful to the Committee for their investigation of potential loopholes. We are continuing to work with HSE and other stakeholders to ensure that any drafting chages are limited to those strictly necessary.

We agree with the Committee that consumers stand to gain significantly from the Directive as a result of a wider choice of service providers, and better quality provision at lower prices. Consumers are protected by the derogation from the country of origin principle for consumer contracts. The harmonisation measures obliging providers to give information to recipients will empower the consumer with more information and will increase consumer confidence. We acknowledge that the proper working of the mutual assistance and supervision mechanisms proposed in the Directive will be critical to ensuring trust and confidence in cross-border services.

At the European level it is clear that thinking on the issue of mutual assistance is at an early stage. However, work is underway to determine how contact points might function most effectively and how competent authorities across Member States might best work together. A sub-group of the Internal Market Advisory Committee has been set up to consider how an information exchange system might be developed to meet the requirements set by the proposals.

At a national level, the Government is continuing its dialogue with stakeholders, and has also commissioned a study to consider the implementation costs associated with the mutual assistance provisions—from meeting requests for information from other Member States to the rollout of the aforementioned information exchange system—as well as the provisions for single points of contact. These costs are likely to be significant, and therefore the Government considers it important to ensure that these would be justified by the potential benefits of the agreed Directive.

The setting up of the mutual assistance mechanism will be a significant undertaking, but we note that there are examples of functioning mutual assistance regimes in other areas of EC activity, for example in tax; therefore we are confident that an effective and workable scheme is possible.

### Next Steps

As the current President of the Council of the European Union, the Government is leading negotiations in Council, and we are closely following progress on the Directive in the European Parliament. As these continue, we regard it as vitally important to ensure the right balance between the market opening potential of the proposal and legitimate levels of protection—and that these benefits are not outweighed by the costs associated with the Directive.

*3 October 2005*

## 7th REPORT: EUROPEAN UNION FISHERIES LEGISLATION

### Department for Environment, Food and Rural Affairs Response

The Government welcomes this report which raises important issues about the Parliamentary Scrutiny of European Union fisheries legislation. We recognise and share the concerns that the Committee has about the lack of time that has been available to consider certain fisheries legislation. The Government is committed to improving the process by which decisions are made on fisheries management within the EU.

Responses to the Committee's specific recommendations are set out below.

### Improving Scrutiny of EU Fisheries Policy

**The Committee agrees with the proposal that the Fisheries Council should be moved to February, along with a later start to the fishing year.**

**We agree with the Minister's assessment that:**

> **"The change in the timetable would give not only parliamentarians more time, it would give the industries in the various countries and the governments in the various countries more time to study these proposals in more depth".**

**We therefore urge the Government to take forward the improvement of the decision-making process for fisheries management as a matter of urgency under their Presidency.**

The Government supports changes to the decision-making process, including altering the fishing year timetable to allow more time between the Commission's proposals being circulated and decisions being taken and applied. In our current EU Presidency role, we have timetabled a discussion on this at the October Fisheries Council.

To help facilitate early discussion of key issues, (the so-called "front-loading" of discussions), the UK arranged a discussion on options and principles for stock recovery at the recent September Council. We anticipate a debate related to the preparation of the 2006 Total Allowable Catches and Quotas package itself in November.

The Government will continue to keep the Committee informed as and when these issues develop. We will also copy you in on the various unofficial working documents as they become available.

European Fisheries Fund

**Mr Bradshaw stated that the UK is "resolutely opposed to any reintroduction of public money which might lead to increased capacity anywhere in the EU fleet" Given the continuing overcapacity of the EU fleet and its impact on over-fishing we agree strongly with the Government on this issue.**

The Government agree this recommendation. We support the principles of the proposed European Fisheries Fund. The proposed regulation is designed to prevent expenditure which will result in an increase in the capacity of fishing vessels. The Government strongly supports this. It reflects the decision taken by the Council of Fisheries Ministers in December 2002 to end subsidies, which could lead to the generation of additional fishing effort. The EU fleet remains excessive, given the state of many fish stocks; and incentives from public funds to increase the effective fishing capacity would put greater pressure on those stocks, and ultimately threaten the livelihoods of fishermen themselves.

We believe the proposed Fund will assist the fishing industry to restructure to a more sustainable basis economically, socially and environmentally, and achieve a better balance between fish resources and effort, protecting the marine environment and improving vessel safety and product quality.

Remote Sensing

**It is vital that mechanisms for compliance with EU Regulations are improved. We support the Commission's recent initiatives in the use of remote sensing to monitor fishing vessel activity and the establishing of a new European Fisheries Control Agency. In our judgement it is essential that the United Kingdom takes forward the introduction of these initiatives during its Presidency.**

The Government agrees this recommendation in part. The potential value of remote sensing has been recognised by Member States but it is not a stand-alone enforcement tool. The Government believes that currently other initiatives that are being progressed such as electronic log books and the registration of buyers and sellers of first sale fish, together with the use of satellite monitoring systems offer a more cost effective means of improving compliance with EU Regulations. Nevertheless contractors are continuing to develop remote sensing technology and Fisheries Departments will be keeping a close eye on the results of the trials of this technology that are currently taking place.

Regional Advisory Councils

**We urge the Government to use the United Kingdom residency to progress the establishment of Regional Advisory Councils across the EU.**

The UK Government agree this recommendation. We continue to support the establishment of the Regional Advisory Councils. The Pelagic and the North Western Waters Regional Advisory Councils have been formally inaugurated in the last few weeks. In addition to facilitating the establishment of the Regional Advisory Councils, the United Kingdom Presidency organised an informal meeting of EU Fisheries Directors to discuss their progress and will continue to facilitate co-ordination between the RACs and the Commission.

## 11th REPORT: THE EUROPEAN UNION'S ROLE AT THE MILLENNIUM REVIEW SUMMIT

### Letter from Rt Hon Douglas Alexander MP, Minister for Europe, Foreign and Commonwealth Office to the Chairman of Sub-Committee C

I refer to your letter of 27 July 2005 to Tim Morris enclosing the Committee's report on the EU's role at the Millennium Review Summit. I enclose the Government's response to the report, which addresses specifically the Committee's conclusions as outlined in Chapter 8 of the report.

The Committee might also be interested in the attached documents. These illustrate the very close and effective cooperation that EU Partners maintained in the run-up to the Summit, which resulted in broad agreement between Partners on the EU's priorities for the Summit. I enclose:

- extracts from the June European Council and July GAERC meeting conclusions;
- the EU priorities paper for the 60th session of UNGA;
- the EU written statement at the Summit itself; and
- the EU written statement circulated to delegations in New York to accompany the Foreign Secretary's statement on behalf of the EU at the general debate of the 60th session of the UN General Assembly that immediately followed the Summit.

I also enclose a copy of the paper on conditionality written jointly by the Treasury and the Department of International Development.

I understand that the Committee's report will be debated in the House of Lords on Thursday 20 September. Lord Triesman will participate, and wind up for the Government.

*28 September 2005*

## Government Response

### Chapter 8: Conclusions

114. *In order to ensure a successful outcome at the Millennium Review Summit the EU must articulate the case for reform, use its transatlantic relationship to influence the United States and have a serious dialogue on the reform agenda with countries in Africa, Asia and Latin America (para 32)*

The European Union worked tirelessly to promote a successful Summit outcome.

In New York and in capitals the EU encouraged all UN Member States throughout the negotiating process to play their part in ensuring a successful Summit outcome. Shortly before the Summit itself, when negotiations were at a very difficult stage, the EU—Presidency and several Member States—lobbied at the highest levels including in Africa, Asia and Latin America, emphasising the need for constructive participation in the end-game negotiations. We were part of the core group in New York that sought to reach agreement on the most contentious parts of the Summit outcome text. The EU also urged partners, including the US, to show the necessary flexibility to reach compromise to achieve the best outcome possible. The Foreign Secretary and Secretary of State for International Development reinforced these messages with the US and key partners from all regional groupings.

This overall effort was crucial in achieving the Summit outcome, which was finely balanced shortly before leaders arrived at the Summit. As the Prime Minister noted in his address to Summit leaders, if fully implemented, the reforms agreed will represent a major step forward for the UN system.

115. *The Government, whilst holding the EU Presidency, should give an adequate emphasis to the importance of the EU's role at the Summit and provide Parliament with an explanation of any areas of disagreement between United Kingdom and EU policies and priorities (para 34)*

We sought at every opportunity to stress the crucial role the EU would play at the Summit. As agreed with EU Partners, we raised as Presidency the importance of a successful Summit outcome in many of the EU's meetings with Third countries in the months preceding the Summit. Furthermore, Heads of Government at the June European Council, and Foreign Ministers at July's GAERC meetings endorsed the EU's strong support for the UN Summit process in their respective conclusions (attached at Annexes A and B). Partners agreed a priorities paper for the 60th session of UNGA (attached at Annex C). The EU also circulated a detailed written statement at the Summit, and a written statement to accompany the Foreign Secretary's statement on behalf of the EU at the general debate of the 60th session of the UN General Assembly that shortly followed the Summit (attached at Annexes D and E).

There was a very broad consensus on the EU's position and priorities for the Summit. This reflected the very close cooperation that EU Partners maintained throughout the Summit process, in New York, Brussels and in Capitals.

One area where there is no EU consensus is on Security Council reform. However this did not affect the EU's approach to the Summit.

116. *We commend the EU for its stated commitment to increased aid. The Minister for Europe is right to acknowledge the very significant commitment made by the EU-10, until recently recipients of aid themselves.*[3] *But we note that some doubts have been expressed as to whether all the Member States so committed will be able to deliver the sums pledged. We therefore recommend that monitoring procedures be rigorously applied in order to ensure that the pledges made by all Member States are met (para 41)*

We agree that progress should be rigorously monitored and believe that it will be. Each Autumn the European Commission will send a questionnaire to Member States asking them to report progress on a series of development commitments, including the new aid volume commitments. On the basis of this information the Commission will issue a report each Spring which will then be discussed by the Council of Ministers. The progress made by each individual Member State will be visible for all to see.

117. *We recommend that, well in advance of the December Council, the Government provides to Parliament for examination a detailed analysis of how the EU's new long-term strategy on Africa will implement the outcome of Gleneagles and of the Millennium Summit Review (para 43)*

We agree with the recommendation. An explanatory memorandum on the European Commission's Communication on the EU Strategy for Africa will be submitted for parliamentary scrutiny. A debate on EU development, including Africa, has already been organised by the House of Commons EU Scrutiny Committee for 3 November.

118. *If broad participation in the International Finance Facility is to be secured the Government will, as a matter of priority, need to convince European and other partners of the usefulness of this instrument and encourage them to support it (para 45)*

We agree. On 9 September, the UK launched the pilot IFF for Immunisation (IFFIm) alongside the announcement of pledges to the IFFIm by France, Italy, Spain and Sweden. The IFFIm demonstrates the technical feasibility of the IFF and the frontloading principles. On the same day as the IFFIm launch, the UK and France jointly announced that they would implement the IFF.

We continue to discuss the IFF with EU and non-EU donors, with the aim of launching the IFF in 2006. The IFF already has support from over 80 countries, including France, Italy, Sweden, Brazil, China and South Africa. However, one of the advantages of the IFF is that it does not require the agreement—or participation—of all donor countries for it to be launched.

119. *The EU should make serious efforts to enlist the support of the emerging countries of the globalised economy in its efforts to gain support for its development agenda (para 48)*

EC delegations engage in regular dialogue with emerging countries on the development agenda. In addition, outreach to the emerging countries of Brazil, China, India, Mexico and South Africa was a major part of the G-8 agenda this year, with the Summit in Gleneagles attended by EC President Barosso.

Since then, there have been the EU-China and EU-India summits, which have included development issues on the agenda.

Trade is also an important part of the development agenda. The EU will continue to work closely with all WTO members, including the G20 grouping of developing countries (which includes China, India and Brazil) to move the WTO Round of trade negotiations forward, to ensure a successful outcome to the WTO Ministerial Conference in Hong Kong in December. We aim to complete the WTO Round in 2006.

120. *We were interested to hear the Minister for Europe mention a paper written jointly by the Treasury and the Department of International Development on conditionality and recommend that the Government make this paper available to Parliament with an explanation of how far the Government's analysis is shared by other EU Member States and the European Commission (para 49)*

The paper on conditionality, a copy of which is attached, will be placed in the Commons and Lords libraries, and we are currently analysing to what extent our policy is shared by other EU member states and the EC. Once this analysis is complete it will also be placed in the Parliamentary libraries.

[3] Q 150.

121. *We call on the Government, in cooperation with Italy, France and Germany, to work on securing the agreement of other leading nations to the G8 initiative (para 51)*

We are working closely with all other members of the G7 to secure the agreement by the Boards of the IMF, World Bank and African Development Bank to press ahead with implementation of the G8 debt relief initiative. We will provide the Committee with a readout from the Annual Meetings of the World Bank and IMF, where the issue is scheduled to be discussed.

122. *We urge the Government to give a strong lead in the EU preparations for the WTO ministerial meeting in Hong Kong in December 2005 and to take forward the discussion on reforming the Common Agricultural Policy in a way that benefits developing countries*[4] (para 52)

As EU Presidency, we will work closely with the Commission, our EU partners and other WTO Members to build on the progress made so far to ensure a successful and pro-development outcome at the WTO Ministerial Conference in Hong Kong in December. This will allow us to achieve our aim of completing the WTO Round by the end of 2006. A successful trade round has the potential to lift 140 million people off subsistence of less than $2 a day 60 million people in sub-Saharan Africa alone. Agriculture is the key issue for developing countries.

We will continue to press for reform of the CAP and other developed countries' trade-distorting agriculture policies. Within the WTO Round, we will push for improved market access for developing countries, reductions in trade-distorting domestic support and agreement on an end date for agricultural export subsidies at Hong Kong. We believe that WTO members can and must agree an end date of 2010. In the longer term, we will continue to press for further reform of the CAP.

123. *We agree with the Minister for Europe that it has been a "brave and principled" decision by the Government to pick climate change as one of its key priorities for the United Kingdom's EU ands G8 presidencies.*[5] *We urge the Government to seek agreement at the international conference in November, and to promote a specific date for the start of the post 2012 discussions included in the Millennium Review Summit draft-outcome document. The date should ideally be the December 2005 UN Climate Change Conference, where the United Kingdom will represent the EU (para 57)*

The 1 November meeting marks the formal launch of the Dialogue on Climate Change, Clean Energy and Sustainable Development which was agreed at Gleneagles to provide a forum for continuing discussions amongst the G8 and China, India, Brazil, South Africa and Mexico and other countries with significant energy needs.

The Dialogue will create a unique forum for participating countries to work together on the shared challenges of addressing climate change, energy security and access to energy. The Gleneagles Communique outlined the need to:

(a) address the strategic challenge of transforming our energy systems to create a secure and sustainable future;

(b) monitor the implementation of the Gleneagles Plan of Action and explore how we can build on that progress; and

(c) share best practice.

The Gleneagles Communique makes very clear that the Dialogue is not a substitute for negotiations on future action in the UNFCCC. The UNFCCC is the only place where agreement can be reached on future action.

The UN Climate Change Conference (COP11 COP/MOP1) in Montreal later this year will represent the first time that an item that allows the Parties to discuss formally commitments post-2012 has been included on the Agenda. This item will cover Article 3, paragraph 9 of the Kyoto Protocol, which covers consideration of commitments for subsequent periods for Parties included in Annex I to the Convention. The EU's objective for this agenda item will be to secure the start of negotiations on further international action post 2012.

The EU is also looking forward to initiating a process among all Parties to explore how to implement better the UN Framework Convention on Climate Change.

[4] Q 151. See also The Future Financing of the Common Agricultural Policy, 2nd Report, Session 2005–06, HL Paper 7, para 116.
[5] Q133.

124. *The EU should, if necessary, continue to press for new principles on the application of force beyond the Millennium Review Summit (para 66)*

The EU welcomed the reaffirmation at the Summit of the provisions in the UN Charter on the use of force and the unprecedented recognition of the responsibility to protect. EU member states are likely to continue to promote debate on the circumstances in which it is right to use force, so that action can be taken against the full range of serious threats to international peace and security, including those from terrorism or proliferation of WMD.

125. *We endorse the concept of the responsibility to protect; we hope the EU will throw its full weight behind its endorsement at the Review Summit; and we express our hope that the Security Council will apply it in future when cases are brought before it which justify such action (para 69)*

The endorsement of the responsibility to protect was an important achievement of the Summit. For the first time, the international community has agreed that it cannot stand by as genocide, war crimes or crimes against humanity are committed against vulnerable populations. At the Summit, the world's leaders recognised that their governments and the international community have a responsibility to act, with force if necessary, even when atrocities are committed within another member state's borders.

126. *We recommend that the Government press for as much specific language as possible in the Millennium Review Conclusions so that the "actual setting up of the Peacebuilding Commission does not in some way go backwards or be delayed".[6] Its objective should be to have the Commission up and running by the end of 2005. We agree with the EU position that the Peacebuilding Commission needs to be closely linked with the Security Council (para 73)*

The Committee's recommendations on the Peacebuilding Commission are entirely in line with the Government's view and were taken up in our negotiating position in New York.

As a result, we achieved a detailed outcome text setting out both the functions, organisation and membership of the Commission (and related Peacebuilding Support Office and Fund) and agreement that its reports should be made widely available. The Summit text also establishes a deadline of 31 December 2005 for the Commission to begin operations.

What remains now is to agree on which UN organ(s) should be involved in the Commission's establishment this was the single most controversial issue in the negotiations on the Peacebuilding Commission prior to the Summit. The Government will continue to press for the closest possible link to the Security Council, particularly as regards the Commission's day-to-day operations.

127. *We urge the Government to do its best to ensure that the strategy against terrorism is finally endorsed at the Millennium Review Summit (para 76)*

We did just that and achieved a good outcome. Some Member States had doubts about specific items within the Sercretary-General's strategy so we were unable to secure full endorsement. But the Summit welcomed the outline presented by the Secretary-General and, crucially, agreed a process to take it forward.

128. *We urge the European Union to take an active role in talks with the Organisation of the Islamic Conference to reach agreement on a Comprehensive Convention on Terrorism as soon as possible (para 78)*

The EU continues to do this. The Summit strongly condemned terrorism, though it did not go on to describe terrorists acts. We continue to press OIC members at every opportunity to fight for the definition of terrorist acts contained in the "Co-ordinator's text" of the Comprehensive Convention. The Summit agreed to try to agree the Convention within a year. We will do all we can to make it happen.

129. *The NPT Review Conference was a disastrous failure and more needs to be done. The Government should include non-proliferation among its priority objectives for the Summit (para 81)*

Like many other countries, the UK was disappointed that no substantive outcome was achieved at the NPT Review Conference, particularly after the strong urging given to the Conference by the UN Secretary General in his opening address. The Foreign Secretary was therefore pleased to accept the Norwegian Foreign Minister's invitation to join an initiative that sought to redress the lack of substantive results at the Review

[6] Q 139.

Conference with a robust declaration on these issues at the Millennium Review Summit. In this initiative, as in our work for the NPT Review Conference, the UK hoped to spur the international community to strengthen the nuclear non-proliferation regime.

We worked until the last minute, both nationally and as EU Presidency, to seek the best possible outcome on non-proliferation and disarmament at the Summit. We share the UN Secretary General's disappointment at the lack of international commitment shown by the inability of States to agree any language on these subjects. Non-proliferation remains a Government priority, and we are currently considering how best to find pragmatic solutions to overcome this setback and enhance the nuclear non-proliferation regime.

130. *We support the proposal to establish a Human Rights Council which would, we believe, be more effective and more respected than the current, largely discredited, institution. We urge the Government and the EU to support all measures proposed at the Millennium Review Summit to strengthen the UN human rights machinery (para 88)*

We welcome the Summit's resolve to create a Human Rights Council responsible for promoting universal protection of all human rights and fundamental freedoms, to address violations of human rights and make recommendations. The EU was disappointed that it was not possible to agree more detail about the Council at the Summit. However, the EU looks forward to working with the President of the General Assembly and partners to take forward work on this as soon and as effectively as possible.

We support the Secretary General's call to resume negotiations on the Council on the basis of the detailed language developed in the run up to the Summit, including, for example, that it must be a standing body able to address urgent human rights situations and questions; must preserve and build upon the strengths of the Commission on Human Rights, in particular the system of special procedures and participation of civil society; and that its members must undertake to abide by the highest human rights standards.

131. *We believe that the EU Member States should be ready to contribute to a democracy fund if the modalities of its operation can be satisfactorily negotiated (para 91)*

At the Summit the EU welcomed the establishment of the UN Democracy Fund. We support its remit to co-ordinate and complement democracy-strengthening activities throughout the UN system. As at 16 September the UK, France, Germany, Hungary, Italy and Portugal have made initial financial pledges to the Fund. Other member states may do so in due course.

132. *The Government must do all it can to ensure that the issue of Security Council reform does not overwhelm all the other important aspects of this Summit (para 102)*

The High Level Panel report and In Larger Freedom made Security Council reform more likely now than for several years. However, there was no agreement among the 191 UN member states on a model of reform before the Summit and it did not overshadow the broader summit agenda. The UK continues to support an enlarged Council to make it more representative. We expect the debate to continue.

133. *We call for the Government to state how it believes the UN General Assembly can be revitalised and to work towards the reforms proposed by the Secretary General (para 106)*

The General Assembly has set up a working group, open to all Member States, to identify ways to further enhance the effectiveness and efficiency of the GA. The UK, as a leading proponent of UN reform, will continue to ensure that the working group leads to practical steps that build on previous resolutions and the proposals in the Outcome Document. Revitalisation should include streamlining the Assembly's agenda, reducing duplication with other UN bodies, and other measures to promote more efficient working methods.

134. *We agree that reform of the UN Secretariat to make it more effective and accountable is both necessary and urgent. The Government should press for the acceptance by all UN member states of the Secretary General's reform package (para 109)*

We welcome the significant progress that the final Outcome document represents. There is strong language and a significant level of detail on strengthening oversight at the UN, in recognition of the need for improved transparency, accountability and efficiency. The future reviews of programme mandates, human resources, budget and programme planning rules are all significant steps forward. It is vital that the UN's resources are channelled to the areas of greatest need and impact, and in this respect we welcome the Summit decision on the review of mandates.

A key task for us during the current General Assembly will be to ensure we deliver these reforms without losing to the lowest common denominator that consensus sometimes delivers. We will be working closely with partners and with the Secretariat to develop strategies to deliver this reform as work on implementing summit outcomes continues.

135. *The Government should make available to Parliament, following the Millennium Review Summit, its analysis of how successful any agreed reforms of ECOSOC are likely to be, and what other reforms might be required in order to render ECOSOC an effective multilateral institution (para 113)*

The EU has welcomed the Outcome document's provisions on ECOSOC, reinforcing the role of ECOSOC as the principal body of UN for co-ordination, policy review and policy dialogue on issues related to development and, in particular, on the implementation of the Millennium Development Goals.

The Outcome document also acknowledges that in order to do this ECOSOC will have to change the way it organises its work. The UK would like to see this include streamlining of the current agenda, and a reduction in overlap between ECOSOC and other UN bodies such as the Functional Commissions and the General Assembly.

**Annex A**

## JUNE EUROPEAN COUNCIL CONCLUSIONS: EXTRACT ON UN SUMMIT

V. External Relations

*Preparation for the September 2005 United Nations Summit*

23. The European Council considers that the United Nations Summit will provide an opportunity to reaffirm our support for the UN as an international relations instrument founded in law. It reaffirms its strong support for effective multilateralism and for the process of reform of the United Nations. It emphasises that the report which the Secretary-General presented on 21 March 2005 is balanced and, with the contribution from the President of the General Assembly, provides an excellent working basis for the declaration to be adopted in September in New York.

24. The European Council wishes to express its gratitude to the Secretary-General for the exhaustive and coherent nature of his report. It shares the Secretary-General's views on his integrated concept of collective security and supports the idea that development, security and human rights are interdependent and mutually reinforcing. It welcomes the strategies proposed in the areas of development, security, human rights, the rule of law and democracy.

25. The European Council considers it essential to achieve a balanced and ambitious outcome enabling the UN to be reformed so that it can respond more practically and effectively to the multi-dimensional threats and challenges identified in the Secretary-General's report.

26. Against that background, the European Council emphasises its commitment to pursuing a substantial dialogue with all UN member countries with a view to preparing for the Summit.

27. Development plays a crucial role in the preparation of the Summit. In this respect, recalling the prime responsibility of developing countries for their own development, the European Council welcomes the agreement reached by the Council concerning Official Development Assistance (ODA). In the context of the commitment to attain the internationally agreed ODA target of an ODA/GNI ratio of 0,7%, the European Council notes with satisfaction that its Member States are on track to achieve the 0,39% target of GNI in 2006 for ODA volumes contained in the Barcelona commitments. While reaffirming its determination to fulfil these commitments, the Council decided on a new collective European Union target of an ODA/GNI ratio of 0,56% by 2010. That would result in an additional EUR 20 billion a year in ODA.

28. In this context, the European Council can reiterate that Member States which have not yet achieved an ODA/GNI ratio of 0,51% undertake to attain that level, within their respective budget allocation processes, by 2010, while those that are already above that level undertake to continue their efforts. Member States which joined the EU after 2002, and have not yet achieved an ODA/GNI ratio of 0,17%, will endeavour to increase their ODA to attain that level, within their respective budget allocation processes, by 2010, while those that are already above that level undertake to continue their efforts; Member States undertake to achieve the target

of an ODA/GNI ratio of 0,7% by 2015, while those which have achieved that target commit themselves to remaining above that target Member States which joined the EU after 2002 will endeavour to increase their ODA/GNI ratio to 0,33% by 2015.

29. The European Council invites the Council to pursue its consideration of the most promising options for innovative sources of funding for development, so as to increase the resources available in a sustainable and predictable manner.

30. The European Union recalls the need, in parallel with funding-related efforts, to improve the quality and effectiveness of Official Development Assistance, and the need to reinforce capacities and ensure the viability of increased Official Development Assistance for partner countries. It welcomes the Paris Declaration on Aid Effectiveness and recalls the commitment by the Member States and the Commission to ensure that it is implemented and followed up without delay, that verifiable key targets are established, and that the specific commitments which the European Union adopted at the High-level Forum in Paris are implemented.

31. The European Council confirms that the European Union will continue to take account of development cooperation objectives in all policies that it implements which are likely to affect developing countries. The EU will make a particular effort to promote and increase the consistency of development policies in the context of the Global Partnership for Development under Millennium Development Goal (MDG) No 8.

32. The EU considers the development of Africa a priority and will step up its efforts to assist African countries to reach the Millennium Development Goals. In this context, the European Council reaffirms the European Union's intention of increasing its financial assistance for subsaharan Africa by collectively allocating at least 50% of the agreed increase in ODA resources to the African continent, respecting the priorities of the various Member States. Aid for countries which are emerging from conflict and for fragile States will also be improved.

33. The European Council regards the creation of the Peace Building Commission, conflict prevention, the fight against terrorism, the adoption of principles governing the use of force, disarmament, the non-proliferation of weapons of mass destruction and their delivery systems and the strengthening of the United Nations' peacekeeping capabilities as its priorities in the area of security in the preparation of the Summit.

34. The European Council welcomes the agreement reached at the United Nations General Assembly on 13 April 2005 on the Convention for the Suppression of Acts of Nuclear Terrorism and calls on all members of the United Nations to sign that Convention during the Summit in September.

35. With regard more specifically to the non-proliferation of weapons of mass destruction, the European Council deplores the fact that despite the EU's efforts, the NPT Review Conference was not able to achieve a document by consensus, dealing with the basic questions. The European Council reiterates the importance which it attaches to the consolidation of the NPT and hopes that the issue will be addressed at the September Summit. It confirms its common position, adopted for the Review Conference, as the basis for pursuing its objectives in the forthcoming examination of the NPT.

36. The European Council welcomes the prominent place given to human rights, the rule of law and democracy in the reform proposals. In this connection, the European Council reaffirms the importance which it attributes to the concept of responsibility to protect, which must be implemented by the Security Council. It supports the Secretary-General's proposals to reinforce the role and resources of the High Commissioner and to establish a Human Rights Council meeting throughout the year, linked to the General Assembly, and reflecting the universality of human rights and their central position in the UN system. It also supports the call for the strengthening of the High Commissioner's Office, inter alia through its interaction with the Security Council. Those initiatives should increase the extent to which account is taken of human rights in the United Nations' activities.

37. In the area of institutional reforms, the European Council recognises the need to reform the main UN bodies, among them the General Assembly, ECOSOC and the Security Council, with a view to enhancing the representativeness, transparency and efficiency of the system. It also supports reform efforts in the areas of the budget and administrative management, to enable the UN better to fulfil its mandate.

38. Sustainable development, including environmental questions and concerns, must be integrated to a greater extent in national and international development programmes and strategies. The European Council supports the Secretary-General's urgent appeal for a more integrated international environmental governance structure, based on existing institutions. In this perspective, and. given the environmental challenges associated with development, the EU proposes that the high-level meeting in September 2005 initiate a process, as part of UN reform, which will lead to negotiations on the establishment of a UN agency for the environment, based on UNEP, with a revised and strengthened mandate, supported by stable, adequate and predictable financial contributions and operating on an equal footing with other UN specialised agencies. This agency, based in Nairobi, would make it possible to develop the environmental dimension of sustainable

development in an integrated and consistent manner, and would cooperate closely with multilateral agencies, each using its comparative advantages to best effect.

**Annex B**

**DRAFT COUNCIL CONCLUSIONS ON UN SUMMIT**

The Council discussed preparations for the United Nations Summit to be held from 14 to 16 September 2005. The Council welcomed the Commission Communication "The 2005 UN Summit: Addressing the global challenges and making a success. of a reformed UN"—as an important contribution in shaping the European Union's aspirations for the Summit. The Council recalled the European Union's recent decision on increasing aid volumes and effectiveness, enhancing policy coherence for development, and focusing on Africa, and welcomed the commitments made at the G8 meeting in Gleneagles.

Recalling the conclusions agreed by the European Council in June and its own decisions of 24 May, the General Affairs and External Relations Council agreed that the European Union should continue to attach the highest priority to ensuring a balanced and ambitious Summit outcome, resulting in substantive actions to support the full implementation of the Millennium Declaration and related commitments, as well as in a stronger and more effective UN that can better meet today's interconnected challenges to international development, peace and security, and human rights. The Council supports the efforts of the UN General Assembly President in drafting a declaration, based on the concepts and proposals contained in the Secretary-General's March Report "In larger freedom".

In particular, the Council emphasises the importance of:

— more and better aid, including debt relief and innovative sources of funding for development, to meet the ODA objectives and the Millennium Development Goals and other existing commitments from major international conferences and recalls the EU's recent commitments to increase levels of ODA;

— good governance, the social dimension of globalisation, and the special needs of Africa;

— international trade as an engine for development, the call for rapid completion of the Doha Development Round, and the call for market access for LDCs;

— its conclusions of 24 May, which *inter alia* highlight the importance of an intensified multisectoral response to HIV/AIDS as laid down in the European Programme for Action to confront HIV/AIDS. The EU further recognises that the MDGs cannot be attained without progress in achieving the Cairo goal of universal sexual and reproductive health and rights;

— the need to make progress on environmental sustainability issues such as climate change and biodiversity, and a more coherent institutional framework of international environmental governance built on existing institutions including through launching a process leading to the creation of United Nations Environment Organisation;

— the creation of the Peacebuilding Commission;

— strong language on terrorism (leading to a definition of terrorism and conclusion of the Comprehensive Convention), disarmament, non-proliferation, and strengthening the rule of law;

— the responsibility to protect;

— strengthening the UN's human rights machinery including the establishment of a Human Rights Council in order to truly elevate the Commission on Human Rights and reinforcing the role and resources of the Office of the High Commissioner for Human Rights;

— strengthening gender equality in all UN activities;

— strengthening the new UN capacity building for rapid action in the face of humanitarian disasters;

— modernising and reforming the UN administrative system, including the Secretary General's longer term vision for grouping the various agencies, funds and programmes into more tightly managed entities in the field of development, humanitarian assistance and environment, and further improving UN system coherence at country level.

The Council recognises the need to reform the main UN bodies, among them the General Assembly, ECOSOC and the Security Council.

The Council welcomed the work of the Latvian President and Irish Foreign Minister as two of the UN Secretary General's Special Envoys for preparation of the Summit and agreed that the Presidency should conduct intensive consultations in New York and capitals ahead of the Summit and carry out further outreach in third country capitals as necessary. The Council agreed that Presidency should prepare a written statement, drawing on the June 2005 European Council Conclusions, the Commission Communication, and EU statements and position papers, for circulation at the Summit.

**Annex C**

## EUROPEAN UNION PRIORITIES FOR THE 60th SESSION OF THE UNITED NATIONS GENERAL ASSEMBLY

### Introduction

1. The European Union is deeply committed to the United Nations, to upholding and developing international law, and to effective multilateralism as a central element of its external action. This commitment was strongly reaffirmed by the European Council in its conclusions of 16–17 June. During the course of the 60th General Assembly of the United Nations, the European Union will give the highest priority to engaging with its UN partners on implementation of the agreements reached at the September Millennium Review Summit. It will also engage with UN partners on other key issues such as co-operation in crisis management, refugees/displaced persons, negotiations of the next UN Budget and the Capital Master Plan.

### 2005 High Level Event

2. The 60th Session of the United Nations General Assembly has special significance this year in view of the meeting of Heads of State and Government on 14–16 September 2005 for the High-Level Plenary Event of the General Assembly in New York. Five years after the 2000 UN Millennium Summit, the 2005 Summit will assess the implementation of the Millennium Declaration, the Millennium Development Goals and the outcome of major UN summits and conferences in the economic, social and related fields. The Summit will also adapt the UN to new realities and define specific tasks in this respect.

3. The European Union stresses that the Secretary General's report "In Larger Freedom" is a good basis for the negotiation of an outcome document for the Summit in September and considers it crucial to agree on a package of development, human rights, security and UN institutional reforms. The result should be a strengthened and more effective United Nations, better able to address the interconnected and multidimensional threats and challenges to international peace, security and development. The EU will strengthen its efforts in a common endeavour to work for an ambitious and balanced outcome at the Summit and is committed to working constructively with UN partners during the 60th General Assembly and elsewhere to implement the agreements made at the Summit.

4. The EU stresses the high importance of development issues in the 60th UNGA. The EU's recent commitment to new levels of ODA, notably to reach a collective 0.56% ODA/GNI by 2010 and 0.7% by 2015 which will result in an additional annual 20 billion euros ODA by 2010, underlines the priority the EU attaches to financing for development. The EU will strive for an ambitious and concrete programme of action, involving more and better financing for development, including through innovative mechanisms; commitments and action, at national level, by developing countries to create and reinforce the necessary governance structures and environment for economic growth; and adopting ambitious national development strategies and policies, as well as paying special attention to the particular needs of Africa. In this regard, the EU recalls its collective commitment to allocate at least 50% of the agreed increase in ODA resources to Africa. UNGA60 should signal clearly the need for longer term, more radical reform of the UN development architecture.

5. The EU underlines the importance of taking into account the social dimension of globalisation in various policies and in international co-operation. The EU will promote employment and decent work for all.

6. The EU regards the creation of the Peacebuilding Commission, conflict prevention, the fight against terrorism, the adoption of general principles concerning the use of force, disarmament, the non-proliferation of weapons of mass destruction and their means of delivery and the strengthening of the United Nations peacekeeping capabilities as its priorities in the preparation of the Summit as far as the issue of peace and security is concerned.

7. The EU welcomes and strongly supports the establishment of a Peacebuilding Commission, to assist countries in making the transition from the end of armed conflict to the resumption of sustainable development activities and to better co-ordinate all bilateral and multilateral actors. The EU will work for an effective Peacebuilding Commission, which can prevent conflicts re-occurring.

8. Regarding the fight against terrorism, the EU welcomes the proposal for a clear statement that violence targeted against civilians and non-combatants is not justified under any circumstances. It urges all states to unite behind the clear political declaration on this proposed by the Secretary General. The EU also supports the UN comprehensive counter-terrorism strategy proposed by the Secretary General in Madrid, including the elaboration of a universal definition of terrorism. The EU calls for agreement at the 60th GA on the Co-ordinator's text of the Comprehensive Convention on International Terrorism, and for the signature and ratification of all 13 existing UN counter-terrorism conventions.

9. The EU also welcomes the prominent place given to human rights, the rule of law and democracy in the reform proposals. In this connection, the EU reaffirms the importance of the responsibility to protect. It supports the Secretary-General's proposals to reinforce the role and resources of the High Commissioner for Human Rights and to establish a Human Rights Council, with a robust mandate, in order to truly elevate the Commission on Human Rights. The EU would favour establishing the Human Rights Council as a main free-standing charter body of the UN, linked to the GA, meeting throughout the year and reflecting, at the institutional level, the universality of human rights and their central position in the UN system, as well as the concern to place human rights on the same footing as issues of development, peace and security. Pending a decision the General Assembly might take on the establishment of such a body, the Human Rights Council should be established as a subsidiary body of the General Assembly, thus creating a link with a universal body. The EU supports the strengthening of gender equality in all UN activities.

10. The EU supports the development of co-operation between the United Nations and the regional organisations as an effective way to maximise efficiency in addressing the numerous challenges confronting the international community.

11. The EU recognises that management reform and modernisation of the UN Secretariat will be key to delivery of Summit outcomes and to enable the UN better to fulfil its mandate. In particular, the EU calls for greater accountability, transparency, professionalism and efficiency within the UN Secretariat and greater authority for the UN Secretary-General to allocate and redeploy resources within an overall budget and posts ceiling.

12. The EU also supports further structural reform of the UN development, humanitarian and environment systems and policies to improve system-wide coherence and effectiveness and promote sustainable development, and looks forward to working with all parties on specific proposals to strengthen environmental governance from the 60th UNGA. In this regard, the EU supports the launching of a process to establish a UN agency for the environment, based on UNEP, with a revised and strengthened mandate, supported by stable, adequate and predictable financial contributions and operating on an equal footing with other UN specialised agencies.

13. In the area of institutional reforms, the EU recognises the need to reform the main UN bodies, among them the General Assembly, ECOSOC and the Security Council, with a view to enhancing the representativeness, transparency and efficiency of the system.

14. The EU supports continued reform and revitalisation of the GA as a key element of the wider UN reform agenda. We will therefore support further rationalisation in the work of the GA Committees following the Summit. We will engage fully on areas that represent clear priorities in the UN agenda, including those where Summit follow-up action is needed. But on lower priorities, or on issues where leaders have already reached substantive Summit decisions, we are determined that in the wake of the Summit, the GA should not simply return to business as usual.

15. The EU supports a reform of the *modus operandi* of ECOSOC and its subsidiary bodies to ensure that ECOSOC carries out its mandate more effectively. ECOSOC must better be able to promote global dialogue and partnership in the economic, social, environmental, and humanitarian fields. It must equally better promote coherent and co-ordinated approaches of the UN-system and has to play an important role in post-conflict situations.

### Humanitarian Assistance

16. The EU will support improvements in humanitarian response commitments to predictable funding, predictable capacity and standby arrangements, as well as safe and unimpeded access to vulnerable populations. The EU will stress the need to observe humanitarian principles and International Humanitarian Law.

### UN Regular Budget for 2006–07

17. The EU will seek to adopt a budget that will strengthen the UN in support of implementation of Millennium Declaration proposals and agreements reached at the 2005 Summit. The EU is committed to ensuring the availability of resources for the UN, while adhering to our long-standing principle of budgetary discipline to ensure effective management of resources.

### Capital Master Plan

18. Given the urgency and the necessity of the renovation of the UN HQ in New York, the EU attaches great importance to the agreement of a comprehensive and coherent Capital Master Plan. The EU considers that decisions on this issue should be taken urgently.

**Annex D**

## Statement of the European Union accompanying the speech of The Rt Hon Jack Straw MP, Foreign Secretary of the United Kingdom of Great Britain and Northern Ireland to the General Debate of the 60th Session of the General Assembly

17 September 2005: United Nations, New York

*In his speech, the Foreign Secretary will refer to progress made at the World Summit, but will address his comments particularly to the Summit's recognition of the responsibility to protect and need for further engagement between the Middle East and the rest of the world*

The Acceding Countries Bulgaria and Romania, the Candidate Countries Turkey and Croatia*, the Countries of the Stabilisation and Association Process and potential candidates Bosnia and Herzegovina, the former Yugoslav Republic of Macedonia, Serbia and Montenegro, as well as Ukraine and the Republic of Moldova align themselves with this statement.

* Croatia continues to be part of the Stabilisation and Association Process.

### Introduction

1. At the Summit, which ended yesterday, world leaders took up the challenge of making the UN more efficient, effective and relevant. The European Union (EU) believes that the Summit Outcome is a clear milestone along the road of reform. It is a clear mandate for change, addressing challenges that the world has long faced—and others that the world is facing for the first time.

2. The EU knows that a stronger and more effective United Nations is the only way to secure global stability and prosperity. Events in the five years since the Millennium Summit have strengthened this conviction. Without a shared effort to accelerate progress towards the Millennium Development Goals, rich and poor countries alike face a future of increased instability. Failure in UN-led efforts to tackle the threats of terrorism and proliferation would endanger the prosperity of the developing world as much as the developed. The United Nations should not be a forum for countries to push individual agendas, but one in which the international community can agree common action for the benefit of all the world's citizens.

3. The EU's support for the United Nations does not make us blind to its faults. It makes us more determined to build a United Nations that can act quickly and effectively. The EU's deep commitment to the ideals of the United Nations and to the vital work it carries out around the world can be seen as well as heard. EU member states pay about half of all voluntary donations to humanitarian and development activities as well as nearly 40% of the cost of the UN's regular budget and UN peacekeeping operations.

### Summit Outcome

4. The EU welcomes the Outcome as a whole, but is particularly pleased with progress in a number of areas: the Summit's headline on the need for more and better aid, and for development efforts to focus on meeting the Millennium Development Goals and promoting sustainable development; the condemnation of terrorism; the detailed mandate for the establishment of the Peacebuilding Commission; the doubling of resources for OHCHR and the decision to create the Human Rights Council; the unprecedented recognition of the responsibility to protect; and crucial first steps towards a reformed UN Secretariat.

5. Like the Secretary-General, the EU had hoped for greater progress in some areas: a more substantial terms of reference for the new Human Rights Council; agreement to give the Secretary-General more flexibility and authority as Chief Administrative Officer of his Secretariat, in return for greater accountability; and backing for further measures on non-proliferation and disarmament.

6. Nevertheless, the EU believes that where action has been agreed, it is vital that the international community now takes it. Where the urgent need to discuss and implement has been recognised, the international community must now heed it. Words and promises must be made reality.

## Development

7. The need for such action is most vividly illustrated by the agenda on development. The Summit provided the foundation for strengthening the global partnership between developed and developing countries set out at Monterrey. Earlier this year, the EU set a timetable to reach new levels of Official Development Assistance. By 2010, this assistance will account for 0.56% of the EU's collective Gross National Income—resulting in an annual additional 20 billion Euros. By 2015 this proportion will reach 0.7%. And EU member states recently agreed to support the G8 agreement to write off debt. In addition, the Summit recognised the value of developing innovative sources of financing.

8. Sub-Saharan Africa is not on target to reach many of the goals for over 100 years and on some goals—including hunger and sanitation—the situation is actually going backwards. At least 50% of the agreed increase in EU aid resources, therefore, will go to Africa; in plain terms this means a doubling of EU aid to Africa over the next five years.

9. More aid on its own will not be enough. The real engines for making poverty history will be developing countries themselves. The EU believes that, as important as increasing aid, is making sure that it is used better and more effectively, in order to drive up standards of governance and help the poorest people for whom it is intended. This means developing countries adopting ambitious national development strategies, creating and reinforcing good governance structures, fostering a positive environment for economic growth and helping the private sector flourish. We welcome the strong and comprehensive commitments made in this regard by the African countries through the African Union, and its NEPAD initiative, and reflected in the Summit Outcome.

10. Some would say that we did not make enough progress on trade at the Summit. The EU believes that, through the Doha Round, the international community must deliver real gains for poor countries by reducing market barriers, abolishing export subsidies and significantly reducing trade-distorting domestic support, so that these countries can trade their way to higher growth and more jobs.

11. The international community of today owes it to future generations to ensure that development, in rich and poor countries alike, is sustainable in economic, social and environmental terms. The EU welcomes the Summit's recognition of the need to meet the commitments and obligations undertaken in the UNFCCC, and remains fully convinced that the UNFCCC is the appropriate forum for negotiating future action on climate change. The EU is firmly committed to urgent global action to mitigate climate change—a serious, long-term challenge for every part of the world.

## Peace and Security

12. The EU is taking a leading role across the development agenda. But this agenda cannot be advanced in isolation. Individual countries can only develop in a secure global environment. Just as development is not a preoccupation only for the developing world, so security is not only in the interests of the developed world. We have seen time and time again how conflict and instability in developing countries have destroyed fragile social and economic progress. The threats of terrorism and proliferation endanger the stable global environment within which trade flourishes and economies grow. Security is of direct relevance to the whole international community.

13. Progress was made at the Summit. The agreement to establish a Peacebuilding Commission will make a major contribution to a more coherent and better co-ordinated international response to the needs of countries emerging from conflict. It will help prevent conflicts from restarting and encourage countries to make the transition from violent instability to peaceful, sustained development. The EU is committed to seeing the Commission established by the end of the year.

14. Increasingly, conflict and violence takes place beyond the boundaries of conventional war. In July, the EU again suffered the horror of a major terrorist atrocity. This time, the target was London. But no continent is safe from the threat of terror. International terrorism requires an international response; we pay the price for each others' vulnerabilities.

15. The United Nations has already done much to set international standards against terrorism and to encourage and help States to meet them. The EU welcomes the Summit Outcome's clear condemnation of terrorism and the undertaking to conclude a comprehensive convention on international terrorism during the 60th session of the General Assembly. But the EU believes we must go further and affirm that the targeting and deliberate killing of civilians and non-combatants cannot be justified or legitimised by any cause or grievance.

16. Despite the Summit's failure to reach agreement on measures for non-proliferation and disarmament, work to make progress on these issues must go on. In his speech to the NPT Review conference, the Secretary General gave stark warning of the catastrophic global impact of any such use. We should heed his words. At the conference the international community made clear its continued commitment to the non-proliferation regime and to disarmament.

## Human Rights

17. The Secretary General has said that we will achieve neither development nor security without respect for human rights. Over fifty years the UN has had remarkable success. It has built a framework of international human rights law that sets clear standards by which all states are judged. As has long been recognised, however, when those standards are breached, we have not always done enough. The EU welcomes the unprecedented recognition of the international community's responsibility to protect populations from genocide, war crimes, ethnic cleansing or crimes against humanity.

18. The EU also welcomes the Summit's commitment to reinforcing the role and doubling the resources of the Office of the High Commissioner on Human Rights. Together with the decision to establish a Human Rights Council, the Summit has thus taken two other notable steps towards creating more effective human rights machinery at the UN. Protection and promotion of human rights has been reinforced as the third pillar of the UN's work, alongside development and peace and security. The EU is fully committed to work with the President of the GA and all interested delegations to complete, as soon as possible during the 60th session of the GA, negotiations on the mandate, modalities, functions, size, composition, membership, working methods and procedures of the new Council.

## Strengthening the United Nations

19. In his report "In Larger Freedom", the Secretary-General set member states a challenge. He called on all member states to reshape the United Nations "in ways not previously imagined, and with a boldness and speed not previously shown". The EU welcomes endorsement at the Summit of the need to reform the main UN bodies, among them the General Assembly, ECOSOC and the Security Council, with a view to enhancing the representativeness, transparency and efficiency of the system. The EU will play its part in ongoing efforts to improve the effectiveness of the General Assembly and ECOSOC. In this regard, the EU welcomes the Outcome document's provisions on ECOSOC, reinforcing the role of the Council as the principal body of UN for co-ordination, policy review and policy dialogue on issues related to development and, in particular, on the implementation of the MDGs.

20. More widely, the EU welcomes the decisions on management reform taken at the Summit and will pursue their implementation vigorously in this session of the General Assembly. There needs to be a modernised approach to management in the UN that is based on strengthened accountability, greater transparency and more efficient working practices. It is vital that the UN's resources are channelled to the areas of greatest need and impact, and in this respect the EU welcomes the Summit decision on the review of mandates. The EU further believes that the Secretary-General needs the authority and flexibility to carry out his managerial responsibility and to re-deploy posts and resources from lower to higher priority areas.

21. At an operational level, the EU is determined to see, through improvements to the predictability of humanitarian funding and capacity and to standby arrangements. The current reforms which will bring the various UN agencies and programmes working in one country together under a single leader and common management are good ones. We look forward to the results of the Secretary-General's further work on strengthening the management and co-ordination of operational activities.

22. The EU is committed to ensuring the availability of adequate resources for the UN, while adhering to our long-standing principle of budgetary discipline. We will therefore seek to adopt an appropriate budget for 2006–07 that will enable the UN to deliver meaningful results in all its activities, including new mandates

agreed by the Summit. Given the need for urgent renovation work to make the UN Headquarters in New York safe, the EU believes that agreement on a comprehensive and coherent Capital Master Plan should be taken during the current session.

**Annex E**

## PARTNERSHIPS FOR POVERTY REDUCTION: RETHINKING CONDITIONALITY

### Foreword by the Rt Hon Hilary Benn MP, Secretary of State for International Development

Five years ago, the world agreed an ambitious plan for development in the 21st century—the Millennium Development Goals. It called for a new sort of relationship between donors and developing country partners based on a shared commitment to common goals, and to joint action to achieve them.

There is, rightly, much debate about how this shared commitment should work in practice. President Mkapa of Tanzania has said: "Development cannot be imposed. It can only be facilitated. It requires ownership, participation and empowerment, not harangues and dictates".

I agree, but our thinking and practice on conditionality has not kept pace with this new approach. That's why the UK Government has reviewed its policy; and is calling on the World Bank, the International Monetary Fund and other donors to do the same.

This paper shows how donors can support policy leadership by developing countries without imposing our own views. It also sets out our clear responsibility to parliament and people to ensure that aid is not used corruptly and is well spent for the purpose for which it was intended. The right kind of partnership must have reducing poverty at its heart, alongside upholding human rights and strong financial management. The paper also highlights the importance of good economic and social policies, and of strong commitment to transparency, accountability and good governance.

In this new approach, agreed benchmarks for measuring progress on the reduction of poverty, rather than policy conditions set by donors, will be the basis for both partners to be accountable to their citizens. The paper makes firm commitments to prevent the misuse of funds through corruption or weak financial management. It is also clear about the circumstances in which accountability to taxpayers will require the UK to consider interrupting or reducing agreed aid. It expresses our commitment to make aid more predictable and more transparent, and explores how donors can work together more effectively,

The "Make Poverty History" campaign is calling on donors to provide "more and better aid" to help developing countries achieve the Millennium Development Goals. I see the principles in this paper as central to both objectives. By supporting policy leadership in developing countries, donors will make their aid more effective. And by ensuring that aid is effectively used for reducing poverty, donors will give their own countries confidence that more aid will be worthwhile.

*Hilary Benn*

### 1. Summary

1.1 Our understanding of what makes aid effective is changing. Evidence and experience have challenged traditional approaches to "conditionality" (where donors make their aid conditional on the pursuit of particular policies in the partner country). This paper sets out a significantly new approach to building a successful partnership for poverty reduction, focussing on poverty outcomes rather than specific policy conditions.

1.2 Good policy matters for development. Macroeconomic stability, growth, good governance and social inclusion are all important for long term poverty reduction. We believe that developing countries must be able to determine their own policies for meeting the Millennium Development Goals (MDGs). We are committed to supporting greater country ownership, especially of the policy process, and better mutual accountability.

1.3 The UK Government believes that an effective aid partnership should be based on a shared commitment to three objectives:

(a) reducing poverty and achieving the Millennium Development Goals;

(b) respecting human rights and other international obligations; and

(c) strengthening financial management and accountability, and reducing the risk of funds being misused through weak administration or corruption.

Developing country governments and donors should agree on benchmarks to assess progress in these areas. These benchmarks should where possible be drawn from national poverty reduction plans. As in any relationship, an aid partnership should be based on open dialogue, with rights and responsibilities on both sides. Each partner should take account of the views and concerns of poor people.

1.4 In deciding how to allocate aid between countries, the UK will take account of the extent of poverty in a country, and of its ability to use aid effectively (as evidenced by the expected impact of its poverty reduction programme and its commitment to sound financial management and accountability standards). Even where the shared commitment needed for a good partnership is not in place, or is under threat (for example in some fragile states), donors can still contribute effectively to reducing poverty. In countries where the government is weak or uninterested in development, the UK will seek to provide aid in ways which build the government's commitment and strengthen its capacity. Where appropriate, the UK will also work with civil society and the private sector.

1.5 Within a partnership, both donors and developing country governments need to agree the purpose for which aid is given. This ensures that both parties have a shared understanding of how aid will contribute to reducing poverty, and can be held publicly accountable for delivering on their commitments.

1.6 In its aid relationships, the UK will be guided by five principles:

*Developing country ownership*

DFID will support nationally owned poverty reduction plans that take account of the views and concerns of poor people. We will not make our aid conditional on specific policy decisions by partner governments, or attempt to impose policy choices on them (including on sensitive economic areas such as privatisation and trade liberalisation). Instead we will agree with partners on the purpose for which aid is being given, and will agree benchmarks to assess progress. We will draw these from countries' own plans, where available, and these benchmarks will relate to the impact and outcome of countries' overall programmes in reducing poverty, rather than to specific policies.

*Participatory and evidence-based policy-making*

Both donor and developing countries should be accountable, to their citizens and to the wider global community, for showing how aid is improving the quality of life for poor people. The UK supports participation and the use of evidence in policy-making, and will press for the use of Poverty and Social Impact Analysis (PSIA). We will also encourage national debate—including in parliaments—on the relative impact of different policy choices.

*Predictability*

Developing countries can use aid most effectively if they can rely on it as part of their long-term budget plans. The UK will seek to make aid more predictable by being clear in advance about how much aid will be given and the basis on which funds will be reduced or stopped. We will talk to partner countries before any interruption of aid, and will assess the impact that reducing or interrupting aid would have on the poor.

*Harmonisation*

The UK will work with other donors to improve aid harmonisation and limit the overall burden of conditionality. In particular, we will encourage the World Bank and the IMF to use conditionality in accordance with the principles in this paper; and will continue to press them to monitor and streamline their combined terms and conditions. DFID will use analysis from the IMF and World Bank in making its assessment of progress towards poverty reduction. However, an IMF or World Bank programme going "off track" will not automatically lead DFID to suspend its assistance.

*Transparency and accountability*

Both partners—donors and developing country governments—should be committed to transparency, and should make public their decisions and the evidence on which they are based. The UK aims to increase transparency around the process of decision-making on conditions, the conditions themselves, and the process for deciding to reduce or interrupt aid. The UK will use conditionality to ensure that aid is not used corruptly or for purposes other than those intended. In giving aid we will also take account of countries' commitment to universal human rights standards and other international obligations.

1.7 The circumstances in which the UK will consider reducing or interrupting aid are, therefore, if: (a) countries move significantly away from agreed poverty reduction objectives or outcomes or the agreed objectives of a particular aid commitment (eg through an unjustifiable rise in military spending, or a substantial deviation from the agreed poverty reduction programme); or (b) countries are in significant violation of human rights or other international obligations; or (c) there is a significant breakdown in partner government financial management and accountability, leading to the risk of funds being misused through weak administration or corruption.

## 2. Introduction

2.1 This paper sets out the UK Government's position on effective aid partnerships. It outlines the principles we will apply in building partnerships. It explores the relationship donors should have with the policy-making process in developing countries. It sets out the circumstances in which we will consider modifying or withdrawing existing aid commitments. It signals a significant change in our thinking and practice.

2.2 In recent years the UK has been moving away from traditional approaches to conditionality. We believe that it is inappropriate and has proven to be ineffective for donors to impose policies on developing countries. Instead, we believe that successful aid relationships must be based on mutual commitment and dialogue, transparency and accountability.

2.3 Good policy matters for development. Macroeconomic stability and growth are essential for lasting poverty reduction. But the policies needed for poverty reduction and long term development are much broader and encompass the social, cultural, economic, civil and political rights of all men, women and children. They also include governance issues, environmental concerns and social exclusion. We will support developing countries to decide for themselves what policies to include in their poverty reduction plans. We will use our aid to back these plans, wherever possible.

2.4 The paper has been produced jointly by the Department for International Development, HM Treasury and the Foreign and Commonwealth Office. It is based on a broad range of international experience and evidence.

2.5 The paper is in four sections:

- What do we mean by conditionality?
- What impact has conditionality had?
- The UK government's approach to aid partnerships.
- The way forward.

## 3. What Do We Mean by Conditionality?

3.1 The UK applies terms and conditions through the programmes it has directly with a country (so-called bilateral programmes) and those it supports as one of many donors such as through membership of the World Bank or European Union (multilateral programmes).

3.2 Aid agreements typically set out terms and conditions to be met by the parties. Agreements often allow donors to stop funding if there is a significant breakdown in the performance of public financial management and accountability. This is sometimes known as "fiduciary conditionality". They can also allow donors to stop funding if a country veers significantly from its poverty reduction objectives or international obligations. There is general agreement that conditionality in these areas is important, though there is debate about the particular circumstances in which it is appropriate, given the potentially adverse consequences on poor people of any reduction or interruption of aid.

3.3 There is more disagreement around the use of "policy conditionality", where donors agree to provide aid on condition that the country pursues particular policies. Aid has often been conditional on economic, environmental or social policies, such as macroeconomic stabilisation or increased investment in health or education. Sometimes it has been conditional on specific policies such as privatisation, which have been controversial in the partner country. If the country failed to implement agreed commitments then donors have reduced or even stopped their support.

3.4 From the. mid-1990s there has been a significant evolution in aid relationships, which has implications for the appropriate role of conditionality. First, poverty reduction has become the primary objective of development assistance, and the Millennium Development Goals have provided a new framework for development.

3.5 Second, while sound macroeconomic policies are essential for growth and poverty reduction, there is also greater understanding of the importance of good governance in reducing poverty and conflict, and of the role of democratic participation in developing national plans to reduce poverty. For example, excessive military spending and corruption have an impact on the delivery of public services and the investment environment.

3.6 In response, donors have broadened the focus of aid conditions from macroeconomic policies to include also conditions linked to political and institutional change, as well as social and environmental policy. Such conditions have included commitments by the partner country to tackle corruption or establish more transparent and inclusive systems of government. Donors have also been readier to include conditions about the process of policy-making, for example making aid conditional on a country's commitment to consult poor people in preparing a national poverty reduction strategy. These so called "process conditions" cover the process of policy making without specifying the content of the policy that should result.

## 4. What Impact has Conditionality Had?

4.1 Evidence on the impact of policy conditionality in bringing about policy change is at best mixed.

### *Have conditions been met?*

4.2 In many cases, either donors or developing countries have not kept to the conditions that they signed up to. Developing countries sometimes agreed conditions in areas of reform even though they were unconvinced of the case for change. Unsurprisingly, countries have largely ignored conditions set in such circumstances, or the reforms pursued have not been sustained. Put simply, conditionality which attempts to "buy" reform from an unwilling partner has rarely worked.

4.3 Donors, too, have sometimes failed to fulfil their part of the bargain. Aid has been withdrawn in response to domestic financial pressures in donor countries or external political events, with limited notice or consultation. There are also frequent examples of donors continuing to provide assistance even when countries have not kept to their agreement.

### *Have conditions reduced poverty?*

4.4 Concerns have been raised that some conditionality has promoted reforms that have made poor people worse off. In the past, poverty reduction was not always given priority in development assistance programmes. For example, structural adjustment reforms during the debt crisis of the 1980s sometimes failed to take account of the social impact, especially on poor people.

4.5 The spotlight has also fallen on privatisation and trade reforms. There is particular concern that in the 1980s and 1990s donors pushed for the introduction of reforms, regardless of whether these were in countries' best interests. This led to growing discomfort that developing country governments were becoming more accountable to donors than to their own people, and that this distorted national priorities in the process.

4.6 Evidence on the social impact of privatisation policies in the area of public services, particularly in the absence of effective competition and regulation, has been a subject of much debate. In some cases, developing country governments have limited capacity to regulate the private sector effectively. There are examples where privatisation has not benefited poor people, and therefore the use of conditionality in such cases has been criticised.

4.7 On trade reform, the evidence is also mixed. Overall, trade reforms have been important in encouraging economic growth in poor countries and hence poverty reduction. But there are concerns, for example, that aid conditions have constrained poor countries from incorporating some of the lessons of successful East Asian economies that relied on appropriately sequenced trade measures during early stages of development, and that conditions requiring unilateral trade liberalisation affect the ability of poor countries to negotiate effectively in multilateral discussions. In some cases poor people have suffered during trade liberalisation, where conditionality has been excessively restrictive, or where insufficient attention was paid to the capacity of the economy to take advantage of the opportunities of more open trade, or to factors that help poor people to benefit from trade, such as their ability to access health and education, financial services, and infrastructure.

4.8 There has been insufficient analysis of the impact of different reforms on poor people. In the last few years, donors have recognised this gap and started supporting "poverty and social impact analysis" (PSIA) of major policy changes, This analysis anticipates and assesses the intended and unintended consequences of policy changes for the welfare of poor men and women and vulnerable groups, such as ethnic minorities, disabled people, older people and children. It covers both income and non-income measures of welfare. So far over a hundred assessments have been completed or are underway. But PSIA needs to be implemented much more consistently, and be more widely owned within developing countries. The UK is working with partners to encourage a country led approach, involving all stakeholders at each stage of selection, design and implementation, and including social and political analysis as well as economic analysis.

## 5. The UK Government's Approach to Aid Partnerships

5.1 We believe that an effective aid partnership is based on a shared commitment to

three objectives:

(a) poverty reduction and the Millennium Development Goals;

(b) respecting human rights and other international obligations;

(c) strengthening financial management and accountability, which reduces the risk of funds being misused through weak administration or corruption.

Partners need to agree the basis for assessing progress in these three areas to ensure that the partnership is achieving these shared objectives.

### *Commitment to poverty reduction*

5.2 The international Development Act, which came into force in 2002, makes the elimination of poverty the primary purpose of UK development assistance. DFID provides aid to further sustainable development and improve the welfare of people outside the UK.

5.3 Within a framework of partnership, both donors and country governments need to agree the purpose for which aid is given. This ensures that both parties have a shared understanding of how aid will contribute to poverty reduction, and can be held publicly accountable for delivering on their commitments.

5.4 Poverty reduction programmes produced by developing country governments should specify benchmarks of progress to clarify for all stakeholders the results intended from the programme, and to prompt changes in the programme if it is not leading to the expected results. We are increasingly interested in assessing whether the programme is producing the desired poverty outcomes, rather than whether the government is implementing a particular policy measure.

### *Commitment to human rights and other international obligations*

5.5 The UK government believes that the realisation of all human rights underpins sustainable development. States have a shared responsibility to ensure that human rights are upheld and that violations do not take place, and that governments respect their international obligations. Donors have a particular responsibility, as part of their accountability to parliament and the public, to ensure that their development assistance is not used in ways that abuse human rights. The human rights situation should be assessed on the basis of the partner country's own international human rights obligations. We will explore ways of working with partner governments and civil society to incorporate human rights-based benchmarks into poverty reduction plans and into frameworks for determining progress on poverty reduction. We will also work to ensure that our own policies, alongside those of other donors, do not impede the ability of recipient governments to fulfil their human rights obligations.

5.6 We will also consider a country's position in relation to other international obligations, eg on peace and security?[7]

[7] DFID is publishing a paper on security and development. This will consider how international obligations on peace and security should affect development partnerships. It will make clear that development assistance resources must remain focused on the MDGs, but a country's commitment to its own international obligations will be relevant in assessing whether the basis for a development partnership has broken down. Judgement will be required. For example, if a country were to adopt an explicit policy of actively supporting terrorism, this would be a clear reason to rethink our aid relationship. If, on the other hand, a country were unable to meet stringent requirements at ports of entry to check all containers for illegal arms export, we would be unlikely to use this as a justification for ending out aid programme.

*Commitment to strengthening financial management and accountability*

5.7 We believe that improving performance in public financial management and accountability is critical for building the capability of states to deliver basic services and to progress towards the Millennium Development Goals. Partner governments, like donors, are accountable to their electorates for the propriety of public finances.

5.8 DFID is accountable to Parliament for how UK taxpayers' funds are used. We have a duty to ensure that development assistance is used to promote poverty elimination. Where aid is provided directly to partner governments through direct budget support, we evaluate the strength of public financial management and accountability and support governments to implement a programme of improvement. This should address weaknesses in the system to minimise the risk of funds being misused through weak administration or corruption. Where necessary, additional short-term safeguards should be considered in dialogue with partner governments and other donors.

5.9 The implication of this approach to aid partnerships is that the UK will consider reducing or interrupting committed aid if:

(a) countries veer significantly away from their agreed poverty reduction objectives or from the agreed objectives of a particular aid commitment (eg through an unjustifiable rise in military spending, or a substantial deviation from the agreed poverty reduction programme); or

(b) countries are in significant violation of human rights or other international obligations; or

(c) there is a significant breakdown in the performance of partner government financial management and accountability systems leading to the risk of funds being misused through weak administration or corruption.

Any decision to reduce or interrupt aid because countries have veered from their poverty reduction objectives will be based on an assessment of the long term impact on poverty of the overall programme of the government, not on failure to implement any specific policy.

5.10 Where a partnership breaks down, the UK will need to judge carefully whether to reduce or suspend aid. This judgement will need to consider the impact for poor people, and for longer-term poverty reduction efforts, of stopping or continuing aid. The judgement should also take into account any special circumstances, such as evidence that the breach will be reversed, or that the government is making efforts to address the problem in question. In all cases the UK will seek to talk the issues through with partner governments before taking a decision.

*Commitment to key principles*

5.11 In its aid relationships, the UK will be guided by five principles:

— developing country ownership;
— participatory and evidence-based policy making;
— predictability;
— harmonisation; and
— transparency and accountability.

5.12 In some countries this already represents UK practice; in others progress needs to be made. We shall continue to work to make sure that the approach is applied universally.

*Developing country ownership*

5.13 The UK government accepts the evidence that conditionality cannot "buy" policy change which countries do not want. Reforms will not be implemented—or will not be sustainable—if a partner country is acting purely in order to qualify for financial support and does not consider that the reforms are in its own interest. The UK will not make our aid conditional on specific policy decisions by partner governments or attempt to impose policy choices on them (including in sensitive economic areas such as privatisation or trade liberalisation). Instead we will agree with partners how aid will contribute to poverty reduction in a manner that can be sustained over the long term, and agree benchmarks to show what progress is being made. These benchmarks should focus on the impact of the government's overall programme, rather than on specific policies.

5.14 Wherever possible we will base our assessment of partner country programmes on evidence of actual impact, since we recognise that policies have different effects in different institutional and social environments. We also recognise that in some cases where the lag between policy action and impact on poverty is long, or the likely impact is well established through the evidence in other similar country situations, our assessment may need to precede the availability of data on impact. In these cases, we will base our assessment on transparent dialogue with the partner country government and relevant stakeholders.

BOX 1: VIETNAM CASE STUDY

The government drew up a comprehensive strategy in May 2002 that sought to reduce poverty and encourage growth. This reform package was agreed by the government following a year-long consultation process that canvassed a broad range of views, including those of local officials.

Donor organisations offered their technical support to this process and were consulted on its progress. The end result was a strategy that was widely supported by the international community, but which was developed entirely by the Vietnamese government.

The basis of the commitments made by to government in order to qualify for Poverty Reduction Budget Support (PRBS)[8] now linked to this strategy.

5.15 We will support broad-based country ownership of poverty reduction plans, including through processes that take account of the views and concerns of poor people. For us, "country ownership" requires that the country has leadership over its development policies. It requires partner governments in consultation with citizens to define a poverty reduction programme, which donors can support (see Box 1). We do not only equate country ownership with government ownership. We believe that civil society, including poor people, should also-have a voice and stake in their development, and that governments should be accountable to them.

5.16 The UK aims to support country-led development and maximum country ownership of development, whilst also maintaining accountability to the UK parliament and public, and ensuring that aid is used effectively. We believe donors have a useful and legitimate role as catalysts for change, and should continue to participate in policy dialogue based on well-researched policy options. Policy matters in poverty reduction—both policy content and the policy process. If we are concerned that policy choices included in a poverty reduction strategy (PRS), or other national strategy, will not lead to poverty reduction, or might even exacerbate poverty, we will discuss these differences of opinion with our partner.

5.17 Questions remain about the amount of genuine autonomy enjoyed by countries, given the greater financial power and technical capacity of donors in some aid dependent countries. Openness and transparency in agreeing the terms on which aid is provided and systems of mutual accountability can help to offset this power imbalance.

5.18 Where a partner government requests technical co-operation (TC) (in the form of specialist personnel, training or research advice), this must not undermine country ownership. Partner governments will always be responsible for deciding the terms of reference for such assistance. Both donors and partner governments have responsibility for ensuring open and transparent procurement processes for the selection of consultants.[9]

*Participatory and evidence-based policy making*

5.19 Both donor and developing countries should be accountable, to their citizens and the wider global community, for showing how aid is supporting sound policies, which improve the quality of life for poor people.

5.20 To improve the quality and effectiveness of policy-making the UK will encourage participation by poor people and by parliaments in decision-making and policy-making. Civil society can also play an important role, as can the media.

5.21 It is critical that there is a full and open national debate in a country—including in Parliaments and National Assemblies—on the relative impact of different policy options, before the government takes final decisions on the way ahead. This debate can be well informed by poverty and social impact analysis (PSIA), and is especially important if partner country governments are considering the adoption of policies which may have a negative impact, or do not have broad consensual support in the country. As part of the partnership

[8] For further information about PRBS see Glossary of development terms.

[9] The UK believes that the procurement of goods and services financed by aid should be through open competition internationally. We do not tie our aid to purchases from UK suppliers.

commitment to poverty reduction, all policy choices in the PRS or other national strategy should be well researched and debated.

5.22 The World Bank and IMF have agreed to increase the use of PSIAs for reforms which are likely to have significant impacts on different groups and on the distribution of resources between different groups. Progress is being made, but considerably more needs to be done to increase the number and to improve the quality of PSIA, to promote its ownership by country governments, and to ensure that the results of the PSIA are used effectively in the policy process.

*Predictability—aid partnerships should enable predictable funding*

5.23 The UK is very concerned that aid to developing countries is unstable. Countries cannot properly plan their public policies if they do not know with any certainty how much external finance they will receive. A major reason why aid has been so unpredictable is that donors do not always make clear the basis on which they will cut or stop aid flows. And where they do have rules, they do not always consistently apply them.

5.24 The UK proposal for an International Finance Facility (IFF) will also help to improve the predictability of aid flows. Donors would make legally binding commitments over the medium to long term to allow increased levels of aid to be disbursed in the years to 2015. This would allow multi-year funding to be agreed for recipient countries, and could therefore enable them to invest more efficiently.

5.25 Where it is necessary to reduce or interrupt aid, we will make the decision based on criteria and processes agreed with our partner country in advance. The process will allow for a substantial period of assessment and discussion between the developing country government and donor agencies. Any planned disbursements will continue during the period of dialogue. Dialogue is particularly important when several donors have conditions in the same areas and there is a risk of countries losing a substantial amount of aid at short notice by failure to adhere to certain conditions.

5.26 We recognise that changing planned aid disbursements within a financial year can severely disrupt the recipient's budgetary process. We will only reduce aid within a country's financial year in exceptional circumstances.

BOX 3: ETHIOPIA CASE STUDY

The UK and Ethiopian governments have drawn up a 10-year agreement that aims to link action on reducing poverty with progress on key issues such as justice, human rights and enhancing democracy. The initiative seeks to build a stronger partnership between the two governments by setting out their mutual commitments and expectations.

As part of the arrangement, there will be regular dialogue between the two sides, making the future actions of each government easier to predict. As a result, the Ethiopian government should be able more accurately to predict future aid, and the UK should have more confidence in the outcome of aid, to the ultimate benefit of the poor.

*Harmonisation—donors must work together more effectively*

5.27 The UK strongly supports efforts to improve donor coordination and harmonisation. These efforts are leading to some rethinking of how donors, collectively, use conditionality and reduce the overall number and intrusiveness of conditions. The International Monetary Fund (IMF) has already moved significantly in this direction, through their "streamlining conditionality" initiative. This has clearly distinguished between the conditions the IMF sets and those set by the World Bank. The IMF has made good progress in limiting its conditions to areas that have a major impact on a country's macroeconomic situation.[10]

5.28 The World Bank has also moved to reduce its conditionality, and this now needs to be applied more systematically. The World Bank is currently reviewing its approach to conditionality and we are contributing to the debate (see Box 4). We will continue to press both the World Bank and IMF to monitor the combined burden and impact of their conditionality and to use conditionality in accordance with the principles set out in this paper.

[10] As set out in its Articles of Agreement, the IMF and World Bank are not allowed to use "political conditionality", but can only directly link lending conditions to their eventual economic impact.

Box 4: World Bank Review of Conditionality

At the 2004 World Bank/IMF Annual Meetings, the World Bank agreed with the UK's suggestion that the Bank should carry out a review of its approach to conditionality, and report back at the 2005 Annual Meetings.

We have specifically asked the Bank to take a critical look at the following five issues: the scope and content of policy conditionality; the appropriate level for application of conditionality (ie overall programme or individual project); improving harmonisation and alignment behind country-owned plans for poverty reduction; improving predictability; and conditionality in fragile states.

In addition to a comprehensive policy statement on conditionality, the Bank is expected to publish operational guidelines for staff, and also to propose monitoring mechanisms to support policy implementation and strengthen accountability to stakeholders.

5.29 Unlike the IMF and World Bank, whose Articles of Agreement require them to link lending conditions to their eventual economic impact, and prevent them using "political conditionality", the European Union sets its development cooperation within the framework of its overall political relationship. Under the Cotonou Agreement with African, Caribbean and Pacific countries, the EU has a clear process for dialogue when concerns arise over human rights and other political issues. Where there is a need for dialogue over issues of this kind, the UK will wherever possible work jointly with other donors, through the EU or other multilateral channels.

5.30 The European Commission (EC) is piloting an approach that bases the benchmarks of its budget support on the impact of reform on social services delivery (such as the increase in girls attending schools) rather than the specific policy reforms themselves.

5.31 Using outcomes rather than policies as the basis for assessing progress offers a way of maintaining accountability for the effective use of aid whilst giving countries a freer rein to choose their own policies. But there are potential downsides. Developing countries are concerned that they will be penalised for failing to achieve results for reasons outside their control, such as a collapse in commodity prices forcing a cut in education budgets because of a shortfall of revenues. There are other difficulties, such as the problem of attributing changes in performance when there are time lags in policy implementation, or where a new government takes power. In addition, accurate and timely data may not be available to determine whether outcomes have been achieved.

5.32 The UK will be looking to learn from the EC experience with this approach, and to explore the scope for incorporating outcome benchmarks as part of an approach harmonised with other donors.

5.33 More action is also needed from bilateral donors to limit their use of conditions. To promote respect for national ownership, and provide a common framework around which donors can harmonise, we will encourage all donors to draw the terms and conditions for their aid from a collectively agreed framework of poverty reduction benchmarks, a country's existing international human rights commitments, and a credible programme of improvement in public financial management.

5.34 Mozambique has recently agreed a common policy matrix with 14 donors (see Box 5: Mozambique case study). We would like to see coordinated approaches become the norm, not the exception. We recognise however that not all donors and not all recipients will wish to develop a framework of support with identical terms and conditions. This may impose excessive restrictions on donor/recipient relationships and potentially increase downside risks for the recipient. It may also increase rather than reduce the potential imbalance of power between donors and recipients.

BOX 5: MOZAMBIQUE CASE STUDY

Total external aid to Mozambique has averaged 12% of GDP over the past decade, and is now just below 10%, compared to an Africa average of 6% to 8%. The government has a medium term objective to reduce aid dependency by funding a larger proportion of expenditure through domestic revenues.

External aid will still be needed for the foreseeable future, however, and DFID has made a five year commitment to support Mozambique's poverty reduction efforts. Our programme, which has more than doubled in size since the late 1990's, will reach £47 million in 2004/05 and £50 million in 2005–06. This will put DFID amongst the top three donors to Mozambique.

Around a third of grant assistance is provided in the form of poverty reduction budget support (PRBS), channelled directly through the Government's own systems. DFID believes that increasing the proportion of aid channelled in this way is essential for sustainability and for the development of domestic accountability. By 2005–06, some 70% of our programme in Mozambique will be in the form of PRBS.

The Government and 14 donor partners, including DFID and the World Bank, signed a memorandum of understanding governing the provision of budget support in April 2004.

5.35 Donors, including the UK, have traditionally relied on an IMF programme to indicate that a country's macroeconomic policy stance and strategy are satisfactory before granting aid. A stable macroeconomic environment is critical for establishing a basis for growth, avoiding adverse effects on the poor and protecting government expenditure that benefits the poor. Our primary concern of poverty reduction places the emphasis on long-run macro-economic stability, sustained economic growth and institution building. The UK will form its assessment of progress in these areas by using IMF assessments and other sources of information. It will not necessarily require a financed IMF programme to indicate that a stable macroeconomic environment is in place. If an IMF programme is suspended (or "off-track"), we will decide whether to continue or suspend assistance according to the principles laid out in this policy paper.

5.36 In view of the IMF's competence in macroeconomic analysis, the UK will look to the IMF to provide an assessment of a country's macroeconomic position, independently of IMF financing. The assessment will require regular monitoring and policy evaluation by IMF staff, We will seek to identify, along with other donors and partner governments, an appropriate macroeconomic standard for assessing country performance. We will also continue to assess whether IMF programmes allow sufficient fiscal flexibility to accommodate priority poverty reduction expenditure while maintaining macroeconomic stability.

*Transparency and accountability*

5.37 Both partners—donors and developing country governments—should be committed to transparency. Accountability is enhanced when both make public their decisions and the evidence on which they are based.

5.38 We are committed to increasing transparency around the process of decision-making on conditions, the conditions themselves, and the process for deciding to reduce or interrupt aid. We will encourage greater involvement of parliaments in the oversight of conditions prior to their agreement, and greater involvement of line ministries, parliamentarians and civil society in the identification of agreed benchmarks. We will also encourage other donors, including the IFIs, to be more transparent, particularly in relation to the process of agreeing the terms and conditions for their aid.

5.39 The UK will make our own aid conditions more transparent, by publishing them on DFID's website.

*Fragile States*

5.40 In deciding. how to allocate aid between countries, DFID will take account both of the extent of poverty in a country, and of its ability to use aid effectively ((as evidenced by the expected impact of its poverty reduction programme and its commitment to sound financial management and accountability standards).

5.41 In fragile states the shared commitments for a good partnership are often not in place. The UK's focus on promoting good partnerships does not mean that we cannot work effectively in these countries. DFID has recently published a paper on working in fragile states[11] which sets out a number of ways of contributing to poverty reduction in these countries.

[11] DFID (2005) "Why we need to work more effectively in fragile states", London: Department for International Development.

5.42 Poor political governance, such as widespread human rights violations, can hasten a country's decline towards instability. Instead of withdrawing from these countries, the UK is committed to finding ways of delivering targeted, selective aid focusing on improving governance and delivering services.

5.43 In the fragile states where we can work with the government, we should as far as possible apply the principles set out in this paper. Partnerships can be built around simple planning instruments for prioritisation and sequencing of reforms. Transitional Results Matrices are currently being piloted in some fragile states, to help apply the poverty reduction strategy principles of a unified, country-owned plan. They have an element of mutual accountability by identifying actions for partner governments as well as donors, and can provide the basis for a partnership in the absence of a poverty reduction strategy.

5.44 In countries where the government is weak or uninterested in development, we will closely monitor the situation to identify opportunities for political dialogue. Wherever possible, we will remain involved through partners other than the government, for example supporting NGOs in the provision of services. Apart from decisions on aid, well-targeted sanctions may also have some impact on the pace of reform. Measures such as asset freezing and travel bans which target those individuals most likely to be able to influence a positive change on the ground can often help limit any wider negative impact on the population. The UK always seeks to ensure that sanctions are properly targeted and enforced, while aiming to avoid unnecessary suffering to the civilian population.

## 6. The Way Forward

6.1 The UK would like to build a new consensus across the international community on effective aid partnerships and accountability, drawing on the approach outlined in this paper. There is already significant international agreement on many of the elements. Critical to making this new approach work will be the evolution of poverty reduction plans into processes that are truly owned and pushed forward by developing countries. As the recent evaluation by the IMF and World Bank demonstrates, despite considerable progress there remain question marks about the level of genuine autonomy that countries, especially those that depend heavily on aid, have over their own policies.

6.2 Much of the solution rests with donors. We need to take a back seat, giving more space to countries to draw up their own plans for poverty reduction. To make this happen, we need to find more effective ways to strengthen countries' policy expertise. We need to make good our commitment to support country priorities with our aid and to cut back on old style conditionality. We need to improve the predictability of our aid and increase the transparency of any conditions applied. And at a more technical level, we need to step up support for poverty and social impact analysis (PSIA), so that developing countries can make choices based on the full range of evidence.

6.3 The UK is keen to work with our partners to make this happen. We also have more to do ourselves to put our new approach into practice, In summary, the UK Government will:

- build aid partnerships where accountability is linked to a country's own plan for reducing poverty;
- promote a more equal approach in which donors do not impose conditions but agree benchmarks with partners;
- highlight the importance of good economic and social policies, and of a strong commitment to transparency, accountability and good governance;
- promote a shared commitment to respecting human rights by donors and recipient governments, and explore ways of incorporating human rights benchmarks into frameworks for determining progress on poverty reduction;
- encourage greater cooperation between all organisations providing aid, including national governments and international financial institutions;
- act to prevent the misuse of funds through corruption or weak financial;
- continue to support partner country's efforts to improve public financial management and accountability through using donor and IFI assistance;
- continue to support efforts by the World Bank and the International Monetary Fund to streamline their use of terms and conditions when granting aid, seeking further progress from the World Bank and considering the overall impact of conditionality;
- continue to seek commitment from other donor agencies to harmonising terms and conditions of aid;
- promote a much greater use of Poverty and Social Impact Analysis, both bilaterally and in the International Financial Institutions to improve the quality of policy reforms;

- consider further how to maintain predictable and stable aid flows. This will look at the issue of how to tackle political concerns about the aid relationship while avoiding interruptions to aid with very little warning;
- develop further our understanding of effective partnerships in fragile states;
- publish more information (including on DFID's website) about the conditions used in DFID's bilateral programmes; and
- produce operational guidelines for DFID staff, review agreements to ensure consistency with this policy and monitor the impact of the policy over time.

## Glossary of Development Terms

### *Millennium Development Goals (MDGs)*

The Millennium Development Goals were derived from commitments made in a series of United Nations conferences in the 1990s and agreed by nearly 150 heads of states and governments at the 2000 Millennium Summit. By 2015, we aim to:

- Eradicate extreme poverty and hunger.
- Achieve universal primary education.
- Promote gender equality and empower women.
- Reduce child mortality.
- Improve maternal health.
- Combat HIV/AIDS, malaria and other diseases.
- Ensure environmental sustainability.
- Develop a global partnership for development.

### *Poverty and Social Impact Analysis (PSIA)*

Poverty and Social Impact Analysis (PSIA) refers to the systematic analysis of the impact of policy reforms on the welfare of different stakeholder groups, with particular focus on poor women and men and vulnerable people (such as people with disabilities, ethnic minorities, older people and children). During 2002–03 the World Bank funded 11 pilot PSIAs, with DFID supporting an additional 8 studies. These provided the basis for a rapid expansion in World Bank-funded PSIAs and by early 2004 there were some 100 PSIA activities being carried out, with two-thirds of these based in PRSP countries.

These studies have provided evidence to inform decision-makers and have strengthened the process of domestic policy-making. Although the total impact of these studies has not yet been measured systematically, early evidence suggests they have influenced actual policy design in Malawi, Zambia and Armenia, amongst others.

### *Poverty Reduction Budget Support (PRBS)*

Poverty Reduction Budget Support (PRBS) is a form of financial aid in which funds are provided:

- in support of a government programme typically focussing on growth, poverty reduction, fiscal adjustment and strengthening institutions, especially budgetary processes; and
- directly to a partner government's central exchequer to spend using its own financial management, procurement and accountability systems.

PRBS is also commonly known as Direct Budget Support.

DFID uses PRBS explicitly to link the provision of aid to the partner government's commitment to poverty reduction. Where circumstances are appropriate, PRBS is the aid instrument most likely to support a relationship between the donor and partner that strengthens the accountability and capability of the state. For further information see DFID's policy paper on Poverty Reduction Budget Support, May 2004.

*Poverty Reduction Strategy (PRS)*

In September 1999, the World Bank Group and the IMF agreed that nationally owned "poverty reduction strategies" should provide the basis of all their concessional lending. In many countries, this strategy takes the form of a PRS Paper, which links debt relief to poverty reduction goals. The UK works actively with poor countries' governments to support the development of these national frameworks. We are also supporting the consultative process to ensure that PRS are built on a broad-based consensus in which the poor have a voice. Interim or full Poverty Reduction Strategies have been developed in 53 countries.

*The International Development Act*

The Act came into force in June 2002. It makes clear that the sole purpose of UK development assistance is the elimination of poverty. It is illegal for the UK Government to spend development assistance for any other purposes. Our aid is "untied" in that the provision of development assistance is no longer conditional on the use of British goods and services.

*IFI programmes*

This refers to programmes carried out by any of the International Financial Institutions (IFIs) concerned with development, namely the World Bank, the Regional Development Banks, and the International Monetary Fund (IMF).

**Letter from the Chairman to Rt Hon Douglas Alexander MP**

Thank you for your letter dated 28 September which contained the Government response to our Report, "The European Union's Role at the Millennium Review Summit" [HL Paper 35, 11th Report of 2005–06].

Sub-Committee C considered the response at its meeting on 13 October. We are grateful for your detailed comments and for the additional information provided, in particular the paper on conditionality. Members of the Sub-Committee have a number of concerns about the outcome of the Millennium Review Summit which they would like to share with the Government during a debate on the Report. We hope that a date for this debate can be found shortly, and look forward to engaging with ministers in a stimulating and thorough review of the European Union's role at the Millennium Review Summit.

*13 October 2005*

## 12th REPORT: THE UNITED KINGDOM PRESIDENCY: DEFRA'S PRIORITIES

### Department for Environment Food and Rural Affairs Response

1. The Government welcomes this Report. It is timely to have the support, thoughts and recommendations of the Committee on Defra's priority areas for the UK Presidency of the EU.
2. Since the report's publication, Defra Ministers and officials have begun chairing Councils and Working Groups in the capacity of the Presidency. Some of these concentrating on the work areas discussed in the Select Committee hearing.
3. Also, in September, Defra hosted a successful joint Environment and Agriculture Informal Council event in London attended by EU environment and agriculture Ministers (the first time such a joint event has been held) The theme of the meeting was the relationship between climate change and agriculture, focussing on the significant challenges and opportunities that climate change presents to European agriculture.
4. It is hoped that the knowledge sharing and goodwill garnered from this event will help with the smooth running of Defra business in the EU during the UK Presidency.
5. The Government responds as follows to the Committee's recommendations.

COMMON AGRICULTURAL POLICY

*Financial Perspective negotiations*

*We agree that the emphasis should be on the rural development schemes, and we consider such spending should be focussed towards the new Member States. As stated in our earlier report, we strongly recommend that rural development funding under Pillar 2 of the Common Agricultural Policy should not suffer as a result of restrictions on the EU budget as a whole. Regarding Pillar 1, to re-open the Brussels ceiling now would create further* *instability in an already complex negotiation and we therefore do not believe that the agreement should be re-opened.*

6. The Government acknowledges the importance of adequate funding for rural development, and, amongst other things, has argued for further transfers of resources from Pillar 1 to Pillar 2. A budget which allows for the continuation of the current levels of pillar 2 expenditure would be affordable, provided sufficient reductions were made elsewhere; and we have argued that any increases in rural development spending could be funded by reductions in agricultural subsidies. The Government notes that the Commission's proposed rural development budget of €88 billion already represents a substantial increase over current levels of expenditure in the EU 25.
7. The Government believes that consideration of the Brussels ceilings needs to be handled with care, in the context of decisions about the whole EU .budget. The Government does not believe that the EU should spend 40% of its budget on the CAP, and believes Europe cannot wait 10 years or more for change. The October 2002 agreement was part of a package that paved the way for enlargement and for the beneficial CAP reforms which have happened since. It was explicitly agreed "without prejudice to future decisions on the CAP and financing of the European Union after 2006" and set ceilings, not targets for expenditure. The Government does not believe a new Financial Perspective should be agreed that does not at least set out a process that leads to a more rational budget, and that this must allow such a budget to shape the second half of the Financial Perspective up to 2013, including expenditure on the CAP. The debate needs to proceed in an inclusive way and the Government is currently consulting other Member States on their views about the budget.

*Sugar sector reform*

*We support the Government's determination to bring the sugar reform into line with the general reform of the Common Agricultural Policy. Reform of this sector is long overdue, and will be inquiring into this subject in the autumn.*

8. The Government has noted the Committee's views on sugar sector reform. Liberalising the outdated and protectionist EU sugar regime is an important element of our efforts to reform the Common Agricultural Policy and is a top priority for the UK Presidency. Reaching agreement at the November Council, as the Commission wants, is a challenging timetable, but we will do all we can to help meet it.

### Marine Environment

*We were pleased to hear that the Government recognise the critical importance of viewing fishing within the context of the wider marine environment. We urge the Government, during their Presidency, to ensure this approach is accepted by all Member States and informs the debate in the Agriculture and Fisheries Council.*

9. There are a number of issues that will come before the Agriculture and Fisheries Council during the UK Presidency that deal with the conservation of fish stocks and the marine environment. These include a number of recovery and management plans for certain fish stocks and proposals for management measures for the sustainable exploitation of fishery resources in the Mediterranean Sea. The Committee will wish to note that on the 20 September the Council adopted a regulation to protect deep water coral reefs in the seas around the Azores, Madeira and the Canary Islands.
10. We also hope to be able to hold some discussions on progressing the Marine Thematic Strategy during our Presidency. However, this depends on the timing of the package issuing from the European Commission, and to some extent on its content, including whether there is an adequate impact assessment as a basis for debate. These are matters for the European Commission rather than the Presidency.

*We were pleased that the Government have pledged to ensure the handling of fisheries proposals is "better managed" in order to improve the scrutiny process in advance of the December Agriculture and Fisheries Council. We will work with Defra to ensure this is achieved.*

11. We acknowledge that the speed with which proposals have hitherto had to be adopted as a consequence of the December Council process, has meant that they have not been given adequate consideration from a scrutiny perspective. Improvements in the scrutiny process have therefore been a particular priority for our Presidency. We have encouraged the Commission to develop its "front-loading" agenda by bringing forward discussions on a range of subjects which would otherwise have made the December agenda all the more congested. Minister Bradshaw will also chair a discussion at the October Council, which will consider changes to the fisheries calendar in order to provide for

more time between the circulation of proposals and their ultimate agreement and application. In addition, at a practical level, we will continue to keep the Committee informed on progress on the various dossiers, in particular, by forwarding to you the key Commission documents as they are released.

### Action on Climate Change

*We were encouraged by this and urge the Government to do all they can during the Presidency to improve National Allocation Plans for the next stage of the EU ETS.*

12. The need for clearer and more detailed guidance from the Commission on preparation of NAPs is a key priority for Phase II. This would ensure that the Commission and Member States are provided with the necessary information to undertake robust, transparent and consistent assessment of the NAPs, specifically, Member States progress towards Kyoto target. The Commission have committed to producing revised guidance in the final quarter of 2005, and the UK will continue to work with the Commission to ensure that views are taken into account, particularly on the content of the document. From a UK perspective, it is crucial that the timetable is met in order for revised guidance to be fully taken into account in the development of Phase II NAPs.
13. The Government launched a public consultation on 19 July on the development of the National Allocation Plan (NAP) for Phase II of the EU Emissions Trading Scheme (EU ETS). This consultation seeks views on whether the UK should extend the Scheme to include additional sources of carbon dioxide ($CO_2$) emissions from existing sectors, and to include $CO_2$ emissions from new sectors.

*The Committee supports the Government's goal of trying to deal with the environmental impact of aviation emissions as soon as possible. We reiterate our earlier recommendations that emissions from intra-EU flights be brought into the EU ETS at the earliest possible opportunity.*

14. Aviation is making a growing contribution to climate change and we should ensure that industry takes its share of responsibility for tackling the problem. Emissions trading uses market forces to deliver real environmental benefits in the most cost effective manner.
15. The Government's March 2003 report, *Aviation and the Environment: Using Economic Instruments* set out our approach to developing policy and the Government's principal of sustainable development for aviation: that a proper balance should be struck and maintained between economic, environmental and social considerations; and within this framework that aviation should pay its external costs. As a result of this, the *Future of Air Transport White Paper (December 2003)* sets out the UK Government's intention to continue to press for the development and implementation of a well-designed, open international emissions trading regime for aviation through ICAO.
16. But it also sets out the Government's intention to press for the inclusion of intra-EU air services in the forthcoming EU emissions trading scheme, and to make this a priority of our Presidency of the EU in 2005. Our aim is for aviation to join the EU Emissions Trading Scheme from 2008, or as soon as possible thereafter. However, we recognise that this may not be a total solution and will continue to explore and discuss options for the use of other economic instruments. We plan to use our Presidency of the EU Council of Ministers to debate the options and agree a way forward.

## 14th REPORT: ECONOMIC MIGRATION TO THE EU

### Government Response

### Introduction

The Government welcomes the Committee's overall conclusion that economic migration by third country nationals is important to the economies of EU Member States; and that such migration needs to be regulated in the interests of all parties concerned; and that because of the diversity of labour market needs and requirements the detailed criteria governing it should remain a responsibility of Member States.

This memorandum responds to each of the Committee's conclusions, individually responding to paragraphs 110 to 130 of the report.

110. *Any common EU policy on economic migration would have to build into its basic design sufficient flexibility to accommodate national and regional variations. The ability of the EU to achieve a common position in the field of services suggests that a similar consensus on broad guidelines for economic migration might be attainable, but it is unlikely that the Member States would accept it (paragraph 19).*

We agree. As the Committee's report notes there is no single EU labour market, so a single framework to regulate access to such a thing does not make sense. The differences in the systems within Member States are significant and a common policy will be difficult to reconcile with national interests or be capable of effective implementation.

111. *There is little to fear—and much to gain—from the extension of freedom of movement rights to the new Member States (paragraph 24).*

We agree. The benefits to the UK of providing nationals of the new Member States with access to our labour market have been clear. Since 1 May 2004, accession workers have filled vacancies in sectors which face shortages of labour, including hospitality and catering and agriculture. They are contributing to the success of the economy. They have not been a burden on the benefit system or public services.

However, the terms of the accession treaty with the new Member States make this a decision for an individual Member State, at a time of their choosing during the period on which the derogation on access to a Member State's labour market exists.

112. *It would be in the EU's interest to extend full free movement rights to the A8 countries as soon as possible. Until that happens, it would be inappropriate—and inconsistent with the need for solidarity with the new Member States—to relax controls on the admission of third country national workers (paragraph 26).*

We share the Committee's view that the issue of intra-EU mobility, in particular in relation to the new Member States, should be addressed before additional proposals are considered regarding the control of third country nationals entering the EU for the purposes of employment.

All EEA Nationals, including those from the accession states have a right of free movement throughout the EEA. This right existed from date of accession. However the right of movement as a worker was subject to a derogation which allows individual Member States to set terms on which a national from Poland, Hungary, Czech Republic, Slovakia, Slovenia, Lithuania, Estonia and Latvia can access the labour market of another Member State.

The United Kingdom's experience of opening up its labour market to nationals from the new Member States has been a positive one. We agree that other Member States can note our positive experience and this could assist them in making a decision on when they will provide access to their labour markets, but this is a matter for them. The new Member States might well object if controls on the admission of third country national workers were relaxed while there were still significant restrictions on A8 workers' rights to free movement within the EU. This should be a factor, although by no means the only one, in making decisions on relaxing controls on the admission of third country nationals.

113. *On the evidence of the last enlargement, there is a strong case on economic grounds for according nationals of new Member States free movement rights as early as possible following accession, and for there to be a concerted position across the existing Member States with limited opportunity for them to operate different transitional periods (paragraph 27).*

The next wave of enlargement is likely to consist of Bulgaria and Romania, although a precise date of accession has yet to be agreed. Whilst both countries nationals will have a right of free movement from accession, access to another Member State's labour market is subject to a derogation very similar to that imposed on a number of states in 2004.

No Member State has yet made a decision on how they will apply this derogation following accession. The UK will make its decision at the appropriate time.

114. *Managing the migration aspirations of nationals of candidate countries, coupled with investment in infrastructure and jobs in the candidate country, is the best way to avoid fears of disruption to the labour market in the period following accession (paragraph 28).*

We agree. Before accession to the EU, a candidate country must carry out substantial reforms which are subject to rigorous scrutiny by the European Commission and Member States. Many of the reforms that candidate countries must undertake in order to meet the economic criteria for membership and the relevant chapters of the acquis promote competitiveness, long-term growth and employment. In particular, the requirement to restructure state industries, reform public administration and ensure free movement of capital, goods and workers. The Commission provides funding to support this process of economic development through a number of pre-accession funds. All of these measures provide wider economic opportunities for citizens of candidate countries, and thus reduce migration pressures in the period following accession.

We also agree that it is important to manage expectations of candidate country nationals. Our overseas posts play a key role in educating citizens of candidate countries about the nature of the opportunities available in the UK for legal migrants.

The Government has not yet decided whether and how to apply transitional arrangements on free movement workers from the current candidate countries. The risk of disruption to the UK labour market would, of course, be a factor in this decision.

115. *Economic migration from outside the present EU will continue to be needed (paragraph 29).*

We agree that the UK economy is likely to continue to need to admit people selectively from outside the EU where they have particular skills that can benefit the UK and where a demand for labour cannot be met from domestic sources or EU channels.

116. *We do not believe that it is possible to set an overall limit for net immigration (paragraph 43).*

We agree the UK needs a system which is flexible and responsive, not a rigid, arbitrary quota.

117. *We endorse the Government's view that national economic considerations should remain the primary determinant of the level of economic immigration, provided that this is not at the expense of the interests of the other parties involved, notably the sending countries and, most importantly, the migrant workers themselves, whose rights must not be infringed (paragraph 43).*

We are pleased that the Committee shares the Government's view that national economic considerations should remain the primary determinant of the level of economic immigration, while taking due account of the interests of other parties. We will continue efforts to mitigate the impact of skills losses on vulnerable countries and sectors. We consider that the rights of migrant workers are adequately protected in UK law, including under the Human Rights Act 1998.

118. *All forms of control of economic migration—work permits, sectoral schemes, quotas, Green Cards and points systems—are difficult for State authorities to operate efficiently, if only on account of incomplete knowledge of the labour needs of different sectors of their own economy and differing objectives relating to them. It would be much more difficult, if not impracticable, to operate any of these methods of control at EU level (paragraph 64).*

We, once again, share the Committee's view on the difficulty of operating a method of control which may not reflect the individuality of Member States' labour markets.

119. *We again urge the Government to participate fully in EU immigration and asylum policy. We believe that it would be to the advantage of the United Kingdom to do so. It is damaging to be seen as only partially engaged in this important area of policy. The United Kingdom's recent exclusion from measures in which it would be in its interests to participate underlines the increasing difficulty of maintaining its present position and bears out, we regret to say, the warnings that we have given to this effect in the past (paragraph 73).*

The Government has noted the Committee's recommendation for the UK to participate fully in EU immigration and asylum policy, but does not agree that it is damaging to be seen as only partially engaged. Our policy is clear. The UK opts in to Title IV measures where we can, provided they are in the national interest and consistent with our policy of retaining frontier controls. In practice, this means we have tended to opt in to measures on asylum and illegal migration, but do not tend to participate in legal migration measures. We do not agree with the way in which the UK has been excluded from certain measures; our challenge to the European Court of Justice should provide clarity to the situation.

Consistently not participating in EU immigration and asylum measures does lessen UK influence and risks isolating us from a body of law that is largely of benefit. Therefore the UK pursues the policy that it is in our broader interest to remain as engaged as possible with the EU on these matters. It has been the UK's policy since the 1999 Treaty of Amsterdam to opt in to all EU measures on asylum and immigration (Title IV TEC) that are in the national interest and do not conflict with our desire to retain control over our own borders.

120. *While accepting that there is a role for the EU in setting out some guiding principles, particularly in providing protection for migrant workers, we see no case for micro-management of admission for employment at EU level. Given their very different economic situations, Member States need to retain the ability to respond flexibly and promptly to their labour market needs, which are unlikely to coincide across the EU. This is more likely to meet the needs of companies than a cumbersome central bureaucracy (paragraph 82).*

The Government agrees that Member States need to retain the ability to respond flexibly and quickly to national labour market needs. Added value may be gained from an EU role in setting out some guiding principles but not in seeking to micro-manage employment admission policy.

121. *Community preference is an important principle supporting the fundamental freedom of movement of workers, and we support its extension to resident third country nationals. Its practical effect is inevitably limited by the low level of labour mobility within the EU. It is important to avoid excessive bureaucracy, and additional burdens should not be placed on employers (paragraph 84).*

We would agree with the Committee that community preference is an important principle with regard to allowing the free movement of workers who are Member State nationals throughout the EEA. This preference also applies in the UK to those third country nationals that are settled here.

On extending this principle to those who are settled in other Member States but are not EEA nationals, our view is that our national interest and frontier policy should take primacy; those people who are non-EEA nationals but resident in an EU Member State should not be treated differently from other non-EEA nationals.

122. *In view of the wide differences between the economies of the Member States and their need for economic migrants, we are sceptical of the case for any detailed regulation at EU level of admission for employment or self-employment. We believe that the main scope for EU intervention is in ensuring that the schemes operated by Member States are sufficiently transparent, and protect the rights of migrant workers effectively (paragraph 86).*

We share the Committee's view that the main scope for EU intervention may be in ensuring that schemes operated by Member States are sufficiently transparent. We believe regulation concerning rights for migrant workers is a matter for Member States.

123. *There is no need for the EU to become engaged in the detailed regulation of general self-employed migration (paragraph 87).*

We agree.

124. *While an informal early warning system may provide some reassurance to Member States, We see no need for a more direct control of regularisations at EU level. There is no reason to think that regularisations lead to immediate large scale movement to other Member States (paragraph 90).*

Regularisation campaigns in one Member State do not necessarily impact immediately on other Member States. However, that is not to say that the Member State carrying out the regularisation does not attract more illegal immigration to itself.

As the United Kingdom has not signed up to the Long-term Residents Directive, we are not affected by the medium-term impacts of regularisations in other Member States.

The UK shares its EU partners' commitment to improve the exchange of information on national immigration and asylum measures, and welcomes the Commission's proposed draft decision to establish a web-based network.

125. *The Government should commission research into the likely costs and consequences of acceding to the United Nations Convention on the Protection of Migrant Workers and seek to develop a political consensus towards it, both within the United Kingdom and across the EU (paragraph 97).*

We have no plans to commission such research.

126. *We urge the Government to reconsider the case for acceding to the Council of Europe Convention on migrant workers (paragraph 99).*

We have no plans to reconsider our position on this Convention.

127. *Differentiating between some migrant workers and others on the basis of the length of their residence in the territory can only be justified where there are very specific reasons (paragraph 103).*

There are specific reasons why some categories of worker have a route to settlement and others do not and these do not solely relate to skill level but, instead, to the purpose of the scheme. The Committee has cited the example of seasonal workers and au pairs. In the case of the UK's Seasonal Agricultural Workers Scheme, this is a scheme under which workers are admitted for an entirely temporary purpose i.e to pick seasonal crops. Furthermore, participants are overseas students who we might reasonably expect to return overseas to resume their studies. In the case of our arrangements for au pairs, this is not primarily a labour scheme but rather a youth mobility scheme which offers participants the opportunity to come here and gain some knowledge of the English language and way of life before returning overseas. Given the purpose of these schemes it seems quite reasonable that they should not lead to permanent residence.

We do not think that, in principle, low-skilled migration schemes should lead to permanent residence here. The net long-term benefits of admitting low-skilled workers permanently are less clear that they are in the case of highly skilled workers. If they are being admitted to undertake low paid work, there is inevitably a question about the balance between the economic contribution they would make and the burden that they and their families might in the long run place on the welfare system and public services.

128. *We once again urge the Government to opt into both the Long-term Residents Directive and the Family Reunification Directive. Such a move would strengthen the rights of the United Kingdom's economic migrants and enable them to enjoy equality with economic migrants in the rest of the EU (paragraph 105).*

UK policy is to opt in to Title IV measures where we can, provided they are consistent with our policy of retaining frontier controls.

We have consistently not opted into legal migration measures such as the Family Reunification Directive and Long-term Residents Directive because we wish to retain our frontier control and maintain domestic control over who is admitted to the UK, as provided for by our protocol on Title IV of the Amsterdam treaty.

The Long-term Residents Directive would give long term residents from one Member State the effective right to enter a second Member State and apply for residence there, provided they met certain conditions. We believe that, whilst the Directive contains many provisions which are entirely consistent with our policy on participation in EU immigration measures, giving third country nationals an enforceable right to enter the UK conflicts with that policy.

In view of this, we will not be reviewing our decision to opt out of these Directives. In remaining outside these Directives it is not the Government's intention that the UK should be seriously out of line with our European partners and we will continue to monitor the UK's position in relation to that of other Member States.

129. *In order to address the categories of economic migrants who do not benefit from the Long-term Residents Directive, we recommend that further provision be made to grant to all third country national migrant workers:*

- *the right to change employers after 12 months' continuous lawful employment;*
- *the right to a reasonable period (not less than six months) to seek employment in the event of the termination of previous employment; and*
- *equality as regards social rights (at least core benefits) (paragraph 106).*

Legal migrants, including those from third countries, have the same employment rights as any UK workers in a similar situation. Any third country nationals admitted to the UK for employment on the basis of a work permit can already change employment at any time during their stay although they need to make a new application on the basis of their new employment.

Should the employment end without new employment starting, then the basis of the third country national's stay in the UK is at an end and they are expected to make arrangements to leave. We have no plans to provide for a right to all third country national workers to seek a new job in the event of a termination of employment, although there is scope for discretion in applying this principle to individual cases.

The implications of granting third country national migrant workers equality as regards social rights are potentially very broad, and must be balanced against the costs. However, it is worth noting that third country national migrant workers already have access to contributory benefits on the same basis as UK nationals.

130. *We see little justification within a single market for differentiating at national level as regards the rights of migrant workers. We recommend that the provision of a common core of rights for migrant workers should be the focus of an EU policy on economic migration (paragraph 107).*

In the UK legal migrant workers already have the same employment rights as UK workers. As already stated, all third country nationals also have access to contributory benefits on the same basis as UK workers. However, non-EEA nationals working in the UK do not have access to income related benefits. This is because they are normally issued with a work permit for a specific employer and limited leave on the understanding that there is no recourse to public funds. This strikes the right balance between providing social insurance and protecting the public purse.

Our policy is clear—that we will opt into those EU measures that are in the national interest and consistent with retaining frontier controls. We believe that access to benefits for migrant workers who are third country nationals and do not have existing rights under EU law should remain a matter for individual Member States and do not believe that any common core of rights at EU level should extend into this area.

## 16th REPORT: HUMAN RIGHTS PROOFING EU LEGISLATION

### Letter from Rt Hon Baroness Ashton of Upholland, Parliamentary Under Secretary of State, Department for Constitutional Affairs to the Chairman

I am grateful to the Committee for its report on "Human Rights Proofing of EU Legislation". I am pleased to note that the Committee broadly welcomes the Commission Communication on Compliance with the Charter of Fundamental Rights (COM(2005) 172 final), and that it considers the Communication to be an improvement on the Commission's previous efforts (notably the 2001 Decision—SEC(2001) 380/3) in ensuring compliance with fundamental rights.

The Committee has raised in its Report some suggestions to HM Government which would like to address in turn.

*Paragraph 26 (16th Report—pp 14–15)—We welcome the Communication. It is a useful, though limited, Commission initiative to improve the quality of internal monitoring. The Communication does not, and could not, even if it were intended to do so, address the wider issues raised by our witnesses. It is nonetheless a significant step by the Barroso Commission which, as we explain below, exposes the Commission's legal reasoning in relation to particular proposals and also challenges the other institutions and the Member States to justify their actions.*

The Communication is focused purely on the internal workings of the Commission and does not challenge the Member States to justify their actions in respect of compliance with fundamental rights. I would like to refer the Committee to Harriet Harman's appearance before the House of Commons European Union Standing Committee on 18 January 2006, at which she gave evidence on the Charter of Human Rights and Commission Legislative Proposals. She said: "I stress that the Commission communication on its compliance is an internal communication of the Commission and is already being put into effect in the Commission. It affects the Commission's work; it does not affect the work of our legislature, our Government or any agencies in this country. It is about the Commission doing its work better".[12] As I said in my Explanatory Memorandum of 14 July 2005, and in my appearance before the Committee on 19 July 2005, the Government welcomes the Commission Communication as an instrument to improve the Commission's compliance with fundamental rights. The Commission has clearly signalled an intention to lead by example in terms of human rights, and to balance its work on security and anti-terrorism with measures to protect and promote fundamental rights. The Commission also wishes to make its work more transparent, more credible, and more consultative. This Communication forms part of these efforts, and is, in the Government's view, to be welcomed. Although, as the Committee says, the Communication is somewhat limited, the Government considers it is an important step on the part of a European Institution towards the mainstreaming of fundamental rights principles and standards.

*Paragraph 41 (16th Report—pp. 18–19)—It is our experience that Third Pillar measures commonly raise issues relating to fundamental rights. We have no doubt that impact assessments are particularly important in respect of such proposals. Indeed the failure of Member States to provide background information and explanations for the measure being proposed makes our own scrutiny work that much more difficult and places a further burden on the Government faced with our requests for clarification. We therefore recommend that Member States should carry out impact assessments before bringing forward any proposal under the Third Pillar. Any such proposal should also be supported by a full explanatory memorandum including a section dealing with fundamental rights.*

*Paragraph 134 (16th Report—p. 38)—We therefore conclude that, while we will continue to look at all documents for human rights implications, the obligation on the Government to include a paragraph (not just a statement of compliance) on fundamental rights in EMs should be restricted to draft EU legislative acts (eg regulations, directives, framework decisions). That paragraph should address but not be limited to ECHR rights. Appreciation of fundamental rights in the widest sense (including the Charter) should be part of all Ministers', and their officials', mindset. The Charter may have its imperfections but in many respects it gives a clear statement of rights generally identifiable and accepted under international and/or Community law. Further, if the Commission has done its homework under the Communication (by including sections in explanatory memoranda addressing fundamental rights) then the burden on Departments should not be great.*

With regard to the Committee's recommendation that Member States should carry out impact assessments before bringing forward any proposal under the Third Pillar, it should be noted that there is at present no uniform method for Member States to explain the fundamental rights compliance of their proposals. However, it is the responsibility of each Member State to review the consistency of their proposals with human rights standards, and to ensure that their proposals are in line with the principles of subsidiarity and proportionality.

The Government confirms its earlier position that explanatory memoranda should contain a preliminary view of compatibility with European Convention Rights as discussed at paragraph 129 of the Committee's Report. We envisage that such statements will comment on compatibility with the "Convention Rights" as defined by the 1998 Human Rights Act, in line with domestic legislation compatibility statements, and will focus on the potential effect of the proposed legislation in the UK. We recognise that if the Constitutional Treaty is ratified it will be important to expand this statement to also refer to the Charter of Fundamental Rights. Where the Government was broadly confident that a proposal did not give rise to human rights compatibility concerns,

[12] Harriet Harman MP in European Standing Committee, *Charter of Human Rights and Commission Legislative Proposals*, 18 January 2006, *Hansard,* Column Number 3.

a "positive" statement would be included in the explanatory memoranda.[13] On the other hand, if the Government could not be confident about the human rights compatibility of a proposal, it would make a "negative" or "non-committal" statement.[14] The Government agrees that these statements would apply to explanatory memoranda on legislative proposals (ie Directives, Regulations, Decisions and Framework Decisions) but not to second pillar instruments or non-legislative documents. Where the Government was not confident about compatibility, the explanatory memoranda would give further background on why the Government had reached that view. But, given the speed at which a first explanatory memorandum has to be submitted, it is inevitable that these arguments might not be fully developed at an early stage. In these circumstances the Government would provide the Committee with further information as the implications become clearer.

The Government agrees with the Committee that "appreciation of fundamental rights in the widest sense (including the Charter) should be part of all Ministers', and their officials, mindset". In fact, one of the main reasons for passing the Human Rights Act 1998 (which came into force in October 2000) was to entrench the human rights culture into domestic law. The Government has subsequently ensured the Human Rights Act was assimilated into the workings of the courts, the legal system and public authorities. This included, for example, establishing a Human Rights Fast Track Group of all relevant Government departments and prosecuting agencies to identify test cases at an early stage and ensure they were brought before the courts quickly so that any precedent could be followed. The Government has also established a Ministerial Forum of Human Rights where the principal Non-Governmental Organisation and pressure groups can put their concerns directly to Ministers and have an on-going dialogue about the Human Rights Act. The Government is currently taking the human rights culture beyond policy makers, lawyers and the courts. The acknowledgement of and respect for human rights should be not just in police stations and prisons, but also in care homes and hospitals, and social services departments. The Government will be providing guidance to managers and staff across our public authorities about how to put these values into practice. In addition, the Government has proposed in the Equality Bill the establishment of an independent Commission for Equality and Human Rights to further promote and protect human rights.

*Paragraph 127 (16th Report—p. 36)—We welcome the Government's positive approach to the need to monitor application of the Communication by the Commission. Should the opportunity arise, particularly during the United Kingdom Presidency, we urge the Government to initiate a discussion in the Council, drawing attention to the importance of the Communication for the standing of EU legislation and inviting the Commission to produce an annual report on the working of the Communication.*

The Government thinks such an approach would overstate the importance of the Communication which will take effect alongside the work of the Commission Legal Service and the proposed Fundamental Rights Agency.

In conclusion, the Government broadly welcomes the Communication. We support all efforts to ensure respect for fundamental rights and all attempts at better regulation. And we welcome the Commission's desire for its work to be more transparent, more credible and more consultative. We share the Committee's hope that the Communication will raise and maintain standards of compliance with fundamental rights, and encourage citizens and civil society to assert their fundamental rights. We will continue to watch the application and development of the Commission's new methodology carefully.

*20 February 2006*

**Letter from the Chairman to Rt Hon Baroness Ashton of Upholland**

Thank you for your letter of 20 February which was considered by the Select Committee at its meeting on 14 March. I am sure you will not be surprised to learn that the Committee is disappointed at the Response you have given on behalf of the Government.

You note that the Commission, by its Communication, has signalled an intention to lead by example. However, there appears to be little that the Government are prepared to do to follow that example. You say that there is at present no uniform method for Member States to explain the fundamental rights compliance of proposals they themselves put forward under the Third Pillar. Is there not a case for a uniform method and/or certainly something more helpful and transparent than is often the case at present?

[13] The statement might be along the line of: *"In the Government's* [preliminary] *view, the proposal can be given effect* [or, in the case of a proposed Regulation, *'can take effect'*] *in the UK in a way which is compatible with the Convention rights"*

[14] The statement might be along the line of: *"In the Government's* [preliminary] *view, it* [will/may] *not be possible to give effect to the proposal* [or, in the case of a proposed Regulation, *'The proposal may not be capable of taking effect'*] *in the UK in a way which is compatible with the Convention rights. The Government will address this when negotiating on behalf of the UK"*

As regards draft EU legislative acts which are submitted for scrutiny by this Parliament, you reject the inclusion of a paragraph dealing with fundamental rights in Explanatory Memoranda signed by Ministers. You offer a "positive" or "negative" statement. While the scrutiny procedure may leave little time for detailed consideration within Departments we would reiterate the point that if the Commission complies with the Communication the burden on Departments would be greatly reduced. Further, the Commission's analysis will not, of course, be restricted to the ECHR but encompass all rights under the Charter.

The compliance statements offered by the Government raise concerns, not only of principle but also relating to their terms. We believe that the issue which should be addressed following deposit of a legislative proposal is not whether it could be given effect to without, for example, ECHR breach but whether the instrument itself raises ECHR issues. If it does, then the EM should state which Articles of the ECHR might be engaged and why the view is being taken that the instrument is or is not compatible with the Convention. We acknowledge that there are, as mentioned, time, and therefore resource, constraints. But the Government could, for example, take the Commission's analysis and comment on it, indicating whether they agreed with it and if not, why not, as well as identifying any omissions. Would you not agree that this would be an efficient way to proceed?

The issue of whether a proposal can be implemented or take effect without breach is, we agree, also very relevant but the suggested compliance statement raises further questions here. For example, we would wish to be assured that such effectiveness or implementation was possible across the Union, not just the UK. We are concerned that the Government's proposal betrays an insular approach to matters many of which are transnational or cross-border. Further, it is by no means clear to what extent the Government, in making the "positive" statement, would rely on the argument that ECHR obligations trump EC ones as a matter of international law or even domestic law under the Human Rights Act.

In order for our scrutiny of EU legislation to be effective we are very much dependent on the co-operation of the Government. Providing a statement, perhaps in the manner suggested above, of the extent to which fundamental rights and signalling any difficulties would expedite our work and reduce the extent to which we would need to question Ministers during the scrutiny process. There would, we believe, be practical benefits for both Parliament and the Government. We would therefore invite you to reconsider this matter.

Finally, we note that you reject our suggestion that the Council might invite the Commission to produce an annual report on the working of the Communication. You say that such an approach "would overstate the importance of the Communication which will take effect alongside the work of the Commission Legal Service and the proposed Fundamental Rights Agency". This is a matter to which we propose to return in the context of our inquiry into the Agency.

*15 March 2006*

**Letter from Rt Hon Baroness of Upholland to the Chairman**

Thank you for your letter of 15 March 2006 regarding the Government's response to the Committee's 16th Report *Human Rights Proofing EU legislation*. I am sorry for the very long delay in sending this reply. This was due to the need to ensure thorough consultation within Government.

In my initial response of 20 February 2006 to the Committee's 16th Report I said that the Government's position was that explanatory memoranda on European Union legislative proposals should contain a statement of compliance with Convention rights. In your letter of 15 March 2006, you indicated the Committee's disappointment with that response.

Following further consideration, I am now pleased to inform you that the Government will provide an analysis (not just a statement) of compliance with fundamental rights (as described by Article 6(2) of the Treaty on the European Union) in the explanatory memoranda of European Union legislative proposals submitted for scrutiny.

If the Committee agrees that this is a sensible way forward, the Cabinet Office, with the assistance of my Department, will update its guidance to Departments accordingly. In some cases, it may be difficult for Departments to complete the analysis within the current ten-day deadline. In the rare cases where this occurs, we hope that, subject to consultation with your Committee staff on a case-by-case basis, the Government may either submit an explanatory memorandum later than the usual ten-day deadline, or provide the analysis in a supplementary memorandum. If new issues or concerns arise during the negotiations on proposals, the Government will provide relevant information either by way of Ministerial correspondence or supplementary memoranda.

*26 March 2007*

## 17th REPORT: THE WORLD TRADE ORGANISATION: THE HONG KONG MINISTERIAL 13TH–18TH DECEMBER

**Letter from Ian Pearson MP, Minister for Trade, Investment and Foreign Affairs, Department of Trade and Industry, Foreign and Commonwealth Office to the Chairman**

Further to my letter of 23 January[15] updating you on the outcomes of the Hong Kong Ministerial, I am now in a position to provide you with responses to the conclusions of the Committee's very helpful report.

*29 January 2006*

### Government Response

#### The current status of the Doha Development Agenda, and the forthcoming Hong Kong Ministerial

33. *We urge WTO members to work for the completion of the Doha Round by the end of 2006.*

We agree.

#### The changed landscape of negotiations

34. *As we noted in our earlier report, it remains important that the developing countries recognise that they have a responsibility to work for the successful completion of the Doha Round, as well as power to influence the outcome.*

We agree that developing countries will have a major influence on the outcome of the Doha Development Agenda, to a much higher degree than in previous trade rounds. This is an important step forward both in terms of the accountability of the World Trade Organisation and in the ability of multilateral trade negotiations to create a world trading system that brings benefits to developed and developing countries alike. With seats in the Five Interested Parties and the G4 and G6 groupings, Brazil and India will have a major role in shaping a final deal. However, we need to be alive to concerns among the G90 that their membership is not represented in these small groupings. We will aim to ensure that representatives of the LDCs and other poorer and more vulnerable countries are properly consulted and content with the negotiating process.

#### Agricultural market access

35. *We support the Commission's offer to reduce agricultural tariffs by an average of 38.9% and consider that the developing countries should now respond constructively.*

We continue to want to see ambitious reductions in agricultural tariffs in order to ensure substantial improvements in market access and the benefits this can bring to developing countries. We support the Commission in its work towards resolving this very difficult issue. Its offer of 28 October 2005 has yet to provoke any meaningful engagement from other WTO members. We fully support the Commission's position that the Round has to be balanced across the main issues, and that the EU cannot make any further unilateral moves without movement from others in return. We continue to seek to persuade other WTO members of the need for constructive engagement.

36. *We consider that it is important to ensure that LDC and ACP countries do not suffer disproportionately as a result of the erosion of their preferential access to the EU's agricultural markets. We accordingly urge WTO members to agree appropriate temporary transition measures to compensate these countries. These measures should be designed to distort trade as little as possible.*

We strongly support multilateral trade liberalisation but appreciate that reductions in the EU's MFN tariffs will have an impact on preferences received by developing countries under the EU's preferential trade agreements. Similarly we support reduction of the EU's domestic and export subsidies but appreciate this will have an impact on developing countries that benefit from high price guarantees on particular commodities (eg sugar).

[15] Correspondence with Ministers, 45th Report of Session 2005–06, HL Paper 243, pp 87–88.

We and our European partners are committed to helping developing countries to combat the effects of preference erosion through trade adjustment assistance, and by providing additional aid for trade to tackle other barriers to their ability to benefit from greater trade liberalisation, such as poor infrastructure. The EU has adopted a "development package" that encompasses these aims and that includes commitments to substantially increased development aid.

The July 2004 Framework Agreement states, "The importance of long-standing preferences is fully recognised. The issue of preference erosion will be addressed." The EU's development package was discussed at the Hong Kong Ministerial. Not all developed countries were able to follow the EU's lead and mirror all of the commitments entered into by the EU. However, both the US and Japan announced—around the Hong Kong Ministerial—very substantial increases in aid for trade. In addition, at Hong Kong the developed countries committed to introducing an equivalent arrangement to the EU's "Everything but Arms" measure—ie duty and quota free access for all 50 LDCs.

Disappointingly, this commitment is only for 97% product-coverage, which limits its potential value. We will seek to persuade developed countries to go beyond 97% coverage when the time comes to put this commitment into effect.

Increased developed country duty and quota free access for LDCs will create new preferences that will partly offset the effects of preference erosion. With this exception, none of these proposals involves trade-distorting actions or measures. Trade adjustment assistance and aid for trade represent development aid funding this will improve opportunities to trade for developing country recipients, but does not involve any trade-distorting intervention in markets.

**Agricultural export subsidies**

37. *We support the Government's decision to push for the removal of all agricultural export subsidies as well as the EU's May 2004 offer to eliminate these subsidies if all other WTO members agree to follow suit. We urge WTO members to agree to do so by 2010*

At the Ministerial in Hong Kong WTO members agreed to eliminate all export subsidies by 2013. While this was a later date than we would have liked, the agreement is welcome.

Some EU Member States came to Hong Kong reluctant to put forward an end date. The compromise reached was for an end date of 2013. The date is both specific and fixed and, furthermore, the elimination is progressive. There is a commitment to phase out a substantial proportion by the mid-point between the beginning of the implementation period and the 2013 end-date, ie by around 2010.

On export subsidies WTO members agreed to the parallel elimination of all forms of export subsidies and disciplines of export measures with equivalent effect to be completed by 2013. This includes an agreement to ensure elimination of all commercial displacement in the form of food aid. This will have a big impact on the US. It also includes ensuring that all trade-distorting practices of State Trading Enterprises are eliminated (which potentially affects Canada, Australia and New Zealand in particular).

**Non-agricultural market access**

38. *We firmly believe that it is now time for developing countries such as Brazil to respond before Hong Kong to agricultural offers from the likes of the EU with serious proposals of their own in access to non-agricultural markets.*

It is clear that larger developing countries such as Brazil and India have much to gain from liberalisation of trade in both the agricultural and industrial sectors. They are not confronted by the same problems that face the weak and vulnerable or smaller developing countries. We believe that it is important for larger developing countries to participate actively in all aspects of the DDA negotiations. Therefore we are disappointed that at Hong Kong, Brazil and others were unwilling to negotiate meaningfully with the result that NAMA became a hostage to agriculture. However, Paragraph 24 of the Hong Kong Ministerial Declaration established parallelism between the NAMA and agricultural negotiations. We are of the view that this means real increases in market access by all developed and larger and more advanced developing countries—in both sets of negotiations.

**Trade in services**

39. *We urge countries to secure a commitment at Hong Kong to a date by which revised best and final offers on trade in services will be tabled.*

The Ministerial Declaration agreed at Hong Kong, together with the annex on services—"Annex C", builds on the package agreed by WTO Members in July 2004 by providing a clear framework to define a way forward for services liberalisation in the Doha Round. The Ministerial Declaration reaffirms that negotiations shall proceed with a view to promoting the economic growth of all trading partners, particularly developing and least-developed countries. The Declaration urges all Members to participate actively towards achieving a progressively higher level of liberalisation in trade in services, with due respect for the right of WTO Members to regulate to meet national policy objectives and with appropriate flexibility for individual developing countries.

Annex C reaffirms that the request-offer process remains the main method of negotiation and clarifies the non-prescriptive nature of the proposed plurilateral approach. Despite a number of proposals from WTO Members calling for their inclusion, Annex C omits any reference to multilateral numerical targets and indications. This outcome is in line with the UK preference for a settlement that avoids mandatory requirements on developing countries to liberalise services and maintains the flexibility for developing countries to choose whether or not to make any GATS commitments at all. The Annex calls on WTO Members to submit outstanding initial offers as soon as possible and sets target dates for the submission of plurilateral requests by 28 February 2006, a second round of revised offers by 31 July 2006, and final draft schedules of commitments by 31 October 2006.

**Commitment to Doha: Multilateral versus bilateral and plurilateral agreements**

40. *We believe that governments should strongly pursue multilateral arrangements. Were the Doha Round to break down, this would bring serious pressure to bear on governments to pursue bilateral and regional agreements as a way forward. It would be a paradox if a breakdown of the Doha Round were to lead to bilateral agreements between the major trading blocks from which the developing countries would be excluded to their detriment. We therefore urge all WTO members to work for a successful outcome to the Hong Kong Ministerial as a very high priority.*

We are strongly committed to pursuing a more liberal trading environment through multilateral negotiations. Developing countries have real negotiating power in the WTO, with each country having an equal vote. Well-designed bilateral agreements can be a positive force both economically and politically, and can provide an important compliment to the multilateral system. They cannot and should not, however, be viewed as an alternative to the multilateral trading system, which must continue to take centre stage.

## 18th REPORT: TOO MUCH OR TOO LITTLE? CHANGES TO THE EU SUGAR REGIME

### Department for Environment, Food and Rural Affairs Response

INTRODUCTION

The Government welcomes this considered and constructive examination of the issues relating to reform of the EU sugar regime.

As the Committee's report notes, agreement on a revised regime was reached at the November 2005 Agriculture Council on the basis of a Presidency compromise which was supported by an overwhelming majority of member states. The formal legislative aspects of the dossier are expected to be completed in February 2006, now that the European Parliament's Opinion has been received. Secondary legislation implementing various aspects of the new regime remains to be put in place by the Commission through the Management Committee procedure, before entry into force of new arrangements from 1 July 2006. In addition Member States need to reach their own decisions on certain discretionary elements, notably in respect of compensation for growers and the operation of the voluntary restructuring scheme.

Decisions are also still outstanding on adjustment aid for ACP Sugar Protocol countries for the period 2007–13, following agreement on an initial tranche of 40 million euros for the balance of 2006. Adjustment aid was not a matter for the Agriculture Council and negotiations continue on this aspect of sugar reform in the General Affairs and Development Councils. It is very much the Government's intention that this should be concluded as soon as possible.

Notwithstanding the work still to be done on this and on transitional and implementing measures in general, the overall framework and duration of the new regime is nevertheless now clear. Much of this reflects the Committee's conclusions. The Government believes the agreement on reform to be a very good outcome, which marks a major step change in a regime hardly touched by all previous CAP reforms since its inception nearly 40 years ago.

When fully implemented, the reformed regime should bring significant economic benefits to the EU and greatly reduce the market and trade distortions that have characterised the present arrangements. The new regime should also enable the EU to comply in full with its WTO and other international obligations and to advance its more general trade and development objectives.

The final package endorsed by the Council is very closely based on the proposals considered by the Committee in its report, namely a substantial cut in institutional-prices, abolition of permanent intervention, the introduction of a voluntary restructuring scheme to reduce production and a new decoupled direct aid for growers. Although certain changes have been made, the Government believes these are entirely consistent with the aims of the reform and in some instances help to address specific concerns raised by the Committee, notably in respect of possible discrimination against the UK as a result of the current deficit area status of UK beet production and the balance between the beet and cane sectors. A final Regulatory Impact Assessment incorporating these elements is in preparation, but is expected to confirm the broad efficiency and welfare gains resulting from the earlier analysis.

The main points of difference between the final compromise and the original proposals can be summarised as follows:

— the price cut will now be 36% instead of 39%, the initial reduction in 2006–07 being the same as proposed, but with new interim steps in 2007–08 and 2008–09 leading to the final cut in 2009–10;

— the budgetary provision for the decoupled grower compensation will remain as before, but, in Member States such as the UK where the level of existing prices has reflected their deficit status, additional compensation will be provided in the first four years of the reform;

— as a consequence of the re-phasing of the price cuts, ACP and LDC suppliers will have longer to adjust, and more money will be raised through the processor levy (thereby allowing the rate of restructuring aid to be maintained at €730 per tonne, in 2007–08);

— a minimum of 10% of the restructuring aid is now reserved for sugar beet growers and machinery contractors to compensate them for the loss of their specialised machinery when production is abandoned, and the fund will now provide greater flexibility as regards the partial closure or re-use of buildings: also, Member States in which more than 50% of the quota is being given up can qualify for an additional diversification aid reflecting the extent to which their industry is closing, as well as some time-limited adjustment aid for remaining growers;

— there will be a limited safety net intervention scheme for four years, with a ceiling of 600,000 tonnes a year, set at 80% of the reference level for the following year;

— traditional cane refiners will receive a new transitional aid, totalling €150 million in the period to 2009–10, to adjust to new market conditions;

— 10 Member States not included in the earlier allocation key for C sugar will receive additional quota, and three will receive additional isoglucose quota;

— there will be a 50% reduction in the levy contribution payable by the isoglucose sector;

— new assurances have been given about the availability of sugar at competitive prices for non-food uses, and on the possibility of exports within the revised limits set by the WTO;

— the circumstances in which the existing safeguard provisions under the Everything But Arms Agreement might be invoked where fraud is suspected have been clarified.

In the light of these developments the Government has the following responses to the Committee's conclusions.

Paragraph 118. *We welcome the Council of Ministers' decision to reform the EU sugar regime. To have left the regime unchanged would have signalled a distorted and wasteful use of resource within EU agriculture (paragraph 17)*

The Government is grateful for the Committee's support and for the broad consensus among UK stakeholders in favour of early decisions to bring sugar into line with other aspects of CAP reform. Conclusion of these negotiations under the UK Presidency represents a significant achievement and demonstrates the EU's commitment to continued progress towards its wider trade and development objectives.

Paragraph 119. *We understand the anxieties expressed to us by witnesses that a price cut of almost 40% is too large. However, we believe that a substantial price cut is necessary in order to reduce EU sugar production and eliminate the need for the subsidised exports of surpluses. The Council of Ministers did not agree the originally proposed cut of 39% but we believe a cut of 36% will provide a clear and appropriate signal to the industry about its future pattern of investment. We are, however, concerned about the impact of the cut on growers in certain ACP countries. (paragraph 26)*

The Government agrees with this analysis and strongly supported the Commission in resisting calls for a different approach or for a less radical series of price reductions. The final compromise does provide for a longer period of adaptation and slightly smaller final cuts. But the Government shares the Commission view that this will not materially affect the expected benefits of reform or the prospects of achieving the necessary degree of rationalisation and restructuring within the EU sugar sector.

The Government shares the Committee's concerns regarding the impact on ACP states but believes that, overall, the effect of reforming the EU sugar regime will be beneficial for developing countries, as it will reduce the market distortions caused by the existing regime. We do however recognise that reform will have a negative effect on some of the ACP Sugar Protocol countries. This is why the UK Government is working hard to secure adequate and timely transitional assistance to help ACP Sugar Protocol countries adjust to reform. We want the Commission to find at least €250 million per annum for transitional assistance for ACP sugar producers, preferably through an extra budget line in the new Development Cooperation and Economic Cooperation Instrument. This is a matter to which the Government continues to attach great importance.

Paragraph 120. *The transitional measures will continue coupled aid for some remaining beet growers. This will sustain high cost production, preventing the sugar industry from becoming fully competitive and weakening the EU's ability to respond to the requirements of the WTO and developing countries, (paragraph 34)*

The Government is pleased that the final agreement provides for mandatory full decoupling, with only a minor exception in the case of those countries giving up at least 50% of their quota, who will have the possibility of an additional coupled payment of 30% of the income loss for a maximum of five years.

Paragraph 121. *We consider that the compensation being offered to growers is now too generous and we note that there is no similar treatment for workers who lose their jobs on farms or in the processing factories. (paragraph 35)*

The Government notes these comments, but believes that the final deal addresses much of the Committee's concern in respect of grower compensation. One of the conditions attached to the payment of the Restructuring Aid in respect of any processing factories which close is that a social plan must be submitted detailing the actions planned with respect to re-training, redeployment and early retirement of the workforce. This includes provision for similar measures on farms. In addition, there is an Aid for Diversification which is intended to ensure national restructuring programmes are in place in regions affected by factory closures and loss of rural employment.

Paragraph 122. *We share the concerns of witnesses that direct payments might not be immediately completely decoupled in all Member States. If that were the case, sugar growers and processing companies in the United Kingdom would be placed at an unjustified competitive disadvantage. The strategy of the Commission in responding to the requirements of WTO would be undermined and within the EU there would be a substantial continuing distortion in the use of resources. (paragraph 39)*

The final agreement is clear that grower compensation is, with the exception covered by the Committee's paragraph 120, to be fully decoupled and has to be incorporated into the Single Payment Scheme model that Member States have already adopted. This still provides for an element of discretion on the details and the Government agrees that there are a number of issues that need to be considered carefully before decisions are taken on how that discretion will be used. The Government will be conducting a consultation exercise on this issue shortly.

Paragraph 123. *We are very concerned that the November agreement raises the possibility that, in those countries giving up at least 50% of their quota, farmers could receive an additional coupled payment of 30% of the income loss for a maximum of five years, plus national aid. This contradicts the strategy of bringing production into line with market opportunities through price cuts and the restructuring programme. (paragraph 40)*

Paragraph 124. *Given that the EU must reduce production by approximately 8 million tonnes, the effect of this coupled payment would be that producers who are more efficient would be forced to reduce production to accommodate those who are high cost. We call on the Council and Member State national governments to ensure that all direct payments to sugar producers are fully decoupled. Failure to comply should result in a penalty being imposed by the Commission, such as the withholding of future compensation payment. (paragraph 41)*

The Government notes the comments in these two paragraphs. As it has pointed out in response to paragraph 120 above, this is only a minor exception to the principle of fully-decoupled grower compensation. Coupled payments are only available after a member state has already lost more than 50% of its beet industry. The payments are intended not to prop up inefficient beet production but rather to help manage the decline and eventual disappearance of that inefficient production.

Paragraph 125. *We recognise that job losses will result from the reform. However, we agree with the Government that these losses are unavoidable if a competitive EU sugar industry is to be built. As in other sectors, it will be the responsibility of Member State governments to mitigate the impact on displaced workers. (paragraph 47)*

The Government agrees with the Committee's conclusions which reflect the findings in the European Commission's own analysis, that without reform around 15,000 jobs would be lost in the European sugar industry by 2012. This is in addition to the 16,000 jobs lost in the UK food manufacturing industry alone over the last five years as set out by the UK Industrial Sugar Users Group in their evidence to the Committee. This point has been covered in the Government's partial Regulatory Impact Assessment (RIA) which will now be updated to take account of the final reform deal. As noted in response to the Committee's conclusion at paragraph 121 above, measures to mitigate the effects of restructuring are explicitly provided for in the conditions for aid, those these remain the responsibility of the member states and companies concerned.

Paragraph 126. *The arrangements for the setting of quotas per Member State and the prevention of quotas being traded across frontiers is at the heart of the distortion of competition within the EU. (paragraph 49)*

The Government agrees that quotas hamper competition, but it expects cross-border trade in sugar to increase once reform is fully implemented. Over time the role of quotas in regulating production is expected to diminish as the market adjusts to a new balance of supply and demand.

Paragraph 127. *It is disappointing that the failure of the reform to remove quota or to make it transferable between Member States seems likely to continue this distortion of competition across Member States. (paragraph 51)*

The Government notes the Committee's comments. The purpose of quota transfer would have been to facilitate the redistribution of production within the EU on the basis of efficiency and comparative advantage. But it would not have reduced total production. The voluntary restructuring scheme is designed to achieve a similar market-driven rationalisation, combined with lower output. The possibility of purchasing additional quota (within defined limits) also allows the most competitive to increase their quota share at a price which effectively limits the option to those with the most sustainable basis for future operation.

It remains to be seen how the market will actually respond to what is a fairly radical set of reforms. If there is evidence of unfair practice on the part of commercial undertakings, the Government is confident that the UK and European competition authorities will act as appropriate.

Paragraph 128. *The Committee notes that the need for a transitional aid payment for full time refiners arises because the market is both regulated and, at the processing level, monopolistic. We believe it is the responsibility of the Commission to monitor the working of the market and ensure continued and robust competition between the cane and beet sectors. (paragraph 54)*

The Government notes the Committee's comments and agrees with its conclusion. In the final Presidency compromise an additional amount of 150 million euros is to be made available during the transition period (up to and including 2009–10) to assist full-time cane refiners to adapt to the new regime. These funds will be distributed proportionately between EU refiners, on which 94.3 million euros would be available for the UK refiner. Distribution of funds will be subject to the provision of a business plan to be approved by the government of the member state concerned. But this support will cease at the end of the transition period.

Paragraph 129. *We note the concern of witnesses about potential threats to the environment and the risk that habitats valuable for some species of wild life might be lost. It will be important that these issues are addressed by specific environmental policies, where appropriate, during implementation of the new regime. (paragraph 58)*

The Government notes the Committee's concern that with the implementation of a new sugar regime there may be potential threats to the environment and the risk that habitats valuable for some species of wildlife might be lost. The Government believes that the best way of addressing this is through agri-environment schemes rather than the continuation of an unsustainable level of price support. Indeed, building on the successes of previous agri-environment schemes, the Government launched the Environmental Stewardship Scheme in March 2005 which aims to secure widespread biodiversity and other environmental benefits. With Entry Level Stewardship (ELS), which is open to all eligible farmers and land managers in England, the aim is to cover 70% of farmland within the next three years and, thus, to tackle countrywide problems such as general biodiversity loss and diffuse water pollution. Higher Level Stewardship. (HLS) aims to deliver significant biodiversity and other environmental benefits in high priority situations and areas. There are arable options in both ELS and HLS to provide a range of habitat features such as winter seed and diverse cereal stubbles for farmland birds and for Pink-footed Geese. In addition, monitoring is either in place or under development that will allow us to assess the effectiveness of the schemes in offsetting any biodiversity losses due to changing farm practice.

Paragraph 130. *There is a strong case for exploring the possibility further of establishing a biofuel industry, but in establishing such an industry, it is important that sugar should be seen as only one potential source of raw material and be used only where it could compete and could do so without specific subsidy. (paragraph 60)*

The Government agrees with the Committee's recommendation concerning the development of a biofuel industry. As part of the overall strategy for improving sustainability and reducing the impact of climate change, the Government supports the production of transport biofuels. However, the Government's climate change programme emphasises the need for cost-effective measures to tackle climate change. A cost-effective and viable biofuels industry is about creating an industry independent of excessive levels of subsidy and support must take account of the cost to the taxpayer. Current support is not targeted at one particular biofuel feedstock. The forthcoming incentives which will allow sugar beet for biofuel use to be grown on set-aside and to be eligible for the €45/ha Energy Aid payment on non set-aside land, currently apply to other biofuel crops. The duty rate cuts for biodiesel and bioethanol apply to biofuels derived from crops and from other sources such as waste vegetable oils and animal fats. As part of the Renewable Transport Fuels Obligation, the Government proposes to develop a carbon and sustainability assurance scheme to ensure that the best biofuels are used.

Paragraph 131. *We support the Commission's approach of implementing country-specific Action Plans in order to mitigate the impact on ACP Sugar Protocol countries of the reduction in the EU sugar price. (paragraph 71)*

Paragraph 132. *The gap between the sum of money being offered and the estimated assistance required is vast. An offering of €40 million without firm commitments on further funding justifiably fuels the fears of ACP countries that the funding required to adapt their sugar industries may fail to be provided. (paragraph 76)*

Paragraph 133. *Witnesses from the ACP countries were understandably anxious about the precise sources of support money. We recommend that the Commission provides clarification as soon as possible to the ACP countries of which Directorate will have overall budgetary responsibility for the Action Plans. (paragraph 77)*

Paragraph 134. *Implementation of the proposals will create an immediate crisis of reduced revenue for the ACP countries but the Action Plans can only offer solutions for the long term. This makes it essential that assurance of funding beyond 2006 is given by the Council of Ministers now in order that ACP governments can begin the process of transition. (paragraph 78)*

Paragraph 135. *The Committee shares concerns that continuing uncertainty impedes the necessary process of adjustment to lower prices in the Sugar Protocol countries. It is imperative that agreement is reached on the Financial Perspective soon in order that firm commitments can be made on the future funding to ACP countries. The uncertainty over the financing is a key contributor to the anxiety the ACP countries are experiencing as they prepare for reform. (paragraph 81)*

Paragraph 136. *The reform will be introduced over a more gradual timeframe than the two years originally proposed. It is important that this should not delay the action that is needed to adjust ACP sugar industries to the longer term level of price cut. (paragraph 83)*

Paragraph 137. *Ultimately the process of adjustment cannot be escaped. For the ACP countries concerned, the greatest benefit would come from aid to a longer term development strategy rather than sustaining a high cost sugar industry. (paragraph 86)*

Paragraph 138. *We accept the need for assistance to be tailored to the needs of each country and designed to facilitate each country's long-term economic development. However, the funding provision remains totally unsatisfactory. We strongly recommend action by the Commission's DG Agriculture and DG Development should be co-ordinated to ensure that funds are available on a scale and at a time that reflects the scale of the problem the ACP countries face. (paragraph 87)*

The Government notes the comments on transitional assistance for ACP countries contained in paragraphs 131 to 138. It agrees that it is unfortunate that the EU's budgetary timetables and the timetable of reform are such that agreement on the sugar reforms was reached in Council before the budgets from which assistance is to be funded were agreed. This has led to the current situation of uncertainty for the ACP Sugar Protocol countries. It should be emphasised that the €40 million of assistance that has so far been confirmed is only for 2006. Further and more significant assistance will be provided between 2007–13. Since the next Financial Perspective is still being negotiated it is not possible to give any figures on what levels of funding are likely to be however, The Government agrees that it is necessary to provide certainty to the ACP by deciding on these levels as soon as possible, and would like to assure the Committee that the UK will be pressing for adequate funding for sugar transitional assistance as part of this process.

The Commission have proposed that funding for 2007–13 should come from the Development Cooperation and Economic Cooperation Instrument in the External Relations budget in the next Financial Perspective. No decisions have yet been taken on this and discussions are ongoing. The new Financial Framework agreed in December was a major step forward as it set the overall EC budget limit, including individual Heading ceilings. The Austrian Presidency will now take forward the consideration of detailed allocations within each budget Heading, including the financial costs of sugar transitional assistance to ACP sugar producers.

The longer phase-in period for price cuts for the ACP under the terms agreed in November 2005 will give the Sugar Protocol countries more time to implement adjustment programmes before reform is fully implemented. It is important that assistance is delivered as soon as possible to take full advantage of this extended period. The UK Government has been working with the European Commission and the ACP to make this happen—commissioning studies of the likely impact of reform on the ACP and the LDCs to inform debate about the need for transitional assistance, providing £260,000 to fund the development of the country plans in the Caribbean, and funding a workshop that initiated the process of preparing these plans. As Presidency, the UK worked to facilitate agreement on the Regulation that underpins the provision of assistance in 2006. The Government has been strongly engaged in helping to make effective EU transitional assistance a reality, and will continue to do this.

Paragraph 139. *It is important that the EBA safeguard procedure only applies to triangular trade and is not interpreted as the EU backtracking on its commitments to EBA countries. (paragraph 90)*

The Government agrees with the Committee. Least Developed Country exports are important not just for their economies, but also to maximise competition in the EU sugar market and ensure that EU market prices are brought down to the new reference levels. On 1 December Commissioner Fischer-Boel issued a letter to Dr Ali Yousef Ahmed, Chairman of the LDC Sugar Group to clarify the interpretations of the declaration, underlining that it is not a retreat from commitments to EBA countries.

The Commission confirmed that the reform declaration does not substantially depart from the GSP Declaration, except that it does apply on a country specific basis. The Commission also confirmed that the 25% threshold is only a trigger for opening of procedures to decide whether safeguard measures need to be applied, and not a threshold for the adoption of such measures. The new regime is conceived in a way that the EU can cope with these quantities without using these safeguard measures. Even if the assumed quantities are reached or exceeded, it does not automatically mean safeguard measures would be applied: an in-depth analysis has to take place ensuring the necessary balance between impacts on LDCs and Community producers.

Paragraph 140. *The Committee notes the concerns of witnesses worried by possible environmental implications of changes in world production brought about by reform of the EU sugar regime. However, we conclude that significant changes in the global environment are unlikely to result from the EU reform. (paragraph 100)*

The Government notes the Committee's concerns and confirms that environmental issues were considered as part of the reform process, the principle objective of which was to provide a sustainable framework for sugar production in the EU and for ACP and LDC suppliers The Government has reached the same conclusion as the Committee, as set out in the partial Regulatory Impact Assessment.

Paragraph 141. *Although the transitional arrangements for coupled payments would only become effective when a Member States reduces its quota by 50%, coupled payments sustain high cost production. The transitional arrangements are therefore in conflict with the underlying policy objective of creating a competitive EU sugar industry. Furthermore, the allocation of an additional 1.1 million tonnes of "c" sugar appears to dilute the impact of the original proposal, whilst the decision to allow Finland to provide a national aid of up to €350/ha to its sugar producers provides a further conflicting signal. This causes us considerable concern. (paragraph 102)*

The Government notes the Committee's concerns. It welcomes the decision to allow additional quota reflecting former C-sugar production. This will help to dilute the influence of production quotas and will help to bring down prices an the internal market as discussed in the comment alongside the Committee's paragraph 127.

Paragraph 142. *We are concerned that the price cut may not be severe enough to reduce overall production. In that situation, the Commission should implement a further price cut rather than a flat rate quota cut. (paragraph 107)*

The Government notes the Committee's comments. The Commission will be reporting on the progress in reducing production through the restructuring scheme by the end of 2008. Our own analysis suggests that if prices fall to the new levels, it will be sufficient to bring the EU market into balance. The Government agrees that price reductions are more effective than quota cuts. Nevertheless, it is clear that there will be a very large sugar surplus on the EU market in the first year of the reforms and the Commission have made clear that they will use all of the mechanisms for market management that are open to them in order to limit this surplus.

Paragraph 143. *We recognise the widespread resistance to the removal of quotas among Member States but believe that if the price cuts and restructuring process are successful, quota will become redundant and should be removed. in that context the requirement to leave the new regime unchanged until 2014 is inappropriate. (paragraph 111)*

The Government notes the Committee's views. The UK has consistently argued in favour of phasing-out all production quotas in a reformed CAP. The difference between the agreed reforms and some of the Commission's earlier ideas is that the reduction in EU production capacity will be a voluntary process. By radically cutting prices, in order to discourage production in high cost regions and by facilitating increased quota production in more efficient regions as well as in alternative sweeteners, the agreed reform moves decisively towards a situation where quotas would no longer be necessary. Monitoring and evaluation will be important over the coming years in order to form the basis for further change as appropriate.

Paragraph 144. *As stated in our earlier report, we strongly support the need for the WTO to provide practical and effective means for agricultural liberalisation. The EU can no longer postpone action on difficult issues. Every effort should be made to reach agreement within the Doha Round. (paragraph 115)*

Since the Committee's report was published last year, the 6th Ministerial meeting of the World Trade Organisation (the WTO) took place in Hong Kong (13-18 December 2005). The outcome at Hong Kong might not have been as ambitious as many had hoped, but it did take some significant steps forward.

The main achievements at Hong Kong were:

— Agreement to end all export subsidies by 2013 and a substantial part to be realised by the end of the first half of the implementation period.

— Extending duty-free and quota free market access to 97% of products originating from Less Developed Countries.

— An agreed date to end cotton export subsidies by 2006.

— New commitments were pledged from the EU, US and Japan on aid for trade beyond the ambition of Gleneagles.

People had lowered expectations for Hong Kong but a key part of what we did achieve was down to the EU—in particular, on agreeing to an end-date on export subsidies. There is much significance in the EU signing up to this, showing that they are prepared to face up to difficult issues in order to secure a deal.

The Hong Kong text has set the end of April 2006 for agreement on modalities (the final architecture of a deal) in agriculture and NAMA (Non Agricultural Market Access) and substantive conclusion of the Round by the end of 2006. The UK and the EU are committed to achieving this deadline.

Having agreed to the elimination of all export subsidies by 2013, WTO members can now concentrate their efforts on coming to an agreement on other aspects of the negotiations, including a tariff reduction formula to provide substantial increase in market access. The EU put forward a proposal, including this formula, on 28 October 2005 and a number of other parties have also put forward their own proposals. Further negotiation from all WTO members is now urgently needed in agriculture and in other areas of the Round, such as NAMA, in order for the Round to move forward. The UK Government continues to seek to persuade other WTO members of this need for constructive engagement. We agree that every effort should be made to reach agreement within the Doha Round.

Paragraph 145. *While we welcome this reform, it must be seen as only a step towards a sugar industry that is able to compete in a world market without the need for levels of protection substantially greater than those given to other sectors of the EU economy. (paragraph 117)*

The Government agrees with the Committee's analysis. Defra's Regulatory Impact Assessment sets out clearly the very substantial economic welfare and consumer costs of the existing regime. It also analyses what a fully-liberalised EU sugar market would look like. The agreed reforms reduce the costs by roughly half. That in itself represents a very significant achievement, particularly as all previous attempts at reform in this area have not succeeded. The Committee will however be aware of the Government's Vision paper for CAP reform which sets out its ideas on the way forward for the CAP more generally.

## 19th REPORT: REVIEW OF SCRUTINY: COMMON FOREIGN AND SECURITY POLICY

### Letter from Rt Hon Douglas Alexander MP, Minister for Europe, Foreign and Commonwealth Office to the Chairman

In his letter of 30 January to the Foreign Secretary, Lord Bowness sent a copy of the Select Committee's Report on the Review of CFSP Scrutiny. The Foreign Secretary joins me in welcoming the report. I attach a memorandum with our full response to your conclusions.

The Secretary of State for Defence and I look forward to even closer engagement with you on CFSP scrutiny issues.

*30 March 2007*

### Foreign and Commonwealth Office and Ministry of Defence's Joint Government Response

1. The Government welcomes the review of Common Foreign and Security Policy (CFSP) scrutiny of 30 January 2006 and values the close dialogue between the Committee and the Foreign and Commonwealth Office and the Ministry of Defence in this area. This memorandum sets out the Government's response to the Committee's conclusions, which are set out in italics. Unless otherwise stated, references are to paragraphs in the Committee's report (HL Paper 100).

*We welcome the increased commitment to the scrutiny process shown by the FCO over the previous two years and hope that the culture of scrutiny which has been created will continue in future and be fully adopted by the MoD. (para 27)*

2. The Government thanks the Committee for its recognition of the improved working practices that have reduced the number of overrides and led to a wider dialogue with Parliament on CFSP issues. As the examples in the Committee's report demonstrate, the culture of scrutiny is now established fully in both departments. We acknowledge that there is scope for even greater transparency, as the report highlights, and we will continue to assist Parliament with its scrutiny function to the fullest extent. However it is reassuring that steps taken to improve the accountability of CFSP decision-making have had a positive impact.

*We urge both the FCO and MOD to continue to have a dedicated person who exercises oversight of the scrutiny process of all proposals going to Council, and acts as a single point of contact for Committee staff. (para 31)*

3. The introduction of a scrutiny co-ordinator at the FCO and MoD has played a key part in reducing the number of overrides and has improved the communication with Parliament on CFSP matters. The Government assures the Committee that this post will continue at both the FCO and MoD, particularly given the large number of departmental teams involved in the process.

*We urge the MoD to develop more specific scrutiny guidelines to those working on EU proposals. (para 32)*

4. The Government will ensure MoD's scrutiny guidelines are developed further, specifically drawing on established guidelines within the FCO and Cabinet Office.

*In view of the short time often available to engage in an exchange of views and the wide-ranging subject matters of many proposals, we expect Government officials to readily continue to be available to assist the Sub-Committee members in the scrutiny process. (para 37)*

5. The Government acknowledges that the fast pace of CFSP decision-making makes full dialogue difficult on many proposals. and we are pleased that the Committee appreciates the readiness of desk officers to give detailed explanations of policy documents when required. The Government is anxious to prevent misinterpretations of CFSP decision-making and remains content for officials, where available, to be consulted to give technical help and informal advice as necessary.

*We reiterate the importance of receiving a signed explanatory memorandum for the final version to be considered by the Sub-Committee. In order to be considered in the Chairman's sift, signed memoranda must be deposited by midday each Thursday during Parliamentary sittings. (para 43)*

*The "effective engagement" (Q 2) between our staff and officials within both the FCO and MoD has been an important development which has enabled the fast and effective handling of scrutiny. We fully welcome the advance provision of explanatory memoranda and briefings on forthcoming documents. (para 44)*

6. The Government also welcomes the effective engagement between the Committee's staff and officials within both FCO and MoD. We aim to continue the practice of sending advance notice of EMs where appropriate, along current lines. However, the Government fully acknowledges the importance of depositing a signed explanatory memorandum on time to provide the definitive statement of the Government's view.

*For it to be practicable to organise extra meetings which a majority of Members are able to attend, the Government must give as much notice as possible, either informally or in writing, of documents which will require scrutiny. (para 46)*

7. The Government appreciates the readiness of the Committee to meet on alternative dates to ensure that scrutiny can be achieved in time for the tight deadlines often imposed by CFSP decisions. We shall continue to work with the Committee staff to give advance notice of all documents judged to require scrutiny.

*We will only examine documents at very short notice where there is a real urgency (that is, a real need for a document to be deposited just days prior to its probable agreement by Council). In these cases we expect the Government to explain fully the urgency of the situation and to provide as detailed an explanatory memorandum as soon as possible, particularly with regard to the Government position, in order to enable effective scrutiny. (para 49)*

*Although documents may be informally considered prior to the weekly sift, it is essential that the Government ensure that documents are deposited in sufficient time to allow the Chairman to consider whether they should be sifted for examination to the Sub-Committee. (para 50)*

8. The Government recognises the need to explain fully the circumstances when scrutiny at short notice is required. The effective liaison between officials and the Committee staff has been key in ensuring that this happens to a sufficient level. We aim to maintain this successful dialogue.

*We urge the Government, when a dissolution is imminent, to deposit as many documents as possible prior to dissolution in order that scrutiny may take place before the Committee ceases to exist. (para 55)*

9. The Government acknowledges the importance of submitting as many documents as possible before dissolution of Parliament, and will endeavour to do so where security restrictions allow.

*Where the timing of a proposed extension is entirely predictable we urge the Government to give notice of the impending decision as early as possible to enable Parliamentary scrutiny to take place. We suggest that the Government in turn encourage the Council Secretariat to forward drafts to Member States at an early date. (para 57)*

10. The Government has a close working relationship with the Council Secretariat and is content that the Secretariat already forwards most drafts as early as could reasonably be expected. Should the number of incidents increase where documents emerge at a very late stage however, we would be happy to take this up with the Secretariat.

*The Government should explain why it is not possible for an explanatory memorandum to be produced prior to the circulation of a document by the Council Secretariat. Though the Cabinet Office cannot be expected to keep track of the vast majority of documents which they have not yet received, it should be possible to take notice of significant new initiatives such as the Communication on the Euro-Mediterranean Partnership which was a published document being used to prepare for a major international summit. (para 59)*

11. It is. in most cases, feasible to produce an explanatory memorandum prior to the Council Secretariat circulating a document, and the Government now does this regularly on CFSP issues. Before the Euro-Mediterranean Partnership initiative, only final texts from the Council Secretariat were submitted for scrutiny.

This helped to prevent excessive bureaucracy by ensuring that the Committee saw the definitive versions of each document. The Euro-Mediterranean Partnership incident was the result of an administrative oversight in the Council Secretariat and not a typical occurrence. The Cabinet Office has since introduced a monthly check of new Commission documents published; this early version of the text is now submitted to the Committee for scrutiny if the document has not already been circulated by the Secretariat.

12. A recent example of this new working practice concerned the Commission's Communication to the Council and the European Parliament on the results of the consultation launched by the Green Paper on Defence Procurement and on the future Commission initiatives (COM (05)626). The Government deposited the document for scrutiny on 18 January 2006, following publication by the Commission on 6 December 2005. However the final text had still not emerged from the Secretariat in early March 2006.

*We underline the great importance of the Government keeping us informed of potential ESDP missions at an early stage, including in those cases in which the Council chooses not to act. Given the speed at which eventual joint actions on ESDP missions are adopted, early warning is crucial for scrutiny. We urge the Government to make these letters as detailed as possible. It is at this stage, when the Council is vet to make a final decision, that we can most usefully make a contribution. (para 73)*

*The Government alert the Committee to potential new initiatives and reviews of existing legislation and policies at as early a stage in the process as possible. Where draft proposals cannot be provided due to the restricted nature of documents, the Government should outline the main proposals along with a statement of the Government's position. (para 80)*

*Where advance notification of proposals or draft instruments cannot be given the Government should provide a full indication of the reasons for this in either its explanatory memorandum on the deposited document or by letter. This should include, where necessary, an explanation of the main points of disagreement on a particular proposal. (para 82)*

13. We acknowledge that there have been instances in the past where the Committee has had less than sufficient time to examine proposals in detail. However the Government has since formed a much closer working relationship with the Committee staff in both Houses, and is now more familiar with the wishes and requirements of the Committee, The recommendations in this report help to make these even clearer. The Government also recognises that it is in its own interest to give detailed notice of new initiatives, so that documents pass scrutiny in good time for Council adoption. We shall endeavour to give advance notice where possible, but at the same time we intend not to trouble the Committee unnecessarily with proposals in their infancy whose principal objectives are still being formed.

*It is necessary for our scrutiny of Commission documents for the Government to give a broad view and explain their position on the overall issue and, where it is a Member State competence, what course it seeks the Council to follow. (para 97)*

14. Recent correspondence with the Committee has outlined the importance of stating the Government's policy on a particular issue, as well as explanation of the issue itself. We acknowledge that this is essential for proper scrutiny.

*In order for the Committee to properly scrutinise the Government's handling of CFSP it is necessary for the Government to start systematically depositing a number of non-legislative Council documents. (para 105)*

*We acknowledge that the Government is already depositing a number of useful non-legislative documents. However, we believe that the Council takes politically significant decisions on non-legislative proposals that are not currently subject to scrutiny by Parliament. We therefore welcome Mr Douglas Alexander's acknowledgement that there is "further scope for a greater degree of transparency" in the Government's handling of the scrutiny of CFSP. (Q 12) (para 106)*

*We conclude that the failure of the MoD to inform the Committee of the Battlegroups initiative was a serious mistake. We urge the Government to provide an assurance that major initiatives such as this will in future be deposited for scrutiny. (para 107)*

15. The Government has worked hard to deposit an increasing number of documents in pursuit of transparency in CFSP decision-making, and we are pleased that the Committee finds useful those non-legislative proposals that are now routinely submitted. This report will help us further to identify additional types of document that would add value to and increase openness in the scrutiny process.

16. The Government very much regrets the fact that information on the Battlegroups initiative was not deposited for scrutiny. This was an oversight which it will endeavour to ensure will not be repeated. It will continue to be the Government's policy that major initiatives such as this are deposited for scrutiny.

*It is the responsibility of each Government department to ascertain what proposals for possible new reviews or other initiatives falling under Pillar II of the Treaties should be deposited. We expect the Government to act in a transparent manner in the exercise of that discretion. (para 110)*

*Items which the Council notes, discusses, underlines, welcomes or stresses (and other similar terms which do not denote agreement to follow a specific course of action) we would not expect the Government to deposit for scrutiny. Items which the Council agrees, endorses, or approves we expect the Government to deposit for scrutiny. (para 114)*

*In addition, we expect the Government to deposit for scrutiny any new initiative which is likely to appear in the next ESDP Presidency Report. (para 115)*

17. The Government welcomes this clarification of which documents the Committee would like to scrutinise. On occasion it has proved difficult to judge the CFSP items that would be of most interest the Committee, away from the official guidelines agreed with Parliament. We shall continue to liaise with the Committee staff on the deposit of all documents, including those that will inevitably fall between the categories described in this report.

*We do not propose any change to the Scrutiny Reserve Resolution. It will continue to be the case that there will be no possibility of an override on a non-legislative document. (para 117)*

*We do, however, recommend that the scrutiny process be the same for non-legislative as for legislative documents. The Government should make every effort to deposit a non-legislative document as much in advance of the Council meeting at which it is to be considered as possible. We also maintain that non-legislative documents should be accompanied by comprehensive explanatory memoranda rather than by covering letter. (para 118)*

18. It is clear from this report that advance deposit of all documents earmarked for the Committee is advantageous and provides for a more thorough process of scrutiny. The Government agrees that it would be sensible for a similar process to apply to non-legislative documents as for their legislative counterparts. and will endeavour to explain fully its position in relation to such proposals.

*We do not believe that it would be practical either for the Sub-Committee or the Government for there to be prior scrutiny of all items for discussion on the Council agenda. It is important nevertheless that we are able to request from the Government, usually by correspondence, further information on items which appear to be of a substantial nature, but relating to which there have been no formal documents submitted for scrutiny, (para 123)*

19. The Government agrees that it would be difficult to submit for scrutiny all items for discussion at Council, but understands the Committee's wish to ask for information on some issues that have not fallen under scrutiny requirements. We stand ready to respond to requests for information on documents that have not been submitted for scrutiny, and hope that the pre-Council information and Written Ministerial Statements provided regularly to Committee staff will help the Committee to identify those issues it would like to pursue.

*We seek an assurance from the Government that the Minister for Europe will continue to provide oral evidence on current developments in European foreign policy twice a year. (para 126)*

20. The Government welcomes the Committee's positive reaction to the evidence sessions given by the Minister for Europe with a view to providing greater transparency to CFSP. We aim to continue this practice twice a year as the Committee suggests.

*The MoD should provide separate ministerial statements on defence matters prior to and following each defence GAERC in May and November. (para 130)*

21. The Government does not agree that the MoD should provide a separate written ministerial statement. Each Council is a single meeting, at which the Government seeks to achieve its aims through all its Ministers representing the UK. For example at the GAERC on 21 November 2005, there were firstly discussions on Bosnia with the Council meeting as Defence Ministers. The conclusions from this were forwarded to Foreign Ministers, who met at the same Council. Following further discussions the Council, with Foreign Ministers present, came to agreement. The Government had a unified approach throughout. It is logical to report this to Parliament in a single written ministerial statement, which sets out the Government's view of the Council proceedings. This approach is consistent with the provision of pre-Council scrutiny material, which the FCO makes available to the Committees at official level after co-ordination with the MoD.

*The MoD should provide a Minister to give oral evidence to the Sub-Committee following each defence GAERC in May and November. (para 132)*

22. The Government welcomes the opportunity for MoD to give oral evidence to Sub-Committee C following each GAERC at which Defence Ministers attend. Where possible it will provide a MoD Minister to appear at these evidence sessions. In the event that a Minister is not available. a MoD official will take on this duty to ensure that the Committee can fully scrutinise these Council meetings.

**Letter from the Chairman to Rt Hon Douglas Alexander MP and Rt John Reid MP, Secretary of State for Defence, Ministry of Defence**

Thank you for your response to our Report which was considered by Sub-Committee C at its meeting on 27 April and by the European Union Committee at its meeting on 2 May.

We would once again wish to reiterate that the improvements made by both the FCO and the MoD over the past two years in assisting in the scrutiny of CFSP and ESDP are most welcome. Although the scrutiny of CFSP remains challenging due to the often urgent nature of the subject, a joint recognition of these difficulties has enabled both yourselves and the Committee to work together in addressing them. It is important that the improvements which have taken place continue.

One of these difficulties is the need to scrutinise urgent items during recesses. We accept that overrides in such cases may be unavoidable, and note that advance warnings of possible overrides during the recent Easter recess were provided. We appreciate these letters but stress that they are no replacement for full explanatory memoranda and texts of documents which should be deposited for scrutiny as soon as possible, even when Parliamentary scrutiny has already been overridden.

We also draw attention to specific comments within the response.

In paragraph 4 of the response you state that you will ensure that the MoD's scrutiny guidelines are developed further, specifically drawing on established guidelines within the FCO and Cabinet Office. Parliament should be informed when these new guidelines have been developed, and what specific improvements have taken place.

In paragraph 12 of the response you cite as an example of the early deposit of documents the Commission's Green Paper on Defence Procurement which was deposited on 18 January 2006. The explanatory memorandum, however, was not signed by the Secretary of State until 28 February and, due to an administrative mix-up, was not received until 9 March. Although the early deposit of documents is of assistance to Committee staff, it is not possible to carry out scrutiny until an explanatory memorandum has been received. This particular instance was not one of any urgency, but we regard the delay in receipt of the explanatory memorandum in this case as unacceptable.

Furthermore, your response in paragraphs 11 and 12 does not answer the question posed in the Report as to why an explanatory memorandum is sometimes not produced until after an official text has been received from the Council Secretariat. A recent example of this was the proposed Common Decision to establish an EU Planning Team in Kosovo (on which an explanatory memorandum was received on 19 April even though the Decision had been agreed by Council on 10 April). The Cabinet Office's monthly check of new Commission documents to which you refer in paragraph 11 should be followed up with early action to produce an explanatory memorandum where action is to be taken on a Commission document within a short time-frame.

You state in paragraph 15 that you hope to further identify additional types of non-legislative document which may be suitable for Parliamentary scrutiny. We shall continue to monitor this assurance and ask that requests for deposit of particular documents which come to our attention be taken seriously.

We note that you do not agree that separate written ministerial statements should be produced from each department following the GAERCs. There is some validity to the argument that you wish to produce a unified response therefore the FCO should take the lead on producing these statements. However, we remain unconvinced that the MoD makes a sufficient contribution to this process and ask for reassurance that the MoD takes the lead in producing those aspects of the statement which relate to defence issues, following appropriate consultation with the FCO.

Finally we once again stress that it would be preferable for a Minister to provide oral evidence following each defence GAERC rather than an official. Despite limitations on ministerial time we believe that this should be possible and are prepared to be flexible in organising such evidence sessions in order to assist in arranging a suitable time.

*3 May 2006*

**Letter from Rt Hon Des Browne MP, Secretary of State, Ministry of Defence and Rt Hon Geoff Hoon MP, Minister for Europe, Foreign and Commonwealth Office to the Chairman**

Thank you for your letter of 3 May to Rt Hon John Reid MP and Rt Hon Douglas Alexander MP, addressing specific parts of the Government's response to the Committee's Review of Scrutiny.

We are pleased that the steps we have taken over the past two years have been helpful in assisting your Committee, and the Commons EU Committee, in the scrutiny of CFSP and ESDP. On our part, we very much value the flexibile and co-operative approach shown by Committees and the Clerks on these important issues.

As you requested, MOD will inform Parliament when it has further developed its scrutiny guidelines. It is envisaged that these guidelines will be in place by the summer and MOD will write to you with a copy of them as soon as they are in place.

The administrative mix up that you referred to, which resulted in the delayed receipt of the Explanatory Memorandum on the Commission's Green paper, was extremely regrettable. Even though, as you note, there was no urgency in receiving this Memorandum, I can assure you that the Government is committed to ensuring that signed Memoranda are deposited in a timely fashion. Procedures have now been put in place to ensure that this situation should not occur again.

You are right to note that the text for a proposed Council Decision to establish an EU Planning Team was deposited on 19 April, after agreement by the Council. As Douglas Alexander explained in his letter of 6 April, the final text of the decision was not available in time for the Committee to scrutinise before the beginning of the Easter recess. Given that the Committee would not re-convene until the week beginning 24 April, the FCO felt that it would be preferable to wait for the definitive text so that it could be deposited with the Explanatory Memorandum. As it happened, the definitive text issued by the Council Secretariat was not available until early May, which prompted the FCO to issue the Explanatory Memorandum with a draft text, and without an official Council document number, on 19 April in time for the Committee's first meeting after the recess. You will be aware that an addendum followed on 3 May once the official text had been received.

This will hopefully explain why Explanatory Memoranda have been submitted previously after "official" texts are received. In fact, the texts upon which decisions are agreed are often not the "official" versions (that is, the definitive and final documents issued by the Council Secretariat) but near-final versions sufficiently agreed for Council action. The Secretariat issues the definitive texts in their final form in slower time, sometimes weeks after their adoption at Council. We understand now that you would prefer to receive Explanatory Memoranda as soon as possible in all circumstances, including during absences of the Committee. We shall endeavour to do this from now on.

On the issue of the post GAERC written ministerial statement, we can assure you that it has been the practice and will continue to be the practice for MOD to have primary responsibility for those elements of the statement which relate to defence issues.

Furthermore, we note the Committee's preference for a Minister, rather than an official, to provide oral evidence following the GAERC and your offer to be flexible in organising suitable times for the evidence sessions is very much appreciated. We undertake to consider Ministerial attendance on a case by case basis, in light of other commitments. However, you may be aware that, due to other Ministerial engagements, senior officials from MOD will give evidence to the Committee on June 15 regarding the outcome of the GAERC on 15 May.

*13 June 2006*

**Letter from Des Browne MP to the Chairman**

You will recall your letter of 3 May to John Reid and Douglas Alexander on the Government response to the Lords Report on Scrutiny of CFSP. In the joint MoD and FCO response, MoD agreed to inform Parliament when it had further developed its scrutiny guidelines.

I am pleased to inform you that these guidelines are now in place. A copy of the MoD ESDP Parliamentary Scrutiny Guidelines for Desk Officers is enclosed. I hope that these guidelines further demonstrate our commitment to improving the transparency of CFSP related business.

*28 September 2006*

**Annex A**

**ESDP Parliamentary Scrutiny Guidelines for MoD Desk Officers**

1. The requirement for Parliament to scrutinise aspects of the European Union's Common Foreign and Security Policy (CFSP) matters, including European Security and Defence Policy (ESDP), has increased recently as this aspect of the EU has developed, MoD involvement in parliamentary scrutiny of CFSP/ESDP has particularly increased following the establishment of the European Defence Agency (EDA). This is reflected in regular Ministerial Correspondence, official level evidence sessions and a number of House of Lords Reports. Therefore it is important that staff within the MoD are clear on their responsibilities in enabling Parliamentary Scrutiny of ESDP.

## Parliamentary Scrutiny

2. Parliamentary Scrutiny is the process by which Parliament is given the opportunity to examine and express views on proposals for European Union legislation and any other documents held to fall within the terms of reference of the Scrutiny Committees of both Houses of Parliament. These include the following documents:

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

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

(iii) Any proposal for a common strategy, a joint action or a common position under Title V (provisions on a common foreign and security policy) of the Treaty on European Union which is prepared for submission to the Council;

(iv) Any proposal for a common position, framework decision, decision or a convention under Title VI (provisions on police and judicial co-operation in criminal matters) of the Treaty on European Union which is prepared for submission to the Council;

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

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

3. The MoD has specifically committed to the Scrutiny Committees that it will put forward for scrutiny the following EDA documents:

(i) The EDA's report to the Council on its activities during the previous and current year, to be submitted in May of each year (Article 4.2a of Council Joint Action 2004/551/CFSP of 12 July 2004, hereafter "the Joint Action").

(ii) The EDA's report to the Council in November each year on the Agency's activities during the current year and information on the draft elements for the Agency's work programme and budgets for the following year (Article 4.2b of the Joint Action).

(iii) The Council guidelines issued annually to the EDA in relation to its work programme for the following year (Article 4.3 of the Joint Action).

(iv) The financial framework issued every three years by the Council to the EDA (Article 4.4 of the Joint Action).

(v) Any renewal or amendment to the Joint Action establishing the EDA (Article 27 states that the Council may review the Joint Action every three years).

4. As part of our commitment to improving transparency, we also write to the Scrutiny Committees before and after EDA Ministerial Steering Boards, outlining the agenda, topics of discussion and outcome of the meetings. DPIO leads on work related to scrutiny of the EDA, consulting as necessary with other areas of the Department.

5. The House of Lords 19th Report of Session 2005–06, entitled "Review of Scrutiny: Common Foreign and Security Policy" has also made suggestions as to the types of non-legislative documents that they wish to be deposited for scrutiny. Box 10 of the Report[16] sets out some examples, and is reproduced at Annex A. However, it should be noted that the FCO would have responsibIlity for enabling scrutiny of the examples given.

## Responsibility for Parliamentary Scrutiny

6. The Cabinet Office is in overall charge of managing scrutiny procedures. It deposits documents with Parliament and instructs other Government Departments to submit Explanatory Memoranda setting out the policy, financial and legal implications of each document.

7. However, there is a special procedure for Common Foreign and Security Policy (CFSP) documents. The FCO has overall responsibility for CFSP and this includes European Security and Defence Policy (ESDP). The FCO has particular responsibility for the civilian aspects of ESDP. Furthermore, the FCO submits Explanatory Memorandums on all ESDP operations, civilian and military. This is because of their overall responsibility for ensuring Parliamentary scrutiny of CFSP decisions and also to include expertise from the

[16] The Report can be found at http://www.publications.parliament.uk/pa/ld200506/ldselect/ldeucom/100/10002.htm

relevant geographical departments in the Explanatory Memorandums to ensure the Committee get a holistic overview of the EU's policy. MOD should be consulted on the production of any Explanatory Memorandum in which it has an interest.

8. The MoD leads on military ESDP areas such as capability development and defence institutional aspects, such as the EDA. We are expected to deposit and draft the accompanying Explanatory Memorandum for documents on these. The MoD may occasionally have responsibility for Commission work on the European Defence and Equipment Market, though in many instances the DTI will take the lead for this.

### Parliamentary Scrutiny Committees

9. Parliament has two specialist European Union Select Committees that consider EU documents: the Select Committee on the European Union in the House of Lords and the European Scrutiny Committee in the House of Commons. Any scrutiny submissions from MOD to the specialist scrutiny committees should also be sent to the House of Commons Defence Committee.

### Scrutiny of Legislative Documents

10. There is a distinction between legislative and non-legislative documents for scrutiny. Legislative documents include proposals for Common Positions, Joint Actions and Common Strategies, and must be submitted for scrutiny. The FCO is responsible for the majority of CFSP legislative documents.

11. The Government is committed to the principle of effective scrutiny of European legislation, and has given Parliament an undertaking that Ministers will not agree to any legislative proposals in the Council of Ministers—except in certain circumstances eg where the national interest would be damaged by delaying agreement—until scrutiny by the Committees has been completed. This commitment is laid out in the Scrutiny Reserve Resolutions of the House of Commons[17] and the House of Lords.[18]

12. Once the Committees have completed consideration of a legislative document they will either decide to clear it from parliamentary scrutiny so that the Government can agree it at Council, or ask further questions on the document.

13. If the Scrutiny Committees have not cleared legislative documents from scrutiny before meetings of the Council, the UK will have to enter a parliamentary scrutiny reserve (via UKRep Brussels) on the document in question while we take parliament's views into consideration. The other course of action is to over-ride the Scrutiny Reserve Resolutions. Ministers are committed to avoiding either of these outcomes wherever possible: a reserve holds up policy-making and an over-ride may lead the Scrutiny Committee to call on a Minister to account in person for the reasoning behind an over-ride, if the Committee believes it to have been unjustified.

### Scrutiny of Non-legislative Documents

14. Non-legislative documents may include those on new initiatives, such as the Battlegroups Initiative, or EDA papers as described at paragraph 3 above. The deposit of non-legislative documents for scrutiny is neither mandated nor precluded. It is for Government departments to ascertain what non-legislative proposals should be submitted to enable the Committees to properly scrutinise CSFP. Non-legislative documents can be agreed in Council prior to completion of scrutiny without this constituting an over-ride. Documents for which the MoD is responsible will predominantly be non-legislative, such as the EDA documents listed above.

15. We should aim to alert the Committees to potential new initiatives and reviews of existing legislation and policies at an early stage in the process. By providing advance notice of important new developments and enabling upstream scrutiny, the Committees can conduct their scrutiny more effectively. This will often require the submission of non-legislative documents for scrutiny.

16. Once the Committees have completed consideration of a non-legislative document they will again either decide to clear it from parliamentary scrutiny or ask further questions on the document. Non-legislative documents may be agreed at Council before being cleared from scrutiny without this constituting an over-ride. There is no requirement to maintain a parliamentary scrutiny reserve on non-legislative documents.

[17] *Standing Orders of the House of Commons-Public Business 2005(2)*, Appendix: Resolutions: Scrutiny European Business

[18] House of Lord *Companion to the Standing Orders and Guide to the Proceedings of the House* (2005) Appendix M: Scrutiny Reserve Resolution Relating To The Work Of The European Union Committee (6 December 1999).

### Actions for Desk Officers

17. First, we must identify issues which might need scrutiny. The desk officer who leads on any given subject also leads on its scrutiny. DPIO will offer advice and assistance when requested, but it does not initiate the scrutiny procedure. The earlier an issue is identified the better. Lead departments should consult with DPIO and UKRep and come to an early agreed view.

18. There is a fine balance between discharging our responsibilities on scrutiny and wasting the Committees' time, Trivial amendments or updates will often not require scrutiny. Some non-legislative documents may be deposited with the committees for information purposes, after Council agreement. These would not carry a scrutiny reserve. An example would be the EDA report to the Council on its activities during the previous and current year, to be submitted in May of each year. If it is still unclear whether an item will need scrutiny, DPIO will discuss the matter with the Cabinet Office, FCO and Committee clerks for further guidance.

19. Once an issue has been identified and it has been decided it should be submitted for scrutiny, the desk officer should then:

— Work out a timetable for action together with DPIO, DPIO-EU3 (9621 82594). DPIO can, if appropriate, alert the Committee Clerks to the proposal and advise on timings of Committee meetings available before the Council. If the proposal is for legislation, it should be considered whether the timescales for scrutiny are realistic, and the Presidency advised accordingly. If it is likely that the Minister will have to decide whether or not to over-ride scrutiny, the view of the relevant Private Office should be sought (see below);

— Draft an Explanatory Memorandum, (EM), explaining the measure under discussion and the Government's likely reaction to it. This should cover the most recent text available (UKRep Brussels or DPIO will be able to offer advice if requested). If no text is yet available, the EM should inform the Committees of the likely nature of the measure. NB—an EM must be submitted within ten days of a document being deposited before Parliament;

— Draft covering letters to the Chairmen of the Scrutiny Committees explaining what the EM is about and how it fits with UK policy. In the event of an over-ride, the letter should explain why (for reasons of policy and/or time pressure) an over-ride was necessary;

— After a final clearance with DPIO, UKREP and other interested parties, EMs and letters should be submitted for Ministerial approval and signature. The Minister should be asked to sign the EM itself (on the final page) as well as the covering letters. Once the EM and letters are signed by the Minister, the Private Office will take ownership. They will arrange for them to be deposited in Parliament, given to the Clerks of the Committees and circulated around Whitehall via the Ministerial Support Team and the Parliamentary Branch. For speed, an electronic copy will also be sent to the Clerks to give them sufficient warning of the issue at hand.

### Drafting an Explanatory Memorandum

20. See the attached example at Annex C. If the text of the measure is not yet in final form, the EM should have the letters OTNYR ("Official Text Not Yet Received") in the top right-hand corner. If there is a final text, the top right hand corner of the EM should contain the number of the relevant Council document. If the text is not a Council document, for example an EDA Report to the Council, there will be no number. These should have "UNNUMBERED" in the top right hand corner of the EM.

### The Requirement for Urgency

21. Ministers have made a commitment not to agree to EU legislative measures in Council until parliamentary scrutiny has been completed successfully or unless there are exceptional reasons for doing so (eg extreme urgency). Failure to complete scrutiny holds up policy. So time is of the essence. But the Scrutiny Committees only meet once a week, the Lords on Thursdays and the Commons on Wednesdays: their deadline for taking papers is noon on the preceding Thursday. So the opportunity to get documents through the process is limited. The Scrutiny Committees must be given as much time as possible to look at measures under discussion, to ensure that they can take a view before a measure is ready to be agreed in Council. Our objective is to give the Committees sufficient time to allow at least two meetings at which to consider a legislative document.

22. For deposited documents, the responsible department is required to submit an accompanying EM within 10 working days of the document being deposited with Parliament.

### Inability to Complete an Explanatory Memorandum for Scrutiny

23. It may be the case that officials are genuinely unable to complete an EM in time for scrutiny, eg if an important measure needs to be rushed through Council, or during Parliamentary Recess. In this sort of exceptional circumstance, when scrutiny can only take place after adoption of the instrument, letters from the Minister to the Chairman of each Committee should be drafted, covering the EM, and explaining why scrutiny could not be completed in the usual way. But this is an exceptional circumstance: the Committees will complain to Ministers if they consider that the parliamentary process is being abused. Before such a decision is taken, the relevant Minister's office must be consulted, submitting if necessary, that the Minister will be content to over-ride and write to the Committees to explain that decision. The Minister will be extremely reluctant to over-ride too frequently.

24. During Parliamentary Recess, the House of Lords may exceptionally scrutinise documents via the written procedure. This involves documents and EMs being circulated to members as usual, with members being asked to provide any comments in writing. Documents should continue to be submitted for scrutiny in the normal way (the Committee Staff will continue to sift through documents) ie as soon as officials are aware of the item and a text is available. But if it is evident that a recess over-ride is unavoidable you should also seek agreement from the relevant Private Office that the Minister is content to over-ride scrutiny. A short Ministerial letter should accompany your Explanatory Memorandum.

25. With the work that will be done to enable upstream scrutiny, together with the low number of legislative documents that MoD is responsible for, over-rides should occur infrequently. However, in certain circumstances, timelines may be outside MoD control.

### Supplementary Explanatory Memorandums

26. If the final document differs significantly from what has been covered in the EM, a Supplementary EM will be required. DPIO can advise.

Supplementary EMs may also be needed when the Committees have additional questions on the original EM. But take time to consider whether the document has changed in substance, or in terms of minor textual amendments or style only. A Supplementary EM may not then be necessary. More often, updates will be provided through Ministerial Correspondence.

### Oral Evidence Sessions

27. Scrutiny Committees may call for Ministers and officials to give evidence on documents submitted for scrutiny or following events like EDA Ministerial Steering Boards. Parliamentary Branch will coordinate MOD witnesses for such sessions, notifying the Committee Clerks. The desk officer with the subject lead is responsible for providing briefing as required by those giving evidence. Following oral evidence sessions, witnesses will normally be invited to check the accuracy of the verbatim transcript: Parliamentary Branch will coordinate the MOD response.

### Further Assistance and Guidance

28. If you require any further assistance, contact the DPIO EU Team (DPIO-EU3 on 9621 82594). But the key thing to remember is that the sooner scrutiny issues the less work there will be for you to do. Therefore, it will pay to be vigilant.

**Annex B**

1. Examples of the Type of Non-legislative Document which we Recommend shouldbe Deposited

— Report on the Implementation of the EU's Common Strategy on the Mediterranean region adopted in June 2000. Approved at 2 November 2004 GAERC with a view to its adoption by the European Council on 4–5 November 2004.

— Report on European Security and Defence (ESDP) and Space. Approved at 22–23 GAERC November 2004.

— Report on integrating the fight against terrorism into EU external relations policy. Endorsed at the 13 December 2004 GAERC.

— Report considering the practical implementation of EU-OSCE cooperation in conflict prevention, crisis management and post-conflict rehabilitation. Approved at the 13 December 2004 GAERC.
— Report on EU activities in the framework of prevention, including implementation of the EU programme for the prevention of violent conflicts. Approved at the 13 June 2005 GAERC, with a view to its adoption by the European Council on 16–17 June 2005.

2. Recommendations, Guidelines, Conceptual Frameworks

— A series of guidelines aimed at improving the EU export control system for goods that may be used either for civilian or military purposes. Endorsed at the 13 December 2004 GAERC.
— Detailed proposals for the implementation of the Presidency's document entitled "European Defence: NATO/EU consultation, planning and operations." Approved at 13 December 2004 GAERC.
— Recommendations on the accelerated decision-making and planning process for EU rapid-response operations. Approved at the 23 May 2005 GAERC.

3. New Initiatives

— New policy of engagement with Libya, five concrete actions. Agreed at the 11 October 2004 GAERC.
— Comprehensive package of EU assistance to Iraq. Agreed at 2 November 2004 GAERC.
— A course of actions in relation to Belarus. Decided at the 22–23 November 2004 Council.
— Action Plan aimed at supporting peace and security in Africa. Approved at the 22–23 November 2004.

**Annex C**

Further Sources of Information

Cabinet Office Parliamentary Scrutiny Guidance:
http://www.cabinetoffice.gsi.gov.uk/euro/

House of Commons Defence Committee:
http://www.parliament.uk/parliamentary_committees/defence_committee.cfm

House of Commons European Scrutiny Committee:
http://www.parliament.uk/parliamentary_committees/european_scrutiny.cfm

House of Lords European Union Scrutiny Committee:
http://www.parliament.uk/parliamentary_committees/lords_eu_select committe.cfm

House of Lords European Union Scrutiny Committee—Sub-Committee C:
http://www.parliament.uk/parliamentary_committees/lords_s_comm_c.cfm

**Annex D**

**Draft Explanatory Memorandum**

DRAFT LETTER TO THE CHAIRMAN OF THE LORDS AND COMMONS EUROPEAN SCRUTINY COMMITTEES

X May 2006

Dear [*Chairman*]

I enclose an Explanatory Memorandum, covering the Head of the European Defence Agency's report to the Council about the Agency's activities during the previous and current years. The report was noted by the General Affairs and External Relations Council on 15 May 2006.

**Annex E**

**Explanatory Memorandum on European Defence Agency Document**

REPORT BY THE HEAD OF THE EUROPEAN DEFENCE AGENCY TO THE COUNCIL

Submitted by the Ministry of Defence

X May 2006

### Subject Matter

The Head of the European Defence Agency's (EDAs) report to the Council describes the activities that the Agency has been engaged during the previous and current year. The report highlights the work being carried out in the four "flagships" (European defence equipment market (EDEM). armoured fighting vehicles (AFVs), command control and communication (C3) and unmanned air vehicles UAVs). It also highlights the Hampton Court related activities on capabilities (strategic lift and air-to-air refuelling) and research and technology (targets on R&T) as well as ongoing work on a long term vision for European Security and Defence Policy capabilities.

### Scrutiny History

On 26 May 2004 the Ministry of Defence submitted an Explanatory Memorandum on the draft joint action to create the Agency. Since May 2005 the Secretary of State for defence has written to the House of Lords European Union Committee and House of Commons European Scrutiny Committee before and after each EDA ministerial Steering Board to inform them of the issues discussed. On 23 May 2005 the Government submitted its response to the House of Lords report on the European Defence Agency and on 26 April 2006 the Government submitted its response to the House of Lords report Current Developments in European Defence Policy.

### Ministerial Responsibility

The Secretary of State for Defence has overall responsibility for policy on defence capability and procurement. The Secretaries of State for Foreign and Commonwealth Affairs, Trade and Industry and the Chancellor of the Exchequer also have an interest.

### Legal and Procedural Issues

There are no legal or procedural issues arising from this report.

### Subsidiarity

Work carried out by the European Defence Agency is in support of Member States' efforts to improve their defence capabilities and is carried out on an intergovernmental basis.

### Policy Implications

There are no new policy implications that arise from this report. The UK will continue to engage positively with EDA to ensure that it is an effective tool in helping to improve military capability in Europe.

*Flagship Programmes*

On the European Defence Equipment Market flagship work is ongoing to implement the Code of Conduct on defence procurement. The UK has confirmed that it will subscribe to the Code, which came into force on 1 July 2006. The UK also continues to work with the Agency on the other flagships (Unmanned Air Vehicle, Command Control and Communications and Armoured Fighting Vehicles) through the Integrated Development Teams, Project Teams and Capability Technology Boards. As specific projects are identified and defined within these groups MoD will decide on a case by case basis whether there is merit in UK participation.

*Strategic Lift and Air-to-Air Refuelling*

The UK is encouraging Member States to use the EDA as a facilitator to help find solutions to the current shortfalls in Air-to-Air (AAR) refuelling and strategic lift within Europe. On AAR the UK is already at an advanced stage with a national solution to this requirement. However, other Member States have formed an ad hoc group, under the umbrella of the Agency, to look at PFI and other approaches to collective procurement of this capability. On Strategic lift the UK is encouraging member states to work together so that nations can acquire capability that would be able to satisfy national requirements as well as their commitments to international institutions such as the EU, NATO and UN. A framework has been proposed, which aims to help nations work across institutions. It also puts forward a series of options which Member States could evaluate to understand which option could best suit their needs.

*Research and Technology*

Work to transfer the Western European Armaments Organisation (WEAO) portfolio is progressing well and an Administrative Arrangement between the Agency and Norway has been concluded. However, I am disappointed that an Administrative Arrangement with Turkey has not yet been concluded. The UK will continue to press for this to happen as soon as possible.

Despite the slow emergence of new Category B ad hoc projects I am confident that more will be forthcoming as the Agency continues to develop and implement the required legal instruments that underpin collaborative working. The UK and France have already put forward such a Category B project on lightweight radar systems. This project is being evaluated by other Member States within the Capability Technology Boards in order to gauge whether or not they too may wish to participate.

Work is still ongoing to develop the vehicle for Joint investment in Defence R&T and separately an R&T programme of work in the area of Force Protection. Final proposals on both of these are expected by the end June. At this point the UK and others can decide whether to participate in this work.

On the issue of defence R&T the UK has long argued that Member States within Europe spend too little on this important area. EDA figures bear this out, showing that on average less than 1.5% of Member States' defence budgets are spent on R&T. To help remedy this situation EDA have been exploring whether targets should be set for increasing the average spend on defence R&T. I have put forward a realistic but challenging target to increase average spending on defence R&T to 1.75% of defence budgets by 2010 and suggested that this target should be disaggregated so that each Member State has a real impetus to boost spending in this area. However, there is as yet no consensus between Member States on this issue. The EDA will continue to develop this work further with Member States before putting forward further proposals.

*Long Term Vision*

Work on the long term vision will be an important step to help agree the likely ESDP capabilities that will be required in the 2020–30 timeframe. This will help to shape future work programmes so that Member States may, where appropriate, begin to work together to achieve shared objectives looking out beyond the 2010 timeframe of the Headline Goal. I therefore look forward to receiving the EDA's initial report to the Steering Board following the integration of the three strands of work on the Long Term Vision.

*Financial Framework*

Member States will in the second half of this year begin to consider in earnest the medium term financial arrangements for the Agency. I believe, as my predecessor has previously commented, that the Agency should predominately be a catalyst for nations co-operating together, addressing shortfalls, on the basis of foresight and rigorous analysis. I do not believe the case has yet been made for very large increases to the EDA's budget over the next three years. However, I will discuss this issue further with other Member States over the coming months with the aim of finding a mutually satisfactory outcome by the time of the November GAERC and Steering Board.

### Regulatory Impact Assessment

None.

### Financial Implications

The three year financial framework and the budget for the Agency are due to be agreed by November 2006 General Affairs and External Relations Council and EDA Steering Board.

### Timetable

The Council noted this report on 15 May. The Head of the Agency will in November submit to the Council a report on the Agency's activities in the current year and will provide information on the draft elements for the Agency's work programme and budgets for next year.

## 20th REPORT: PAEDIATRIC MEDICINES: PROPOSED EU REGULATION

**Letter from Rt Hon Jane Kennedy MP, Minister of State, Department of Health to the Chairman**

I am pleased to attach the Government response letter in respect of the House of Lords European Scrutiny Committee's report on the European Commission's proposals for a regulation on medicines for paediatric use.

*25 March 2006*

**Government Response**

### Introduction

1. The House of Lords European Union Committee (Sub-Committee G) published its report *Paediatric Medicines: Proposed EU Regulation* on 2 February 2006. This response sets out the Government's position on the recommendations contained in that report.

2. The report follows an Inquiry undertaken by the Committee to examine the European Commission's proposals for a Regulation on medicinal products for paediatric use (COM 2004 599 final).[19] The Commission's formal proposals were adopted on 29 September 2004. Negotiations on the proposals began in the Council in October 2004 and the Department of Health (DH)/Medicines and Healthcare products Regulatory Agency (MHRA) are leading in negotiations in Europe for the Government.

### Background

3. Increasing access to paediatric medicines which have been evaluated to the same standards of safety, quality and efficacy as those available to adults has been a concern in the UK for a number of years. In the UK, steps have been taken at a national level within the existing regulatory framework to produce, in the short to medium term, a measurable increase in appropriately labelled and formulated medicines for children, to increase information on paediatric use of medicines for prescribers, carers and patients and to facilitate the conduct of paediatric clinical trials. The Government considers, however, that a pan-European solution is required to address the current unacceptable situation and has been supportive of the Commission's initiative to develop a legislative proposal.

4. The Commission's proposed Regulation on medicines for paediatric use was developed in response to concerns expressed by all Member States, including the UK, which resulted in a Council Resolution of December 2000 which called on the Commission to develop proposals in the form of incentives and regulatory measures to ensure that all medicines are adapted to meet the specific needs of the paediatric population.

5. The proposals recognise the need for a regulatory approach which includes both incentives and requirements to ensure that new medicines for children and medicines already on the market meet the specific needs of the paediatric population while ensuring that children are not subjected to unnecessary clinical trials or delaying the authorisation of medicines for adults. The proposals aim to strike a balance between improving the availability of medicines licensed specifically for paediatric use and providing the stimulus for the pharmaceutical industry to undertake the necessary research. The Government's view is that the proposed

[19] Full title of the proposal is "Proposal for a Regulation of the European Parliament and of the Council on medicinal products for paediatric use and amending Regulation (EEC) No 1768/92, Directive 2001/83/EC and Regulation (EC) No 726/2004.

Regulation will be key to addressing the current unacceptable situation whereby more than 50% of all medicines used to treat children in Europe have not been tested for specific use in children.

6. The proposed Regulation will be adopted though the co-decision procedure. Political agreement was reached on the draft Regulation at the Health Council in December 2005 under the UK Presidency. The next step is for the European Parliament to consider the proposal in its second reading. It is hoped that a common position will be achieved in the first half of 2006 and that the Regulation may be in place by around the end of 2006.

7. For ease of reference, we have numbered the Committee's recommendations to reflect the sequence in which they appeared in the Conclusions and Recommendations section of the Committee's report (pages 41-43). Where different recommendations address overlapping issues we have provided a single overarching response.

## Chapter 3—The Need for the Regulation

1. *We conclude, in principle, from the evidence we have had that there is an overwhelming and urgent need to take effective action at European level to govern clinical trials in children and the authorisation of medicinal products for paediatric use with the minimum of delay.*

This Conclusion is consistent with the Government's view. Before a medicine is authorised for use in adults, the product must have undergone extensive testing including pre-clinical tests and clinical trials to ensure that it is safe, of high quality and effective. In contrast, most medicines used to treat children are not studied and licensed for use in children. This has been of concern to the Government for a number of years and we have encouraged the Commission to bring forward legislative proposals in this area.

## Chapter 4—Ethical Considerations

2. *We conclude that the Clinical Trials Directive is an appropriate basis for this Regulation.*

3. *We recommend that, in drawing up the guidelines underpinning the Clinical Trials Directive, the Government should ensure that particular attention is paid to the rights and capacity of children to give informed consent to trials. The guidelines must cover adequately and clearly the vulnerability of children, the possibility of conflict between the consent of parents and children involved in trials, the definition of informed consent and the distinction between consent and acquiescence in circumstances which are likely to arise during trials involving children, as well as the extent to which any trials concerned might benefit the child in question.*

The Clinical Trials Directive (2001/20/EC)[20] is not the basis for this Regulation. That Directive does, however, provide the legal text which sets out the requirements for conducting clinical trials and in the recitals to the proposed paediatrics Regulation there is a specific cross reference to the Clinical Trials Directive, making it clear that the controls and monitoring of studies in children conducted in the EU must comply with that Directive.

The Government believes that the protection of those participating in clinical trials must be the over-riding priority and believes that the safeguards laid down in the Clinical Trials Directive, including the specific requirements for conducting clinical trials in children as well as the proposed measures contained in the Commission's proposals, provide a secure framework to ensure that the health, welfare and rights of children participating in clinical trials are protected. Obtaining informed consent from a person with parental responsibility or a legal representative is a pre-condition of a child's inclusion in a trial. However, it does not determine inclusion in a trial. That depends on a number of other factors including consideration of any views expressed by the child.

The European Commission, in consultation with Member States, is preparing a guideline on the ethics of conducting clinical trials in children. It has asked the Ad Hoc Group on Clinical Trials, which has prepared guidance on the Clinical Trials Directive, to prepare a draft guideline for public consultation. The Government will make every effort to ensure that the guideline covers:

- rights and capacity of children to give informed consent,
- vulnerability of children;

[20] Directive 2001/20/EC of the European Parliament and of the Council of 4 April 2001 on the approximation of the laws, regulations and administrative provisions of the Member States relating to the implementation of good clinical practice in the conduct of clinical trials on medicinal products for human use.

— possibility of conflict between the consent of parents and children involved in trials;
— the difference between consent and acquiescence; and
— the extent to which the trial might benefit the child concerned.

Officials from the MHRA will represent the Government's policy aims within the Ad Hoc Group. It is intended that the guideline will be in place when the proposed Regulation on medicines for paediatric use comes into force.

4. *We conclude that, in many other respects, the ethical validity and effectiveness of the Regulation will depend as critically on the guidelines to be developed as on the text of the Directive itself. While detailed discussion of such aspects is appropriate for legal, medical and pharmaceutical experts, who must be adequately consulted, we recommend that the underlying issues of public policy should be given wider attention and political oversight. We therefore welcome the Minister's agreement that the relevant officials should give us on-the-record briefing on the progress made in developing those guidelines at an appropriate time after the Directive has been agreed by the Council.*

5. *We recommend that once the guidelines are drawn up the Government should ensure that they are fully understood by the medical and pharmaceutical professions and explained to the general public.*

6. *We further recommend that the Government should ensure that the guidelines are kept fully up to date in line with changes in medical and scientific knowledge and practice.*

The guidelines underpinning the Regulation will be important in setting out how it will work in practice. The Government has given an undertaking to update the committee on developments at the appropriate time. We expect specific guidance to be developed in a number of areas including, for example, the rules of procedure for the proposed paediatric committee and guidance on the required format and content of an application for agreement of a paediatric investigation plan. The Commission will have responsibility under the comitology procedure for developing the guidelines in consultation with Member States. The Government will ensure that the guidelines are available to all stakeholders including healthcare professionals, patient organisations and the pharmaceutical industry. It is established practice for European guidelines resulting from pharmaceutical legislation to be updated regularly in the light of developments in medical and scientific knowledge and practice and the Government will ensure that they are.

## Chapter 5—Information

7. *We recommend that the Clinical Trials Database should contain full details of all paediatric clinical trials, whether terminated prematurely or not. The database should be publicly available as a vital safeguard not only for those who might be involved in clinical trials but also for the medical profession and the paediatric population of Europe as a whole. This principle must be assured in the Regulation itself and in any guidelines developed from it.*

The Government agrees that the database established under the Clinical Trials Directive should contain full details of paediatric clinical trials conducted in the Community. In order to increase the availability of information on the use of medicines in children, and to avoid unnecessary duplication of studies in children, it is proposed that information concerning paediatric clinical trials entered into the database, as well as the details of the results of all paediatric clinical trials submitted to the competent authorities, should be accessible to the public. There may be some information that cannot be made public or cannot be made public immediately because of considerations relating to commercial confidentiality. The Commission will draw up guidance on which data would be entered on the database and which elements can be made accessible to the public.

8. *We recommend that the Government should give further and serious consideration to the proposal that products should be labelled in a way which indicates their suitability for use in children.*

The proposal regarding labelling has changed in the latest text of the Regulation. An abstract symbol, to be agreed by the Commission on a recommendation from the paediatric committee, will appear on the package label of all medicines authorised for paediatric use. Its meaning will be explained in the patient information leaflet. The symbol will not denote a particular age group. The Government will, through membership of the committee, have an input into the selection of a suitable symbol.

9. *It is abundantly clear from our evidence that children are not just young adults: their reaction to drugs varies considerably in relation to age and other factors and the newly-born are particularly vulnerable. We therefore recommend that any labelling scheme that is devised must take full account of this and make plain the risks of using products without consulting the relevant product information, especially for products which are available without prescription. Product information should also be summarised in clear, non-scientific language that leaves no doubt whatsoever about the risks of misuse and the need to follow carefully the dosage information.*

The Government supports the Commission's proposal for identifying products that have been studied in children. It is proposed that a symbol will be placed on the label of all medicines authorised for paediatric use whether they are supplied on prescription or not. The meaning of the symbol will be explained in the package leaflet. The Government does not believe that age specific symbols are required. The symbol will be selected by the paediatric committee within one year of the Regulation coming into force. The Government will, through membership of the committee have an input into the selection of a suitable symbol. The proposal also includes provisions to include more information on paediatric use in the product information, including advice on when and why not to use a product in a paediatric age group.

Medicines labelling and patient information leaflets are already required to be set out in a manner which is accessible to the patient/carer so that the medicine can be used safely and effectively. In July 2005, the MHRA and the then Committee on Safety of Medicines (CSM) jointly published guidance for those involved in writing information for patients/carers on how best to meet their needs (Always Read the Leaflet—Getting the Best Information with Every Medicine). Included within this guidance is a particular section concerned with meeting the needs of specific patient groups including children and young people and how their communication needs can be met. The MHRA has recommended this guidance to the pharmaceutical industry and will monitor and update progress on this initiative, reporting to the Commission on Human Medicines in due course.

## Chapter 6—Mechanism for Implementing the Regulation

10. *We conclude that the European Medicines Agency (EMEA) is the appropriate body to oversee and co-ordinate the tasks envisaged by the proposed Directive. We welcome the Minister's assurances that the EMEA should be sufficiently resourced to carry out this task and that experience suggests it will work smoothly and effectively with the health services and agencies of Member States in doing so. But we recommend that these aspects should be kept under close review by the Government once the Directive enters into force.*

11. *We conclude from the evidence we have been given that the overall composition of the paediatric committee is about right, we fear that any increase in the size of its permanent membership might run the risk of making it unwieldy.*

12. *But, because the effective functioning of the Committee is crucial to the success of the Directive, we recommend that the Government should keep the composition of the Committee under review and ensure that it draws, where necessary, on relevant available ethical and practical expertise from Member States which may not be directly available through the Committee's own membership.*

The EMEA has a proven track record with 10 years experience of overseeing and co-ordinating European pharmaceutical legislation. The agency operates in close co-operation with the regulatory authorities in Member States and their networks of national experts. The members of the proposed paediatric committee may be supported by additional national experts, as necessary. As well as providing members for the proposed paediatric committee, the national regulatory authorities will be involved in, amongst other things, providing regulatory and scientific advice on paediatric drug development, assessing paediatric data, setting up clinical trials networks, and providing information on existing use of medicines in children. The Government agrees that all aspects of the Regulation, including the proposals in respect of the paediatric committee and the EMEA, should be kept under review. It is proposed that the operation of the Regulation will be reviewed within six years of entry into force.

13. *We are unable to judge from the limited evidence and time available to us whether the proposal for funding research into paediatric use of off-patent medicines throughout the Community's research frame work programmes will be adequate. Nor are we able to assess the need for a separate Community-funded research programme on the lines of the Medicines Investigation for the Children of Europe (MICE) proposal. But we recommend that both aspects are adequately addressed, in consultation with interested parties, when the Commission review the working of the Regulation.*

The Government accepts this recommendation and believes that this will need to be considered when the Commission's review of the Regulation takes place. The Government believes there is a need for a study programme for research into paediatric use of off-patent medicines and at this stage takes the view that this can be achieved through the Community's research framework programme.

### Chapter 7—Rewards and Incentives

14. *We recognise that the package of incentives and rewards proposed in the Regulation are a political compromise, based on the acknowledged need to provide incentives and the apparent success of the US model. But we conclude that they are essentially a leap of faith: it is impossible to judge from the information we have been given whether these arrangements are likely to provide the necessary incentives to industry, whether they are likely to be equitable and proportionate, or whether they may give rise to excessive profits, penalise the health service of Member States or create unacceptable disadvantages for the manufacturers of generic products.*

15. *We accept that a political compromise is necessary for the time being to launch the Regulation in the hope that it will bring the desired benefits for the children of Europe at a reasonable cost. But we recommend that the Government should continue to press the Commission to ensure that a full economic review of these proposals is made as soon as possible.*

16. *If the Commission are unable to provide such a review within six years of implementation, as required by Article 49 of the Regulation, we recommend that they should be required to explain to the satisfaction of the Council why it would be premature too do so at that stage and to ensure that it is done as soon as possible after that.*

17. *We also recommend that our successors should subject that review to very rigorous examination when it is submitted for Parliamentary scrutiny.*

18. *In the meantime, we recommend that the Government should make every effort to improve on the adequacy of the estimates of costs and benefits produced in the regulatory impact assessment as soon as it is practicable to do so and to submit the results to Parliamentary scrutiny.*

The Government welcomes the support of the committee on its position for incentivising the pharmaceutical industry to carry out paediatric clinical trials. The Government believes that the incentive should be fair but not excessive, and supports the political position agreed at the Health Council in December for a six-month extension of the supplementary protection certificate.

As demonstrated by the range in the estimated impact of the Regulation in the Rand Europe document and the Government's partial regulatory impact assessment it is not possible to accurately estimate the impact on the NHS at the present time. This information will not be available until medicines start to go through the process set out in the Regulation and come on to the market. This is why the Government argued and secured a review of the economic and health benefits of the Regulation to take place six years after it has come into force. However, if there is not sufficient data available at that time this review will be carried out within ten years of the Regulation coming into force. This position was agreed at the December Health Council, and the Government will continue to support this position.

The Government supports the committee's recommendation to update the partial regulatory impact assessment. Once sufficient information is available to do this, the Government will submit it to the committee for scrutiny.

### Chapter 8—Legal Base

19. *In principle, we continue to believe that the Government should take a robust and consistent line in opposing proposals by the Commission which are, in the Government's view, brought forward for an inappropriate legal base. In this particular instance, in light of the overriding importance of the proposal and the need to make rapid progress in implementing it, we conclude that the Government is justified in agreeing to the present proposal with a Minute Statement recording its objection to the legal base.*

The Government welcomes the committee's endorsement of its position in relation to the legal base for this proposal and is grateful that the committee was able to grant scrutiny clearance before the Health Council on 9 December 2005. The committee will be aware that the Government's view was that Article 95 of the Treaty was not an appropriate legal basis for this Regulation and that Article 308 should have been used instead for the reasons invoked in case C-66/04 *UK v EP and Council* (the smoke flavourings case). Judgement in that case was given on 6 December 2005. The UK's arguments on the correct legal base for establishing a centralised procedure were rejected. Given what the Court said about the breadth of Article 95 and the measure of discretion conferred on the Community legislature as regards its use and the fact the proposed Regulation does not actually set up a new agency, but rather establishes a new committee within an existing agency, similar to the situation in the smoke flavourings case, the Government withdrew its objection to the legal base for the Regulation at the Health Council on 8–9 December 2005 and accordingly did not enter a minute statement. The Government will continue to take a robust line on legal base issues in the future.

**Letter from the Chairman to Rt Hon Jane Kennedy MP**

Thank you for your letter dated 25 March enclosing the Government Response to the Report of the Committee's Inquiry into the above Proposal, which was received shortly before the House rose for the Easter Recess. The Response was considered by Sub-Committee G on 27 April.

As you know, although the Report was only made for information, Baroness Thomas has put down a Question related to the Report which is expected to be debated in due course. We propose to publish the Government's Response in advance of that Debate.

Before doing so, however, we wish to draw your attention to the enclosed submission of additional evidence from the Association of the British Pharmaceutical Industry (ABPI) which was only received on 18 April. A copy has already been sent to the responsible officials at the MHRA.

As you will see, the ABPI are making representations about what they regard as the adverse effect of the two-year notice period required for applications for the six-month extension to the Supplementary Protection Certificate. They are asking for transitional arrangements that would modify the proposed Regulation. This follows informal representations made to the Committee by representatives of two pharmaceutical companies, AstraZeneca and Novartis, after the Report was published. But it was not raised in the evidence given to the Inquiry by the ABPI or any other witnesses.

In the absence of any other evidence we are unable to take a view on what the ABPI have now said. But we believe that their submission is sufficiently important for it to be treated as supplementary evidence which should be made public and that the Government should be invited to submit views on it. We therefore propose to publish the ABPI submission together with the Government Response to the Inquiry before the Debate. It would therefore be most helpful if you could let us have the Government's response to the ABPI submission by Friday 19 May. That would enable us to publish both documents shortly afterwards in the hope that the Debate might be held sometime in June.

I hope this is acceptable to you and look forward to your reply.

*27 April 2006*

## 21st REPORT: INCLUDING THE AVIATION SECTOR IN THE EUROPEAN UNION EMISSIONS TRADING SCHEME

### Government Response

Introduction

The Committee's report has been published at a timely point in the development of EU policy and we welcome the Committee's input into this subject.

Rather than respond in turn to each of the conclusions or recommendations in the House of Lords' report, we have grouped the concerns expressed by theme, and addressed them in this way.

Decision to include Aviation in the EU Emissions Trading Scheme

224. *We do not agree with the Environment Council that global aviation emissions are currently a serious problem but we agree that they will become so. The current level of aviation emissions is small as a proportion of total global, European Union or United Kingdom $CO_2$ emissions. It is most unlikely that aviation could be included within the EU ETS (if that is the desired option) by 2008. Stavros Dimas, the European Commissioner was recently quoted as saying that aviation would be included in the ETS at the earliest opportunity but that this was unlikely to be before 2012. It is important that any legislative proposals are well thought through and sustainable in the longer term, both on environmental and economic grounds. (para 219)*

225. *Two options were considered by the Commission to be the best means to achieve effectively the policy objectives of restraining growth in aviation emissions:*

— *en-route charges or taxes on aircraft emissions and impacts;*

— *emissions trading for aviation.*

We agree that these are the main options. (para 61)

250. *The December 2005 Environment Council Conclusions noted the Ell's position that all policy instruments should be maintained as potential options but said that the inclusion of the aviation sector in the EU ETS seems to be the best way forward and that it has greater potential for application internationally than other policy alternatives. We agree with them but there are substantial problems ahead. (para 218)*

251. *It is important that all government departments are fully involved in developing the United Kingdom analysis of any Commission proposals as the consequences of joining the ETS or of alternative policies involve industry, users of aviation services as well as the environment. The analysis and recognition of those wider consequences appear to us not yet to have been thought through with sufficient rigour. We shall scrutinise the Commission's Impact Assessment and the United Kingdom's Government Regulatory Impact Assessment with considerable care when they are published in the next few months. (para 219)*

The core theme of the Air Transport White Paper is that aviation must be sustainable. This means striking a balance between the economic, environmental and social impacts of aviation. The Government recognises the benefits that air travel has brought to people's lives and to the economy of the country. But we have to balance those benefits against the environmental impacts of air travel, in particular the growing contribution of aircraft emissions to climate change and the significant impact that airports have on those living nearby.

Within such a framework, the Government believes that over time, the aviation should pay the external costs its activities impose on society at large.

We would like to emphasise that there is close co-ordination between relevant Government departments on the matter of including aviation in the EU Emissions Trading Scheme (ETS). The Department for Environment, Food and Rural Affairs and the Department for Transport are working very closely with other Government departments (particularly the Department for Trade and Industry, the Treasury, the Foreign and Commonwealth Office, Cabinet Office and the Devolved Administrations) in considering these issues further.

Our aim is to press for the inclusion of aviation in the EU ETS from 2008, or as soon as possible thereafter. In taking this commitment forward we recognise the importance of a thorough impact assessment involving all Government departments.

### Impacts of inclusion of Aviation in the Scheme

237. *The impact of aviation entering the ETS can be assessed in a number of ways. We consider these in Chapter 5. Witnesses addressed themselves directly to just some of these, while giving little attention to wider impacts upon economies, business or consumers. None addressed the impact upon airfreight. Most attention was paid to the impact upon aviation in general and through that upon the environment. Many witnesses addressed the knock on effect upon other industries that were in the ETS and for some witnesses this was a major issue.*

238. *Many said that there were too many variables in the detailed design of an ETS that included aviation for authoritative figures to be produced. The Minister told us that, "The forecasting of allowance process is complex and highly uncertain". Industry bodies and airlines appeared not to have carried out their own detailed research into the impacts of including aviation in the EU ETS. We would urge them to do so as far as is practical ahead of the publication of the Commission's legislative proposal to bring aviation into the ETS which is expected to be produced in 2006. This would enable them to respond fully when the proposals are published. (para 160)*

239. *The majority of witnesses, including DEFRA, told us that the impact upon passenger air fares and hence upon demand for air travel would be very modest. Clarity is needed about present and future policy on the level of permitted carbon emissions, both in total and for the aviation industry. We have severe doubts about the view that the impact upon emissions allowances prices, airfares and air travel will be modest, except in the short term. (para 168)*

240. *The inclusion of aviation in the EU ETS will affect the EU carbon allowance price, which will have a subsequent cost to existing (non-aviation) EU ETS sectors. The Commission's feasibility study revealed that around 15% of $CO_2$ emissions reductions post-aviation entry to the ETS are expected to come from aviation and around 85% from other industries. While precise estimates have not been forthcoming and many uncertainties exist, it seems clear that other industries and their customers will feel the main impact of including aviation within the ETS. (para 173) The magnitude and nature of this impact will depend on a wide range of design factors. DEFRA commissioned an interim study of these matters. In view of the full-hearted commitment given by the*

*United Kingdom Government to the inclusion of aviation in the ETS from 2008, we find it surprising that a fuller assessment of these matters has not preceded that policy commitment. It is imperative that both the Commission and the United Kingdom Government now conduct a rigorous assessment of all relevant issues before further policy commitments are made. (para 174)*

241. *Some of our witnesses looked to the longer term and told us that, given the United Kingdom's target for a 60% reduction in $CO_2$ by 2050, the consequences of continued aviation growth for other sectors would be severe. Under some assumptions, no growth in carbon emissions by other sectors would be possible after 2017. Growth in aviation emissions would only be possible if emissions by other sectors were reduced over and above any contraction in emissions required to meet EU targets by 2050. One witness suggested that if aviation is included in the ETS and the EU sticks to its emissions targets, a rise in price of emissions allowances would be likely to prevent the currently projected 2017 level of aviation activity and emissions. This presages very substantial increases in air fares and air freight charges within the next 10 years while at the same time prices of energy and other carbon intensive industries will have risen very sharply too, driven in part by the demand for aviation services. This scenario would have major consequences for the aviation industry and its customers and for other industries in the ETS albeit over a rather longer time period for adjustment. This is a very different picture from that provided by the Commission, the Minister and the airline industry. it highlights that there are substantial issues underlying EU policies on emissions targets and the inclusion of aviation within the EU ETS.*

244. *The most dramatic forecast of the Tyndall Centre is that aviation services for the EU might have to stop growing by 2017. Even if that exaggerates the position, when applied to the EU and the global economy it raises important issues of international competitiveness, economic development and of personal lifestyle choices. Within the EU itself, what would be the impact upon EU economic and social integration? Can the EU take decisions that impact more widely on other economies without consequences for its own international competitiveness and potential retaliation? Can the EU determine a policy unilaterally that will raise airfares substantially and limit growth in air travel and airfreight between the EU and for example North America, India, China and the Far East without regard to the competitive position of the EU in relation to those markets? (para 207)*

246. *It is, of course, not the inclusion of aviation within the ETS per se that would raise prices of emissions allowances, of air travel, of all industries in the ETS and curtail growth in all the sectors concerned, but the contracting emissions cap that is necessary for the ETS to achieve its ultimate purpose. The same issues and others too arise with alternative approaches to aviation emissions.*

247. *Witnesses gave evidence on a number of more detailed impacts if aviation enters the EU ETS. Low fares airlines argued that they would be affected disproportionately in various ways. Other EU airlines were concerned about the impact of the ETS on them relative to non-EU airlines that would be less dependent upon the EU market. Most of the views expressed appeared to assume relatively mild impact on airline costs and airfares. As airfares may rise more sharply than airlines acknowledged, their concerns may be increased. We agree that the design of an aviation scheme within the ETS could have differential affects upon different airlines and believe that the Commission's 2006 Impact Assessment should examine these issues. (para 190)*

The Tyndall Centre's forecasts are based on their own projections of demand and emission levels and are greater than those in the Government's Air Transport White Paper (ATWP). This is due to different underlying assumptions, notably on infrastructure constraints, and more conservative assumptions on fuel efficiency trends post 2030. However, we consider that the assumptions in the ATWP remain valid.

The Government has a thorough Regulatory Impact Assessment (RIA) process, which requires an Initial, Partial and Final RIA. An Initial RIA accompanied the Explanatory Memorandum and this will be developed as the work progresses.

Our initial impact assessment analysed the pros and cons of the different options available for dealing with the problem of aviation's greenhouse gas emissions. These options were:

- Do nothing.
- Include aviation in the EU ETS.
- Impose a tax on aviation fuel.
- Introduce emissions charges
- Introduce a ticket or departure tax.
- Encourage voluntary action by the airlines.

We are in agreement that the inclusion of aviation in the EU ETS is the best way forward. We also agree that further analysis of potential impacts and design details is required.

The analysis we are currently undertaking on this subject will feed into the Partial RIA, on which we will have a formal consultation. This will be published following the Commission's legislative proposal. After further analysis, a final RIA, which takes into consideration the results of the consultation, will be presented alongside the legislation when it is presented to Parliament.

We regularly meet with representatives of many different industries in order to understand their concerns regarding the impacts of including aviation in the EU ETS.

### A Cap for Aviation

232. *In an ETS scheme including aviation, the adjusted level of overall allowances and the initial cap for aviation will be a key driver of the price of emissions allowances. This in turn will determine the effect on aviation and other industries in the ETS. The Minister told us "it is the crucial factor". He also told us "We need to give industry a long-term signal so that they can plan and invest". But the Minister told us that, "It is crystal ball stuff really". There is considerable lack of clarity in the detail of thinking in this area both within the Commission and within the United Kingdom government. This cannot be left as a detail to be dealt with after legislation is passed. The Commission's Impact Assessment must be more forthcoming and explicit about likely initial allowances for aviation and the principles governing future levels. (para 170)*

We recognise the importance of the initial cap for aviation from both an environmental and economic perspective. While there is not yet an agreed position across the EU on how a cap for aviation would be decided, there is widespread support for a harmonised approach to setting the cap and how it is distributed to regulated entities. This would provide more consistent treatment across the EU25 and would reflect the largely homogenous and integrated nature of the industry.

The cap itself does not necessarily need to be specified in the legislation. In the current EU ETS, it is the process for deciding the cap not the actual level of the cap that is set out within the legislation. This means that the actual level of the cap can be defined without having to renegotiate the legislation.

Regardless of the process and the relative roles of EU institutions, we believe that agreeing the level of the cap is dependent on having accurate projections of emissions from the aviation industry, and on having a clear understanding of the abatement costs for aviation. We are continuing to draw on existing research on both of these issues, in order to evaluate the need for further work.

These two elements will facilitate the final decision on the level of effort required. We believe that the cap needs to be stringent and scientifically robust but that it cannot create competitive distortions and would like to reassure the Committee that all impacts will be taken into account before the final level of the cap is agreed.

### Interaction with the Kyoto Mechanisms

226. *If aviation enters the ETS, technological improvements in the aviation industry will become even more urgent in order to reduce emissions while maintaining growth in air travel and airfreight. Air traffic management and control improvements can help reduce aviation emissions and measures to maximise these improvements should be pursued vigorously within the EU and internationally. (para 80) A more positive development of the Clean Development Mechanism and Joint Initiative schemes should be encouraged by the EU and by the aviation industry. (para 205)*

243. *Mr Gammeltoft for the Commission told the Committee that in the shorter-term aviation within the ETS will help reduce overall emissions in other sectors by buying allocations and essentially financing efforts to reduce $CO_2$ emissions in sectors where it is cheaper. In the longer term, he told us, the EU ETS would impact on the environmental performance of aircraft. On current evidence we believe that this takes an over-optimistic view of aviation's ability to reduce its own emissions even in the longer term and under-states the potential conflict with other industries. (para 176)*

248. *Faced by increasingly strong environmental constraints, the aviation industry will be able obtain extra emissions allowances through financing Clean Development Mechanism and Joint Implementation projects, which are Kyoto Protocol mechanisms, if this is permitted under Phase 2 of the ETS. We believe that they should be permitted. We note the view of British Airways that the schemes were currently too bureaucratic and changes were required to make them cheaper and easier to implement. We urge the Commission to ensure that these concerns are fully reviewed. (para 204)*

As international aviation is outside of the remit of Kyoto, there will not be Kyoto backed allowances for aviation emissions. This is a technical issue and we are currently looking at a range of options to resolve this.

The Government has already allowed for use of Clean Development Mechanism (CDM) and Joint Implementation (JI) credits in the EU ETS through transposition of the EU's "Linking Directive". Use is allowed under Phase 1 of the ETS and will continue to be allowed under Phase 2. The Government, in line with the requirements of the Directive, is currently considering the limit on use of project credits in drawing up its Phase 2 national allocation plan. As CDM and JI credits can already be used in the EU ETS, the aviation industry could take advantage of those credits when it is included in the scheme.

It is not currently possible to undertake CDM or JI projects directly in the aviation sector. Such adjustment to the CDM and JI regimes would be subject to international agreement on treatment of these emissions more widely.

The CDM in particular has come under a lot of criticism for its bureaucracy and the UK Government has played a pivotal part, leading the EU, in arguing for and securing reform of the mechanism. At the First meeting of the Parties to the Kyoto Protocol (COP/MOP1) in Montreal in December 2005, we negotiated a decision which introduced a number of concrete measures to focus the CDM Executive Board more on its oversight role and provide for strengthened support to the Board from the UN Secretariat. We also negotiated a decision on JI, setting in place necessary measures to facilitate prompt and efficient implementation of the mechanism. This provided for the possibility of drawing on experience under the CDM, where appropriate, to ensure greater efficiency.

As outlined in the *Future of Air Transport* White Paper, we are also pressing for a range of other measures including: adoption by airports, airlines and air traffic controllers of working practices that minimise the impact of their activities on climate change; research and development by aerospace manufacturers of new technologies to reduce the climate change impact of future fleets; and voluntary action by airlines, airports and aerospace companies to control greenhouse gas emissions and develop sustainability strategies.

## Non-$CO_2$ Emissions

223. *All commentators agree that, in the absence of public policy changes, passenger air travel and air freight will continue to increase and with it a significant growth in $CO_2$ emissions. in addition to $CO_2$ emissions, aviation causes other emissions that appear likely to contribute to global warming. We agree that action will be needed to address this environmental issue.*

229. *The European Union Emissions Trading Scheme monitors and aims to reduce $CO_2$ emissions but currently does not monitor or seek to address the other climate change impacts of aviation, which include emission of nitrous oxides and water vapour (which is a greenhouse gas), formation of condensation trails and emissions of sulphate and soot aerosols. The Environment Council says that both the $CO_2$ and non-$CO_2$ impacts of aviation should be included in a future scheme to the extent possible. We urge the United Kingdom Government and the European Commission to fund further research into understanding and addressing the non-$CO_2$ climate change impacts of aviation, and to seek wider international agreement on this issue as the basis for future policy. (para 102)*

We recognise the concerns surrounding the unique climate impacts of aviation, due to the range of emissions released and their effects at altitude. The Environment Council agreed that one of its guiding principles would be that both the $CO_2$ and non-$CO_2$ impacts of aviation should be addressed to the extent possible, recognising that a pragmatic approach should be taken in light of the scientific uncertainties. It has been estimated that climate impacts of aviation are two to four times that of its $CO_2$ emissions alone. While further research is needed, the broad conclusions that emissions are significantly more damaging at altitude is clear.

QUANTIFY (Quantifying the Climate Impact of Global and European Transport Systems) is the main EU research programme dealing with the climate impacts of transport. It is funded until 2010 by the European Commission within the 6th European framework programme. Also, the Commission has entered into contract negotiations for a Specific Supporting Action (SSA) to provide an updated assessment of transport emissions on climate. This consists of four assessment activities: aviation, shipping, road transport and metrics. DfT is providing funding support for the launch conference in June 2006 (as announced in the Budget).

The UK Government has also funded research into the effects of non-$CO_2$ emissions of aviation. An early assessment, *The effects of aviation contrails on global climate*, was funded by the DETR in 2000. Since then, the Department for Transport (DfT) has funded work at Manchester Metropolitan University (MMU) and Reading University to further understand the uncertainties surrounding contrails. It has also funded QinetiQ and MMU to undertake measurements of stable Carbon isotope ratios of aviation particles with the aim of identifying discreet source markers that would help in targeting policy measures. There are also a number of Natural Environment Research Council (NERC)-related programmes, which have been largely completed and address some of the issues related to the effects in the Upper Troposphere/Lower Stratosphere.

We will continue to improve our understanding of the non-$CO_2$ effects of aviation and will continue to consider areas for further research and development, building on industry's commitment in the *Sustainable Aviation* strategy to provide data and expertise to enhance understanding and support improvements in metrics for quantifying and reporting effects.

### Geographic Scope

230. *An ETS scheme with aviation should include all flights departing EU airports. This would cover all the EU's contribution to aviation's $CO_2$ emissions, some 40% of which arise from intra-EU flights and some 60% from departing flights to third countries. We agree that this is a desirable goal but we identified doubt whether the EU can unilaterally impose a scheme upon non-EU airlines. It is important that this legal uncertainty is resolved speedily. Otherwise, the EU may be forced to introduce a scheme based on intra-EU flights only and even then there may be challenge on the inclusion of non-EU airlines. (para 128)*

231. *We do not believe that a wider scheme to include in the ETS all flights arriving as well as departing EU airports is desirable or practical. Such a scheme would go well beyond dealing with the $CO_2$ emissions for which the EU could reasonably take responsibility. (para 129) Any doubts as to the legality of imposing an EU scheme on non-EU countries referred to in paragraph 121 above would apply more strongly in this case.*

The commitment in the Air Transport White Paper was to press for the inclusion of intra-EU air services in the EU ETS. However, we recognise the advantages in environmental terms of a scheme that covers all departing flights. Any scheme will need to comply with the current legal framework for international aviation and be able to stand up to challenge. The feasibility study conducted by CE Delft for the Commission concluded that there were no legal obstacles to covering international aviation in the EU ETS, including the flights of non-EU carriers and flights departing the EU. Nonetheless, we recognise the Committee's concerns about the legal uncertainties and work is ongoing to examine the details of the different options.

#### *Trading Entity*

233. *During the design of any ETS system, it will be necessary to address the issue of which entities would receive emissions allowances and be required to surrender allowances. Our witnesses appeared to assume that the aircraft operators would be the trading entities and we agree with them. (para 136)*

We have considered the different options for trading entities in the scheme. We have concluded that the entity best suited for surrendering allowances for emissions generated is the airline operator.

### Allocation of Allowances

234. *The method of distributing the total level of $CO_2$ allowances for aviation raised disagreement. The British Air Transport Association told us that, ". . . other industries currently in the scheme account for about 50% of total EU carbon emissions and we are just 2% . . ., so we do not see that we should be treated any differently from the other industry sectors" (Q 13). We agree that this is a strong argument against auctioning for initial aviation $CO_2$ emissions allowances, unless basic $CO_2$ allowances for all industries were put up for auction in Phase 2 of the EU ETS. (para 147)*

235. *Some airlines argued against auctioning permits because, "it takes resources away from the airlines which they really need—and we are not a particularly financially successful industry—to make the investment in the technology and in the emissions reduction". Economic analysis suggests, however, that even if initial emissions allowances are distributed free of charge, airlines might still raise airfares in the medium term to cover the opportunity cost of those allowances. In that event, airlines would make windfall profits equal to the value in the market place of their free $CO_2$ allowances. This would strengthen the case for auctioning. Airlines, air fares and air-freight charges should come under close scrutiny for evidence of windfall profit taking in the event that allowances are issued free of charge. (para 148)*

236. *If initial carbon allowances to aviation are allocated free of charge, there are compelling arguments in favour of a benchmarking basis for allocation between airlines. It is more consistent with the "polluter pays" principle and ensures that the significant investments made by airlines in the recent past to cut their emissions are rewarded. We conclude that any permits which are allocated free of charge should be allocated based on a benchmarking system. (para 156)*

We are taking into consideration lessons learnt in Phase I of the EU ETS and are still assessing which methodology is the most appropriate for aviation. We acknowledge the pros and cons of auctioning as highlighted by the Committee and recognise that existing EU ETS sectors favour benchmarking as the most appropriate approach to free allocation, as it delivers the right messages for emissions reductions and recognises early action. Any benchmarking methodology would need to be developed in collaboration with industry and we think this is an area where further dialogue would be helpful.

### Suitability of the ETS Framework for Aviation

227. *There are a number of important detailed design issues for an emissions trading scheme that includes aviation. We consider these in Chapter 4. They are of substantial importance in determining a number of matters. What will be the initial and future impact upon the price of carbon, upon other industries in the ETS and their customers, and upon $CO_2$ emissions? Will the ETS be a robust framework within which to accommodate EU policies on aviation emissions and on air-passenger and air freight growth in the future? Are those policies clear and compatible? (para 95)*

242. *Commenting upon these projections, the Minister said that they give a projection at the upper end of growth in aviation and that it is very difficult to say for sure whether those figures are actually going to materialise". But, he added, "it is likely that there will be an impact upon fares" but it would be premature to say that it would be an enormous impact. Greater clarity from the Government on these matters would be helpful, as would answers to the following questions:*

- *Will inclusion of aviation within the mainstream EU ETS eventually become a major problem for other industries in the ETS? If so, over what timescale?*
- *Should that potential problem be recognised now and if so, what are the implications for the proposal to deal with aviation climate change emissions within the framework of the EU ETS?*
- *Is aviation a special case in the context of emissions-reduction policies in the sense that its ability to reduce the level or even the growth of $CO_2$ emissions is extremely limited in the foreseeable future?*
- *Is an environmental policy driving a proposed way forward that may quite quickly lead to a serious clash with policies on aviation and economic growth? (para 185)*

As the Committee will be aware, an initial report by ICF Consulting[21] has been carried out to evaluate the impact that including aviation in the EU ETS might have on permit prices. This report concluded that over the period 2008–12, there would be no discernable impact on the allowance price, as a result of including aviation in the EU ETS. We have been presenting this report to stakeholders and are discussing with them the extent to which, further analysis will need to be undertaken.

There are other sectors already included within the EU ETS that have high abatement costs and a limited potential to reduce their emissions. The fact that these sectors have been successfully included in the first phase of the EU ETS is confirmation that the rationale behind emissions trading (that environmental costs can be covered through a mixture of emissions reductions and purchase of reductions produced more cheaply by others) functions in practice.

As outlined in *The Future of Air Transport* White Paper,[22] the Government recognises that the benefits that air transport brings to this country need to be balanced against the environmental impacts. The White Paper also promised that, as a matter of principle, action taken to tackle environmental impacts of aviation would take full account of the effects on the competitiveness of UK aviation and the impact on consumers.

### International Dimension

228. *Witnesses and the Commission agreed that emissions from international aviation should ideally be included in a wider international, even global agreement. We encourage the Commission to continue to press for international aviation to be included in any post-2012 climate change regime. (para 97)*

245. *The overall answer provided to the questions above may be either that there will be no problem or that every effort will be made to persuade other countries to join an ETS including aviation. The former is unlikely, the latter may be wishful thinking. We hope that the Commission's 2006 Impact Assessment will address these and many other issues with the same rigour as that applied to the environmental impacts of its proposals. (para 208)*

249. *Two principle ways have been suggested to avoid some of the problems identified earlier. The first is to place aviation in a separate ETS. The second is en route charges or taxes on aircraft emissions and impacts. We consider these in paragraphs 210 and 211. There are advantages and disadvantages of both.*

[21] http://www.defra.gov.uk/environment/climatechange/trading/eu/pdf/including-aviation-icf.pdf
[22] http://www.dft.gov.uk/stellent/groups/dft_aviation/documents/divisionhomepage/029650.hcsp

The International Civil Aviation Organisation (ICAO) has specifically endorsed the concept of an open emissions trading scheme for international aviation, demonstrating international support for emissions trading as the best means of dealing with the environmental impact of global aviation emissions.

The advantage of open emissions trading is that it enables a specific environmental outcome to be achieved at the lowest cost across the economy. In a sector like aviation, where abatement costs are higher, participants pay for reductions in other sectors where it is cheaper to reduce emissions. This ensures that the lowest cost reductions are carried out first.

There is little support for a dedicated ETS for aviation (a closed scheme) as the principal benefits of an ETS would be lost and such a scheme would largely similar in cost and impact to a charge or a tax.

### Concluding Remarks

We would like to thank the committee for their useful contribution, which has highlighted some very important and relevant issues.

We fully intend to continue our close working relationship with other Government departments on this subject. We will also continue to update the House of Lords as we progress with our work in this area.

## 23rd REPORT: EUROPEAN SMALL CLAIMS PROCEDURE

### Letter from Rt Hon Baroness Ashton of Upholland, Parliamentary Under Secretary of State, Department for Constitutional Affairs to the Chairman

I am grateful to the Committee for its report on the European Small Claims Procedure and in particular for its support for a proposal that was an UK initiative aimed at improving access to justice for businesses and consumers alike. The Government believes that this is of growing importance with the ever increasing cross border trade, holidays and internet shopping etc.

During negotiations I had already secured agreement that this should be principally a written procedure, with time limits for each stage of the claim and using modern communications technology where possible. Legal representation should not be mandatory and costs are to be proportionate to the value of the claim.

I am sorry not to have been able to have replied before but the delay enables me to let you know the outcome of the latest negotiations that have resulted in further improvements to the text and to an agreement at the Justice and Home Affairs Council on 1 June 2006.

This is a groundbreaking procedure which is why the Government is pleased that a review is to take place five years after implementation. This will enable the lessons learnt through experience to be fed into the Regulation to ensure that it is even more attractive and effective.

In view of the number of recommendations made by the Committee I am attaching a full response, but I also wanted to comment separately about some of the main recommendations and some of the successes we have already achieved.

### Cross Border

*The Commission's construction of Article 65 TEC would have unacceptably wide implications for national laws and procedures. The ESCP should be limited to cross-border cases (para 61).*

I am delighted to say that we have obtained agreement that the procedure should be limited to cross border cases.

*The closest attention needs to be given to any definition of cross-border case. It may not be appropriate to have the same definition in every Community instrument. Any definition of "cross-border" must be suited to the aim and requirements of the particular proposal (para 70).*

Agreement has been reached that the definition used for the European Order for Payment should apply equally to the European Small Claims Procedure. The use of the same definition of "cross border" would not be appropriate for all Regulations, but in this instance there is no apparent reason why the same definition should not be adopted and consistency, where possible and appropriate, is highly desirable.

*Rather than a test based on the domicile/habitual residence of the parties, a "cross-border" case might be defined as one where the claim in question has arisen directly from the supply of goods or services out of one Member State into another, or supply within one Member State to a person resident in another Member State. This* *approach would link the ESCP far more closely with the requirement in Article 65 TEC that the measure be "necessary for the proper functioning of the internal market" (paras 71 & 72).*

I am sorry that I could not agree with this recommendation for two reasons, first because such a definition would exclude a significant number of small claims for example, personal injury. Secondly because to have different criteria for defining cross border cases to that for jurisdiction and enforcement would unduly complicate the procedure.

### The €2,000 Limit

*The €2,000 limit is acceptable provided that the ESCP is not mandatory and that claimants will have the alternative of bringing claims, including cross-border ones, under domestic procedures (para 102).*

You will not be surprised to learn that discussions over the limit have been central to reaching an agreement. A limit of €2,000 has been agreed. I would have preferred either a range which would better suit the situation in England and Wales, but it became clear that a clear majority of Member States were unhappy with such a proposal because of the novelty of the procedure and their substantially lower costs of living compared with those in the UK and Ireland. The review of the procedure, due to take place five years after implementation of the procedure will enable us to revisit the limit.

*We share the concern expressed by the House of Commons Constitutional Affairs Committee that the claiming of disproportionate costs, which would seem possible under the regime proposed by the Commission, could undermine the value of the ESCP (para 152).*

*If a party in a small claims procedure is to be exposed to costs it is important that he should know in advance the likely extent of his costs liability. There would be great advantage in having a rule which is clear from the outset and not dependent on elastic words such as "proportionate" or "unreasonable" or "inequitable". A party in the ESCP should not be exposed to costs over which he has no control or the limit of which he cannot calculate before deciding whether to bring or defend a claim. A party's liability to costs in the ESCP should therefore be capped (para 154).*

*A successful party should be able to recover any court fees he has paid. In addition, he should also be able to recover his other costs and expenses, including legal fees, up to a financial limit of 20% of the value of the claim. In determining what costs to award the judge should have regard to, among other things, whether a party has had legal representation, the status of the party (whether or not he is a consumer), and the behaviour of the parties in the bringing or conduct of the procedure. Where a party has acted wholly unreasonably, the judge should be able to disregard the 20% limit (para 154).*

We have pursued the issue of costs vigorously, but there has been little support for costs to be fixed by reference to a scale or a percentage. However, a new recital is intended to ensure that legal fees are not disproportionate, and we think that this is a reasonable result.

*12 June 2006*

## Government Response

### Introduction

The Government appreciates the detailed consideration, time and effort given by the Lords' European Union Select Committee (EUSC) and those who gave evidence on the proposed European Small Claims Procedure (ESCP) Regulation.

1. The Government welcomes the Committee's recognition of the benefits of this initiative in terms of improved access to justice and practical benefits for consumers and businesses alike when dealing with low value, cross border cases. At the same time we acknowledge the validity of many of the concerns expressed by the Committee and we address these below.

2. The Government recognises that the ESCP is an innovative proposal. Unlike other recent initiatives, such as the European Enforcement Order (EEO) and the European Order for Payment (EOP), it encompasses defended as well as undefended claims. Some issues remain to be resolved, eg scope and translation, but we are looking at ways in which we, together with other Member States may be able to tackle these.

### Summary

3. The Government welcomes the Committee's recognition that cross border travel, holidays, buying and selling particularly over the Internet are on the increase. Disputes about such transactions can and do arise and because the volume of transactions are increasing the number of disputes is also likely to rise.

4. Many of these are resolved through a variety of means eg trade organisations. As the Committee's Report helpfully points out, Citizen's Advice plays a particularly useful and helpful role and through the European Consumer Centres Network provides information and advice to consumers as well as assistance to consumers who face cross border disputes.

5. In some cases, however, alternative dispute resolution does not work and there is a stark choice to be made, to litigate or to accept that there will be no redress. Litigation should always be the last resort, but access to justice should not be so difficult as to deter someone seeking redress. It can be intimidating to litigate in one's own country, but having to do so in another, is inevitably more so.

6. Providing a single, common procedure is an important initiative, improving access to justice for consumers and others. It is, however, just one of the first steps along the road to improving cross border civil litigation. For example, at present the software to provide translations is generally not of a sufficiently high standard to be likely to be acceptable to the courts and at present there is no EU agreement to use such software. Looking to the future this may be one of the most significant improvements that can be achieved for dealing with the bulk of cross border litigation. Our ambitions in this area are great, but realistically will take time to achieve. With the ESCP we are nevertheless taking an important step.

### Response to Recommendations

*Legal base-cross-border cases*

*The Commission's construction of Article 65 TEC would have unacceptably wide implications for national laws and procedures. The ESCP should be limited to cross-border cases (para 61).*

*Limiting the scope of the ESCP to cross-border cases would not bring the advantage of providing a domestic small claims procedure in Member States where no small claims procedures presently exist. But it is not the role of the Community to reform Member States' civil judicial procedures where no Community dimension exists. Even if there were no issue of vires, subsidiarity must be respected (para 62).*

7. The Government welcomes the Committee's support for the Government's view that the ESCP should not apply to purely domestic cases. Such an approach would be unacceptable for a number of reasons identified by those giving evidence to the Committee and the Committee's own findings. In particular:-

— Article 61(c) together with Article 65 do not provide an adequate base for a domestic application of the procedure;

— The original proposal would run counter to the principle of subsidiarity; and

— It would not replace the national procedures, which would mean that the ESCP would exist in parallel with the national procedure. This would be complicated and expensive to administer and would be confusing for both litigants and the courts' staff.

*The closest attention needs to be given to any definition of cross-border case. It may not be appropriate to have the same definition in every Community instrument. Any definition of "cross-border" must be suited to the aim and requirements of the particular proposal (para 70).*

8. The Government believes that common definitions are desirable in principle, unless there's a compelling reason for difference. In this instance we see no reason why the definition for the European Order for Payment should not also be used for the European Small Claims Procedure.

*Rather than a test based on the domicile/habitual residence of the parties, a "cross-border" case might be defined as one where the claim in question has arisen directly from the supply of goods or services out of one Member State into another, or supply within one Member State to a person resident in another Member State. This approach would link the ESCP far more closely with the requirement in Article 65 TEC that the measure be "necessary for the proper functioning of the internal market" (paras 71 & 72).*

9. The Government considers that the proposed test would not cover all claims that would be suitable for the ESCP eg minor torts. To introduce a different test would add complexity to what is intended to be a simplified procedure. In addition the domicile/habitual residence test is an important one because of the application to

the ESCP of Regulation (EC) No 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters. The concept has been in use in the field of civil judicial co-operation for some time and rarely gives rise to difficulties in practice.

*ESCP-an alternative procedure*

*The ESCP should not be mandatory for the moment. Domestic procedures should remain available for cross-border cases. Member States should ensure that guidance is available to consumers faced with a choice of procedures (para 78).*

10. The Government agrees with the Committee. We consider it essential to retain domestic procedures for low value cross-border cases, because not all such cases will fall within the scope of the ESCP. The Government appreciates the Committee's recognition of our commitment to making the procedure a simple one which people will find easy to use. Nevertheless we recognise that some litigants may prefer existing procedures, at least initially, for a number of reasons, including the different regime as to costs.

11. Her Majesty's Courts Service and Scottish Court Service will provide litigants with suitable information about their choice both via leaflets, the website and through court staff in county courts in England and Wales and in sheriff courts in Scotland. We would welcome any decision by Citizens Advice and other voluntary agencies to provide similar information as we consider it important that the information is as widely available as possible.

*Jurisdiction*

*A consumer should be able to sue (except another consumer) in his own Member State and should only be liable to be sued in that Member State, whatever the cause of action (para 87).*

12. The Government recognises the Committee's concern about the position of consumers in cross border disputes. However, the Commission decided to apply Regulation (EC) No 44/2001 (Brussels I) on jurisdiction and the recognition and enforcement of judgments to the ESCP. This ensures that in many cases a consumer can sue or be sued in his own Member State. It was neither possible, nor appropriate to renegotiate Regulation (EC) No 44/2001 as part of discussions on the ESCP. The Government proposed an alternative text in the Draft Regulation, during its Presidency, to make a provision specific to consumers. However, a significant majority of Member States preferred the direct application of the Brussels I Regulation to avoid complexity and to maintain a consistent approach to jurisdiction and enforcement wherever possible.

*Applicable law*

*Article 9(2), apparently removing any obligation on the parties to provide a "legal assessment" of the claim, would potentially have a substantial impact on the position in English and Scots law that conflict of laws rules are only applied if at least one of the parties has argued that they be applied and that the content of foreign law is a question of fact, normally proven by expert evidence with the burden of proof resting on the party relying on the foreign law. It is not clear to what extent Article 9(2) would displace our domestic rules in this respect (paras 94 and 95).*

13. The Government understands that Article 9(2) was intended to avoid litigants in person being required to address the court on the law relating to the case. It is a realistic and practical approach for low value cases often brought by litigants in person. A litigant will be expected to prove his case, but not necessarily to cite law, indeed as the witnesses made clear many litigants in person would be unable to do so. The Court will make any legal assessment necessary.

14. The provision is silent on the question of applicable law. It follows that, except where a contract specifies the applicable law, national rules for determining applicable law would apply. In the vast majority of cases this will be the law applicable in the court in which the case is tried and so the issue is likely to arise in only a relatively small number of cases.

15. The Government does not see the current position in English and Scots law regarding the conflict of law rules as being disturbed.

*The €2,000 limit*

*The €2,000 limit is acceptable provided that the ESCP is not mandatory and that claimants will have the alternative of bringing claims, including cross-border ones, under domestic procedures (para 102).*

16. The Committee is aware of the very different views among Member States on this issue and that other options to a fixed limit were discussed; these included a range within which each Member State would have been able to set its own limit. At the June Justice and Home Affairs Committee Ministers agreed to a limit of €2,000 this reflects the lower costs of living in a majority of other Member States. As we have already indicated we consider that the domestic procedures should continue to provide an alternative to the ESCP.

*The Regulation should enable the ESCP to be used fora claim exceeding €2,000 where the court and all the parties agree, and the judgment to be enforceable in the same way and with the same effects as a judgment for a sum within the €2,000 limit (para 106).*

17. Whilst we understand the Committee's reasons for raising this point we do not consider it would be able to achieve this in negotiations.

*If the upper limit of claims in the ESCP is fixed at €2,000 there is no need for personal injuries claims to be separately considered. Were the limit to be higher the question of the inclusion of such claims in the ESCP would need to be reconsidered (para 111).*

18. The Government accepts the Committee's concern about the particular nature of personal injury claims. As the limit was fixed at €2,000 during the recent Council of Ministers we concur that there is no need for this type of claim to be considered separately.

*The issue of counterclaims is something to which further thought should be given. The final text will need to strike a balance between ensuring that the ESCP is used only for straightforward, low-value claims as intended and preventing abuse of the system through the lodging of counterclaims (para 115).*

19. The Government fully accepts the Committee's concern about counterclaims and believes that the current text achieves a suitable safeguard against abuse. if a defendant makes a counterclaim which is outside the scope of the procedure then the court will inform him that the case will proceed under national law, with the attendant cost consequences, unless the defendant withdraws the claim.

*Practical aspects of the procedure*

*Given the very different levels of IT skills of consumers and the fact that there will be some for whom IT would present a barrier rather than a gateway to justice, an on-line service, or even simply commencement of proceedings by e-mail, should not be mandatory. As an alternative procedure it is, however, something which should be given serious consideration especially having regard to the international nature of the proceedings under the ESCP (para 122).*

20. The Government accepts the Committee's concerns and recommendation regarding the use of IT for the ESCP. The use of IT in civil litigation has been promoted by this Government eg in relation to hearings and the taking of evidence. We have raised the issue of an on-line ESCP system with the Commission as an appropriate way of dealing with a low value, simplified procedure.

*A written procedure should be the norm in the ESCP. Resort to an oral hearing, particularly a direct oral hearing, while always a matter for the discretion of the judge, should be rare (para 124).*

21. The Committee's comments regarding an oral hearing fully reflects the Government's position.

*The use of an audio, video or e-mail conference in the conduct of the hearing should not be conditional on the agreement of the parties. The conduct of the hearing should be a matter for the court and the judge should be able to determine the particular form it should take if one of the parties is not co-operative (para 128).*

22. The Government recognises the force of the Committee's arguments in relation to the use of technology for hearings. This should be the norm and not subject to the wishes of one party as this could be open to abuse deterring a party from pursuing a claim because of the costs associated with a hearing at a court in another Member State. This is the effect of the latest text. The court can refuse to hold an oral hearing if it considers that in the circumstances of the case, it is unnecessary for the fair administration of the case. The method of hearing is subject to the national law of the Member State where the court is sitting and if the technical means are available. The parties have no power to veto a hearing involving modern communications technology.

*Courts must be prepared to act firmly in refusing oral hearings or any other proceedings that require the presence of the claimant or defendant where that would put either party at a personal or financial disadvantage. Only in the most exceptional circumstances should an out-of-country party be required to attend (para 130).*

23. The Government concurs with the Committee that an oral hearing in another Member State should be entirely exceptional. As indicated above the court can refuse an oral hearing, unless it would be necessary for the fair administration of the case and we would expect the judges in the UK and other Member States to act accordingly. It would be bizarre for a case worth eg, €450 to require an oral hearing, especially where an out-of-country party would be required to attend. It will be for the parties to make clear to the court the financial or personal effect of attending an oral hearing in another Member State. The costs provisions, in the latest text, require a judge to refuse to award costs, which are unnecessarily incurred.

*The ESCP should include a provision that the court should have the power to transfer cases to national procedures. Such a power should only be exercisable very exceptionally (para 138). The power should be exercisable by the court of its own motion or on the application of one of the parties. If exercised, the Court should be able to impose a condition that the party seeking transfer should indemnify the other party as to costs (paras 138 & 139).*

24. The Committee supported for the Government's proposal for the court to have a power to transfer cases to national procedure in exceptional circumstances. Unfortunately the proposed generic provision allowing courts to transfer cases to the national procedure on grounds of complexity attracted no support from other Member States.

*Costs*

*We share the concern expressed by the House of Commons Constitutional Affairs Committee that the claiming of disproportionate costs, which would seem possible under the regime proposed by the Commission, could undermine the value of the ESCP (para 152).*

*If a party in a small claims procedure is to be exposed to costs it is important that he should know in advance the likely extent of his costs liability. There would be great advantage in having a rule which is clear from the outset and not dependent on elastic words such as "proportionate" or "unreasonable" or "inequitable". A party in the ESCP should not be exposed to costs over which he has no control or the limit of which he cannot calculate before deciding whether to bring or defend a claim. A party's liability to costs in the ESCP should therefore be capped (para 154).*

*A successful party should be able to recover any court fees he has paid. In addition, he should also be able to recover his other costs and expenses, including legal fees, up to a financial limit of 20% of the value of the claim. In determining what costs to award the judge should have regard to, among other things, whether a party has had legal representation, the status of the party (whether or not he is a consumer), and the behaviour of the parties in the bringing or conduct of the procedure. Where a party has acted wholly unreasonably, the judge should be able to disregard the 20% limit (para 154).*

25. The Government agrees with the Committee that costs are a crucial issue and that the successful party should be able to recover his costs and expenses, including court and legal fees. We have already secured agreement in principle that costs for the ESCP should be proportionate and the current text goes further by specifying that a court cannot award costs which are unnecessarily incurred.

26. However, the Government recognises the concerns expressed by the Committee that proportionality does not provide litigants with a clear understanding of their exposure to costs. A new recital will make clear that an unsuccessful party should only be obliged to reimburse the fees of a lawyer of the successful party, to the extent to which those fees are proportionate to the value of the claim and are reasonably and necessarily incurred. We believe that this goes some way to addressing the Committee's concerns.

*Detailed points on costs*

*While we are sympathetic to the view that the involvement of lawyers in the ESCP is to be discouraged, the approach taken by the Commission in Article 14(2) is far too simplistic and could work injustice to those who are particularly vulnerable. If Article 14(2) remains it will need some refining (para 161).*

*The benefit of the provision in Article 14(2) should not be limited to natural persons (para 162).*

*Article 14(2) needs to make clear that "a lawyer or another legal professional" refers only to those who are entitled to appear before the relevant court of the Member State concerned (pare 166).*

27. The Committee's view about discouraging the involvement of lawyers in the ESCP was shared by many Member States including the UK Government. With regard to the special treatment as to costs for natural persons this caused Member States concern for similar reasons to those raised by the Committee. As a result Article 14(2) has been deleted in the latest text. Turning to the issue of who should be entitled to appear before the court this is left to national law.

*If the costs rules in Article 14 stand (a question which we consider in paras 140–155) then the difference between "costs" and "expenses" should be clearly explained (para 68).*

28. The Government agrees with the Committee and the current version of the text does not make this distinction.

*There is a case for expanding the remit of the European Consumer Centres so that they would not only be able to advise preparatory to any claim but also to assist in the bringing of any claim under the ESCP (para 172).*

29. The Government accepts the point made by the Committee and will be encouraging the Commission to take this matter further.

*Appeals*

*The absence of a common rule on appeals is disappointing. Article 15 will only add to the distortion which the Commission is keen to remove. It is for consideration whether the Regulation should make clear that appeals should only be allowed on grounds of error of law or serious procedural irregularity and should not permit a rehearing on the merits (para 181).*

30. The Government understands the Committee's disappointment that there is no common rule on appeals, but also recognised that it would not be possible to reach agreement on a common rule. In addition, because appeals are a fundamental part of Member States' domestic legal system any attempt to impose via the proposed regulation provisions on such domestic systems would, for some countries raise constitutional issues and would run counter to the principle of subsidiarity.

*On appeal in the ESCP a similar costs regime should apply as at first instance. As advocated above, a party's liability to costs should be subject normally to a financial ceiling fixed by reference to the value of the claim. In the event of an appeal that rule should be applied afresh (para 84).*

31. The Government shares the Committee's concern about costs on appeal and pressed for the rules that apply at first instance to apply at the appeal stage. This forms part of the latest version of the text, where the cost provisions in Article 14 now also applies to appeals.

*Enforcement*

*Extending the recognition procedure provided by the Regulation to apply to judgments in all cases, contested or uncontested, in the ESCP would be a helpful simplification (para 187).*

*We support the Commission's objective of simplifying cross-border enforcement by removing intermediate measures. We agree that there should be a robust procedure for enforcement based on certification in the Member State where the judgment is issued. That there should be limited power to challenge enforcement is also part of the simplicity and certainty which the ESCP is intended to have (paras 189 and 190).*

32. The Government welcomes the Committee's support for removing intermediate measures for enforcement, as contained in the latest draft of the text. The extension of the abolition of *exequatur* to undefended cases required certain new safeguards to ensure that the defendant has some means of redress if he was unaware of the claim. A suitable safeguard has now been built in to the text.

*However, we are concerned that enforcement may not be resisted on public policy grounds (such as fraud or corruption) in the courts where enforcement is sought and that therefore the scheme for recognition may not provide sufficient safeguards against abuse of the procedure. This is a matter which merits further examination and consideration (para 191).*

33. The Government recognises the Committee's concern and can confirm that this issue has been discussed in the Council Working Group. Where a claim is made or defended fraudulently or corruptly the national law will apply. So if a determination is made based on allegedly fraudulent evidence the party alleging fraud should raise it with the court that made that determination.

*Language*

*The potential difficulty where there is an absence of a language common to the court and all the parties should not be underestimated. It is a matter of concern that, except for provisions in Article 4(7), the issue of language difficulties is largely ignored in the proposal. Article 4(7) itself is inherently unsatisfactory in part. Any rule on translations should be both workable and comply with basic fairness (para 98).*

34. The Government concurs with the Committee that language is a significant issue for the Procedure. We continue to explore possible solutions with our European partners.

*Practical ways must be found to minimise the problem of language. For example, there may be scope for further defining the nature of the claim by the inclusion of more questions in the claim form. As in the case of the European Consumer Complaint Form the claim form in the ESCP could be accompanied by detailed notes to guide the user through the form and assist in its completion. Consideration should also be given to the suggestion of Which? to create a legal lexicon (para 199).*

35. The Government accepts the Committee's comments about the need for practical ways of minimising language difficulties. We will work with our partners to ensure there are well-designed forms and leaflets that help the parties by providing information about making a claim and suitable sources for further help. The forms, which are part of the Regulation, will be available in all official languages and will be designed to reduce the need for them to be translated eg by the use of tick boxes.

*As already mentioned, oral hearings, even by telephone or video conference, should be very much the exception. The practical difficulty and cost of an indirect hearing with simultaneous translation will, we hope, serve to stiffen the resolve of the judges to deal with the case on a paper only basis (para 200).*

36. The Government trusts that judges will take into account not only that the ESCP should be principally a written procedure, but also the ramifications of an oral hearing for litigants, witnesses etc both in terms of costs and time.

### *ADR*

*ADR is to be encouraged in relation to small claims as elsewhere but the ESCP should not be made more prescriptive in this regard. However, an additional box might be inserted in the model claim form annexed to the Regulation, as follows:*

> *"Parties are encouraged to settle disputes arising between them without going to Court wherever possible. What steps have you taken to resolve your dispute before beginning this procedure?"*
>
> (paras 206 and 207)

37. The Committee's views on ADR and in particular that prescription should be avoided in this area are accepted. The contents of the forms remain to be negotiated but we will consider whether such a question as suggested by the Committee should be included.

### *Motor accident claims*

*We direct the Government's attention to the issues raised by the ABI concerning the relationship of the ESCP with the Council of Bureaux mechanism for handling claims arising from motor vehicle accidents and the relationship between the ESCP and the fourth EC Motor Insurance Directive (para 208)*

38. The Government takes due notice of the point made by Committee and the Association of British insurers about motor accidents and the fourth EC Motor Insurance Directive. We have raised this as an issue as part of negotiations on the ESCP.

## Letter from the Chairman to Rt Hon Baroness Ashton of Upholland

Thank you for your letter of 12 June setting out the Government's Response, which has been considered by Sub-Committee E (Law and Institutions).

We are pleased to note that there are a number of points of agreement between the Government and the Committee and that in a number of areas the proposed Regulation appears to be moving in the right direction. You mention, for example, that the procedure will be an essentially written one, using modern communications technology where possible and that legal representation will not be mandatory. There are also areas where we are in agreement but other Member States have not been persuaded of the virtue and utility of our recommendations, for example for a common rule on appeals.

On the other hand, there are points where the Government do not agree with the Committee, for example on the best way of defining "cross-border", but we take the view that we must move forward and we note that a general agreement on the Regulation was reached at the Justice and Home Affairs Council on 1 June.

We are grateful for your apology for the lateness in delivering the Government's Response to our Report. But what concerns us more is the failure to keep us informed of negotiations, including furnishing new texts of the Regulation. It appears that there have been substantial changes made to the text and Parliament has not had an opportunity to examine these prior to an agreement in the Council. Even if the situation in the negotiations was fluid this could have been explained in a letter to the Committee. (Indeed we have only just learnt that you wrote to our sister Committee in the Commons on 18 May.) Your Department's approach in this matter has been somewhat surprising given the importance of the proposal to the citizen and consumer and also having regard to the excellent service you have provided in other civil law matters, such as the Rome II Regulation.

It is clear that whilst a "general agreement" was reached at the recent Justice and Home Affairs Council there are a number of matters which remain under negotiation including the important ones of language and of the forms which will be annexed to the Regulation. We would expect them to be deposited for scrutiny so that we have an opportunity to examine them in good time before any further agreement is reached in the Council.

*29 June 2006*

**Letter from Rt Hon Baroness Ashton of Upholland to the Chairman**

Thank you for your letter of the 29 June 2006 about the Government's reply to the Report by Sub-Committee E (Law and Institutions).

I am extremely sorry that you feel that you have not been adequately kept informed of negotiations. As you know I appeared before the Committee at the end of November with two of my officials involved in the negotiations and updated the Committee in some detail on the state of the negotiations. On 13 December officials provided the Clerk to the Committee with information about the outcome of the December Justice and Home Affairs Committee.

Discussions continued in the Council Working Group and it became clear that some of the issues subject of the ongoing negotiations, eg the limit, could only be resolved by Ministers, during the Justice and Home Affairs Council in June. For other issues the way negotiations were moving only became clear at the May Council Working Group meeting and it may have been appropriate to have provided the Committee with an update at that time. The discussions culminated in a general agreement to a text at the Justice and Home Affairs Council at the beginning of June 2006 and I wrote to you on the 8 June not only to give you the Government's response to the Committee's Report, but also to update you of developments. I appreciate that this was only after Ministers had reached an agreement and l regret both this oversight and the fact that a letter to the Commons Committee was not copied to Sub-Committee E.

I had always intended to provide the Committee with a copy of the latest text and forms, once we had received them. These were received only last week and for the first time includes both existing and additional forms as revised by the Austrian Presidency a copy of which I enclose for your information (not printed). The forms inevitably have to be amended in the light of changes to the text of the Regulation and are, together with the recital to be the basis of the next Working Group meeting later this month.

Due to the problems encountered by your Committee I have asked officials to put in place more robust systems to ensure this situation does not arise again.

I would be happy to appear before the Committee to discuss the European Small Claims Procedure if this would be helpful.

*5 July 2006*

## 24th REPORT: PROPOSED EUROPEAN INSTITUTE FOR GENDER EQUALITY

**Letter from Meg Munn MP, Deputy Minister for Women and Equality, Department of Trade and Industry to the Chairman**

Thank you for your report of 14 February 2006 on the proposed Institute for Gender Equality, which my officials and I found most interesting.

Throughout the course of the past year we have exchanged views and positions on this issue several times (notably my letters to you of 17 July 2005[23] and 12 October 2005,[24] with your replies on 21 July 2005[25] and 31 October 2005),[26] including my appearance before your Committee on 24 November 2005 and the subsequent written report of that meeting.

Recently negotiations have moved on, albeit slowly, at European level and we are now in the final phase of the decision making process. The European Parliament deliberated a Report by the European Parliament Women's Rights and Gender Equality Committee (by MEPs Lissy Groner and Amalia Sartori), during their session from 13–16 March 2006. The European Parliament adopted 53 of the 55 recommendations contained in the report. The Council of Ministers Social Questions Working Group began consideration of the European

[23] Correspondence with Ministers, 45th Report of Session 2005–06, HL Paper 243, pp 595–596.
[24] Correspondence with Ministers, 45th Report of Session 2005–06, HL Paper 243, pp 598–599.
[25] Correspondence with Ministers, 45th Report of Session 2005–06, HL Paper 243, pp 596–598.
[26] Correspondence with Ministers, 45th Report of Session 2005–06, HL Paper 243, pp 599–600.

Parliament amendments on Tuesday 28 March 2006. Further Council Working Groups are scheduled to discuss this dossier on 11 April and 3 May, with a view to reaching agreement at a meeting of the EU Committee of Permanent Representatives (COREPER I) on 17 May, in order to approve a Common Position at the European Employment and Social Affairs Council on 1 June 2006.

Below, I have addressed each of the recommendations that you note in Chapter 5 (page 22) of your Report, I hope that this is helpful.

1. *Recommendation 100 (the need for the Institute)*

The Government takes the view that gender equality would be best served by a separate body able to address issues specific to gender equality in the European Union, such as employment discrimination and child care. The Government also considers that merging the proposal for a European Gender Institute with the proposal for a European Fundamental Rights Agency would result in a loss of focus in these areas. You will recall that the Equal Opportunities Commission (EOC) stated, in their evidence to you last year, that they believed that the EU was not ready to move to a combined non-discrimination agency at this moment in time, and that I commented to your Committee that the UK began by creating separate non-discrimination agencies and is only now beginning the process of integrating them together under the planned UK Commission for Equality and Human Rights.

2. *Recommendation 101 (administrative question—management board)*

The structure and composition of the management structure of the Institute is one of the key issues that is still under discussion between the European Parliament, European Commission and the Council of Ministers. The Government understands that each of the Member States of the European Union will wish to be involved in such institutions as the European Gender Institute, both for pragmatic reasons (to ensure that funds are spent efficiently and effectively) and for policy reasons (to ensure that their national ideas, innovations and experiences contribute to the European debate). It may be that each Member State ultimately has a place on the Board, or may be represented via other fora, such as an Advisory Forum. The Government will examine management structure proposals on their merit, with the core criteria being that structures should be efficient, cost effective and proportionate to the size of the Institute. We will continue to push for this to be the case in Council Working Groups in April and May.

3. *Recommendation 102 (administrative question—Director/equality organisations/NGOs)*

The Government agrees with the Committee that the Director should have adequate authority, with proper accountability and that equality organisations and NGOs will be key stakeholders for the Institute.

4. *Recommendation 103 (budget)*

An overall agreement on the EC budget for the period 2007–13 was reached at the European Council in December 2005. This now needs to be agreed with the European Parliament as part of the negotiations on the Inter Institutional Agreement. The Budgetary Authority will then have to decide the scope and level of funding available for the European Gender Institute. The UK continues to believe that the institute should have no additional impact on the existing EU budget and that the level of funding for, and scope of, the institute will have to be consistent with this.

5. *Recommendation 104 (legal base—incentive measures)*

The Government hopes that the judgment in the ENISA case (which is now expected to be delivered on 2 May 2006) will provide a clearer understanding of the legal position in respect of what constitutes an "incentive measure".

6. *Recommendation 105 (legal base—general approach)*

The Government agrees that it is important for departments to take a consistent approach towards legal bases for proposals which create agencies. Our current position, as stated in previous correspondence, is that we take the view that generally agencies should not be set up using incentive measures legal bases, though we recognise that there are respectable arguments to the contrary. We shall however review these arguments in light of the judgement in the ENISA case once it is delivered in early May 2006. We can also confirm that steps are being taken to provide guidance to departments in order to ensure that there is a consistent approach across the board in respect of these proposals.

I note that your Committee has also taken an interest in the proposals for a new European Fundamental Rights Agency, which is a dossier led by the Department for Constitutional Affairs (DCA). DCA officials reported to Department of Trade and Industry (DTI) officials on my colleague, Cathy Ashton's Committee appearance on 1st March, to discuss this matter. I understand that there was some discussion on the relationship between the two new European Agencies under discussion. I believe that my reply to your recommendation number 100 deals with the issue of the merits of two bodies, rather than a single entity; and that my reply to your recommendation 101 deals with the structure of the management board. We agree that there should be good linkages between the two bodies. As for the location of the European Gender Institute, this issue has not yet arisen for formal discussion, although several EU Member States have begun campaigning to host the Institute.

I do hope that we will be able to resolve our differences on the proposal for a European Gender Institute, upon your return from the Easter Recess (I believe that the next scheduled meeting of your Committee is on 27 April) and that your Committee will be able to lift Scrutiny. If the final phases of negotiations develop well in April and May, then the UK will wish to expedite agreement at COREPER on 17 May, in readiness for the Employment Council on 1 June.

*6 April 2006*

**Letter from the Chairman to Meg Munn MP**

Thank you for your letter dated 6 April, constituting the Government's Response to the above Report, which was considered by Sub-Committee G on 27 April.

We are sorry that the Government continues to favour the establishment of a separate European Gender Institute and do not see how we can "resolve our differences" on that point and lift scrutiny, as you ask, at this stage.

As you know, the Gender Institute Inquiry Report concluded that the case for a separate Institute had not been demonstrated. It recommended that further consideration should be given to the alternative of incorporating the gender equality work with the activities of the proposed European Fundamental Rights Agency, on which the Committee was already carrying out an Inquiry.

The Fundamental Rights Agency Inquiry Report, which was published on 4 April (HL Paper 155) included recommendations in favour of incorporating the work proposed for the Institute with that of the Agency. That remains our position. Moreover, since that Report has been recommended for Debate in the House, we regard the Gender Equality Institute Proposal as still being held under scrutiny by the Committee until the Debate takes place.

We also note your comments on other aspects of the Gender Institute Report which may also be addressed in the Fundamental Rights Agency Debate.

*27 April 2006*

**25th REPORT: ANNUAL REPORT 2005**

**Letter from Rt Hon Geoff Hoon MP, Minister for Europe, Foreign and Commonwealth Office to the Chairman**

Thank you for your letter of 2 March to Douglas Alexander, enclosing a copy of your Committee's Annual Report for 2005. Douglas provided evidence to the Committee on the outcome of the UK Presidency on 17 January and I look forward to continuing contacts with the Committee.

The Government welcomes the quality of analysis and expertise, reflected in this annual report, that the Committee contributes on European issues.

Your letter highlighted a number of areas, set out in the Report on which you requested Government responses. I attach a short note covering these points.

*11 May 2006*

**Government Response**

1. Explanatory note: Where the Committee has asked for a specific response from the Government the relevant paragraph from the Report has been included in *italics.* For more general Government responses the relevant paragraph numbers have been listed.

Subsidiarity and the Conference of European Affairs Committees of National Parliaments of EU Member States (COSAC): Paragraphs 21–29, 42–51

2. The Government welcomes the Committee's work on subsidiarity and the Committee's 14th and 15th Reports. We support a greater role for national parliaments in monitoring the application of subsidiarity. This was part of the motivation behind the Sharing Power in Europe Conference held in The Hague in November 2005 and the Government was grateful for Lord Grenfell's involvement.

3. The Government is aware that the Committee has some remaining concerns about Article 8 of the Protocol on Subsidiarity and Proportionality in the Constitutional Treaty. Whether or not the Protocol comes into force through the Treaty, the Government would want to ensure that it retained its right of access to the European Court of Justice (ECJ) as well as ensuring a significant role for Parliament. The Government and Parliament would need to work together to devise a system to ensure that unrepresentative claims were not forwarded to the ECJ.

4. Given the current uncertainty of the Treaty our focus should now be on what we can do to increase the role of national Parliaments within the current treaties. The Austrian Presidency held a conference in St Poelten in April 2006 on this. The Government acknowledges and welcomes COSAC's proactive contribution in this area.

Better Regulation: Paragraphs 36–41, 59–64

5. The Government welcomes the progress made on better regulation during 2005—including during the UK's Presidency—and believes that this provides a sound basis for ensuring better regulatory outcomes on individual policy dossiers in the future.

6. The Government will continue to give high priority to the better regulation agenda in Europe. We will work with the Commission and other member states to embed the use of impact assessment in the work of the Institutions, including through the measurement of administrative costs of proposals and use of impact assessment during discussions on proposals in the Council.

7. In line with the conclusions of the Spring European Council, the Government supports the increased focus on SMEs and looks forward to seeing robust Commission proposals to encourage SME growth and development.

8. The Government strongly supports the Commission's efforts to simplify existing EU legislation. During 2006, we shall encourage progress to implement on time the Commission's October 2005 Communication, in particular adoption by the Commission of simplification proposals contained in its rolling programme and agreement to these by the Council and Parliament at an early stage. As the Committee may be aware, the Commission carried out extensive consultation with both member states and stakeholders for its Simplification Communication. The Government believes it is important that the Commission continues to involve stakeholders in the initiative.

9. The Government welcomes the interest in better regulation—in particular simplification—shown by the European Parliament, following the recent adoption of four reports by the Internal Market and Legislative Affairs Committees and the debate at the plenary session on 4 April 2006. The European Parliament, as the co-legislator, has an important role to play in simplification and will have responsibility for scrutinising proposals as part of the co-decision process. Proposals simplifying EU legislation will be subject to the usual Parliamentary scrutiny procedure at national level.

Council Meetings

*The Committee has pressed through COSAC for greater transparency in the Council of Ministers.* ***We expect the Government to report progress on this matter to parliament at the earliest opportunity.*** *(Report para 178)*

10. The Minister for Europe wrote to Jimmy Hood MP, copied to Lord Grenfell, on the issue of Council Transparency on 13 March setting out progress under the UK Presidency and longer-term goals. The Government will continue to keep the Committee updated on this matter.

Scrutiny Overides

*We note that our Government is committed to making sure that overrides are avoided wherever possible. Some Departments make particular efforts to ensure that overrides are avoided and these we commend We note that an* *override can on occasion be triggered by events outside the control of our Government, for example by the last minute presentation of a new text by the Presidency. But every Department must remain vigilant to ensure that standards do not slip.* ***We expect the Cabinet Office to continue to take a lead in ensuring that performance improves in those Departments where the twice yearly returns show a need for improvement. We are much heartened by the lower figures for last year so far, compared with 2004.*** *(Report para 181)*

*We also note that we have a responsibility to help prevent unnecessary overrides-for example by managing our work so that documents are considered by Sub-Committees in an appropriate time-scale and not left to fester unexamined and "awaiting scrutiny".* ***All Sub-Committees recognise that this means taking time to consider routine scrutiny items as well as spending time examining witnesses, and all Sub-Committees manage this balance in their own way.*** *(Report para 182)*

***The Committee was, however, delighted at the much improved record of the Government on scrutiny overrides over the first half of the year, and we hope that they have continued to perform as well in the period following June 2005.*** *(Report para 188)*

11. The Government welcomes the Committee's remarks about the much improved record in the first half of 2005. We remain committed to keeping the number of scrutiny overrides to a minimum and the figure of 22 overrides for the second half of 2005, including 19 where scrutiny could not have been completed in the House of Lords, shows that figures remain lower. Of these 19 overrides, 11 occurred at times when the Committee was not sitting because of the Parliamentary recess. The Cabinet Office continues to work with Departments to promote the benefit of forward planning and working closely with the Committee to ensure that as much business as possible is cleared before periods of recess, and in ensuring that items listed in the Committee's Progress of Scrutiny document are reviewed regularly and that responses to the Committee's questions are responded to as quickly as possible.

### Resources

***Having a member of staff working for the Committee in Brussels is proving to be a valuable support for our scrutiny work and we recommend the continuation of the post.*** *The Committee's effectiveness is enhanced by having a presence on the ground in Brussels. We have instructed the post-holder to focus in particular on:*

- *Obtaining information for the Committee (and in particular advance intelligence of Commission proposals);*
- *Explaining and promoting the work of the House in relation to EU affairs;*
- *Strengthening relations with the Brussels offices of the devolved administrations and other national parliaments; and*
- *Fostering personal and face-to-face contacts with people in the EU Institutions in order to enhance further the reputation of the House among EU decision makers and gain influence for the Committee's recommendations. (Report para 209)*

12. The Government acknowledges the value of the Committee's representation in Brussels and agrees with the Committee's assessment of the focus for the post in the year ahead.

*We urge Her Majesty's Government to establish a dedicated website where the public can easily access all explanatory memoranda and regulatory impact assessments. These documents are invaluable to all those engaged in scrutiny of EU matters and, although publicly available on request, could in this way be considerably more easily accessible. (Report para 211)*

13. The Government agrees that in the interests of full transparency Explanatory. Memoranda (EMs) on EU proposals should be easier to access than they are currently. The Cabinet Office is working to set up a website where EMs can be consulted and hopes that this can be established shortly.

## 27th REPORT: CURRENT DEVELOPMENTS IN EUROPEAN DEFENCE POLICY

### Letter from Rt Hon John Reid MP, Secretary of State for Defence, Ministry of Defence to the Chairman

I was very pleased to receive a copy of the House of Lords European Union Committee report on the Current Developments in European Defence Policy. I welcome the Committee's views on this important topic and attach a memorandum with the Government response to the conclusions within the report.

*26 April 2006*

**Government Response**

1. This memorandum constitutes the Government's response to the House of Lords European Union Committee's report, *Current Developments in European Defence Policy* (27th Report of Session 2005–06, HL Paper 125, published on 3 March 2006). The Government welcomes the Committee's report as a valuable contribution to the development of European defence policy. Unless otherwise stated, references are to paragraphs in the Committee's report.

*[Para 30] We welcome the Government's agreement to submit the Steering Board papers and other documents relating to the EDA, including the Head of Agency's Report to the December 2005 European Council. These documents are invaluable to our scrutiny of the EDA and should continue to be submitted at the earliest opportunity.*

2. The Government welcomes the Committee's recognition of its efforts to assist the Committee's scrutiny of EDA business through the submission of EDA related documents. The Government aims to continue the practice of submitting EDA Ministerial Steering Board papers and other agreed documents to the Committee at the earliest opportunity.

*[Para 31] We are disappointed that the three-year Financial Framework for the EDA has not been agreed and believe that it is important for the Agency's forward planning that an agreement is reached soon. The Government should take all necessary steps to ensure that participating Member States agree medium-term goals for the EDA, that appropriate resources be found and that a Financial Framework be set for 2007–09.*

3. Agreement on a three year financial framework for 2007–09 is not required until the General Affairs and External Relations Council (GAERC) in November 2006. In the intervening period the Government will continue to engage in dialogue with other participating member states in order that a mutually acceptable outcome will be achieved at the GAERC. It will, however, maintain that the Agency should be primarily a catalyst for nations co-operating together rather than controlling a substantially larger budget in order to fund projects centrally.

*[Para 32] Given the central coordinating role of the EDA it is important that all participating Member States fully participate in projects which have relevance to their defence needs and capabilities. Having encouraged the establishment of the EDA the Government has a particular role to play in helping to ensure that it becomes an effective and useful organisation.*

4. The Government recognises its role in helping to ensure that the EDA becomes an effective and useful organisation. It will continue to influence the Agency's development through the EDA Steering Board as well as supporting the work of the various Integrated Development Teams, Project Teams and Capability Technology Boards. It is the Government's policy to participate as fully as possible in EDA projects, where this will provide benefit to the UK but not all projects will be aligned with the UK's needs in terms of capability and/or timing. It is for this reason that the Government believes that the majority of projects within the EDA should be Category B projects. This would allow participating member states to opt into those projects where they see benefits rather than all participating member states funding projects through one central fund.

*[Para 33] We reiterate the conclusion in our earlier Report that the EDA needs, initially, to concentrate on a few achievable tasks and welcome the Government's emphasis on ensuring that projects undertaken by the EDA add value to that which could be achieved by the Member States individually. Where these criteria are met, the Government should support EDA initiatives in order that they are fully developed and ultimately achieved.*

5. The Government agrees with the Committee's conclusion that the EDA should initially focus on a few achievable tasks, which add value to that which could be achieved by member states individually. Where these criteria are met, for example with the EDA initiative for a Code of Conduct on Defence Procurement, the Government has demonstrated its willingness to support actively the development of an initiative.

*[Para 34] The Government must do all it can not only to encourage Member States to subscribe to the Code of Conduct on Defence Procurement, but also to abide by its provisions. Having played an instrumental role in the development of the Code, it is imperative that the Government lead by example and demonstrate full compliance with its provisions.*

6. The Government was one of the main proponents of the Code and as such continues to support the Agency, through the EDA Steering Board, to encourage maximum member state participation. It is also clearly the Government's aim to demonstrate full compliance with the Code's provisions and play a leading role in the development of its implementation procedures.

*[Para 35] We agree with the Government that the forthcoming Commission Communications on the European defence equipment market must be subject to rigorous scrutiny. Accordingly, they should be deposited for scrutiny along with a detailed explanatory memorandum outlining the Government's position at the earliest opportunity.*

7. The Government wholly supports the Parliamentary Scrutiny process and will ensure that any communications issued by the Commission on its European defence equipment market initiative will be deposited for scrutiny along with an explanatory memorandum.

8. In point of clarification, paragraph 26 of the Committee's report suggests that the European Commission has decided upon two initiatives based on its Green Paper consultations ie a Communication on defence industries and markets and an Interpretive Communication relating to Article 296. The Interpretive Communication has indeed come about as a result of the Green Paper consultations but the Communication on Defence Industries and Markets is a separate work strand. While the European Commission's communication of 6 December (explanatory memorandum submitted for scrutiny on 28 February) did mention the need to address other aspects of an EDEM construction (eg security of supply, transits and transfers—similar to the item in the Commission's 2006 Work Programme) these were outwith the scope of this particular work.

9. Paragraph 27 of the report also indicates that the Committee is unclear how the Commissions initiatives fit with the EDA Code of Conduct. The Government believes that (as both the EDA and the Commission have consistently stated) these are complementary as the Code of Conduct addresses that part of the market where Article 296 is invoked while the Commission's work addresses that part of the market where Public Procurement Rules still apply.

*[Para 36] Although the EDA is still in its early stages we are hopeful that it can play a significant role in the improvement of European military capabilities. However, full agreement needs to be reached between the participating Member States as to the extent of this role. The Government is well placed to, and accordingly should, encourage such agreement.*

10. The Government believes the EDA will play a significant role in the improvement of European military capabilities. It will continue to fully engage with the Agency and participating member states to ensure that the Agency develops in such a way that it will be able to help deliver the capability member states will require in the future.

## 28th REPORT: A EUROPEAN STRATEGY FOR JOBS AND GROWTH

### Letter from John Healey MP, Financial Secretary, HM Treasury to the Chairman

On 16 March 2006, the House of Lords' European Union Committee published a Report entitled, "A European Strategy for Jobs and Growth; Report with Evidence" (28th Report of Session 2005–06, HL Paper 137). The Report represented the results of the Committee's inquiry into the Lisbon Agenda; it discussed and made recommendations in a range of areas, including actions at the European and national levels.

I would like to draw your attention to my letters of 29 May 2006 to you as Chairman of the House of Lords European Union Select Committee, copied to the Chairman and clerks of the House of Commons European Scrutiny Committee. While these letters were mainly concerned with replies to supplementary enquiries on two Explanatory Memoranda related to the Lisbon Strategy, I also explicitly touched upon some of the recommendations made in the said 28th Report. In particular, I set out our views on the Lisbon National Reform Programmes (NRPs), the Open Method of Coordination, peer review and the issue of a Ministerial-level Lisbon coordinator.

Since these letters were written, in relation to the implementation of the Lisbon Strategy, the Government published in October 2006 an update on progress against its NRP, which, along with the updates from other Member States, was the subject of multilateral surveillance and Conclusions by the ECOFIN Council. In addition, the Commission's December 2006 Annual Progress Report (APR) contained assessments of all Member States programmes, as well as a recommendation to the Council under the EC Treaty for country-specific recommendations for economic and employment policies. I submitted an Explanatory Memorandum on the Commission's APR on 24 January 2007 and the European Council on 8–9 March 2007 endorsed the country-specific recommendations submitted by the Council ahead of their formal adoption later this year.

*20 March 2007*

## 29th REPORT: HUMAN RIGHTS PROTECTION IN EUROPE: THE FUNDAMENTAL RIGHTS AGENCY

### Letter from Rt Hon Baroness Ashton of Upholland, Parliamentary Under Secretary of State, Department for Constitutional Affairs to the Chairman

I am grateful to the Committee for its report on "Human rights protection in Europe: the Fundamental Rights Agency". I fully share the Committee's concern[27] that "a failure to delineate properly the tasks of the Agency could lead to wasteful duplication of the work of other bodies in the field". I also agree with the Committee that the Agency should not become just a "post box for collecting and sorting data". The Government's efforts in the Council negotiations are aimed precisely at avoiding this situation.

As stated in its response to the 2004 Commission consultation paper on the Fundamental Rights Agency, the Government believes that it is essential that the Agency should provide genuine "added value" by establishing itself as an effective body able to make a real contribution to the furtherance of human rights. To this end, the Government believes that, with finite resources, it is necessary for the Agency to concentrate upon the areas in which it has the greatest potential relevance and utility. Its primary purpose (building upon the mandate of the European Monitoring Centre on Racism and Xenophobia) should be as a fact-finding and opinion-giving body able to assist Community Institutions on fundamental rights issues.

It is clear from the Committee's "detailed recommendations"[28] that the Committee does not share several key aspects of the Government's view on the Fundamental Rights Agency. I would like to address the Committee's recommendations in turn.

#### Legal Base

*Paragraph 130. When the final role of the Agency is clear, the Government should report to Parliament on the question of the legal base (para 37).*

The Government will be happy to report again to Parliament on the question of the Agency's legal base once the Agency's role is finalised. The Government and all Member States are clear that Article 308 TEC[29] is the appropriate legal base for the Regulation establishing the Agency. Article 308 TEC provides the Council with the means to attain the objectives of the Community if the Treaty has not provided the necessary powers.

The Commission proposal on the Fundamental Rights Agency will be adopted by the Council in consultation with the European Parliament. I would like to clarify paragraph 5 of the Committee's report[30] to state that the Council is not treating this dossier as if subject to the co-decision procedure but is consulting the European Parliament, namely the LIBE[31] Committee, on its content.

#### Geographical Scope

*Paragraph 132, More detailed provisions for co-operation between the Council of Europe and the Agency in relation to third countries should be set out in the Memorandum of Understanding. The Memorandum should in particular specify the nature of the Council of Europe's role in assisting the EU in these cases and how the Agency would be involved in the process (para 61).*

*Paragraph 133. The power to consult the Agency in relation to third countries should not be reserved to the Commission. The Parliament should also be able to make a request for the assistance of the Agency where the Parliament needs to consider the human rights position in third countries (para 61).*

[27] House of Lords European Union Committee, 29th Report of Session 2005–06 on Human rights protection in Europe: the Fundamental Rights Agency, paragraph 129, p 39.
[28] Op cit, pp 39–42.
[29] Treaty establishing the European Community.
[30] Op cit, p 8.
[31] Commission des Libertés Civiles, Justice et Affaires Intérieures (Civil Liberties, Justice and Home Affairs Committee).

*Paragraph 134. Candidate countries should be able to participate in the Agency. These countries, although already members of the Council of Europe as required by the Copenhagen Criteria, would potentially derive substantial benefits from the assistance of the Agency as they prepare for Union membership (para 63).*

The Government agrees with the Committee that candidate countries should be able to participate to the Agency. In fact, Article 27 of the proposed Regulation on the Fundamental Rights Agency gives candidate countries the possibility of participation in the Agency subject to the decision of the relevant Association Council. Nevertheless, as already explained in previous correspondence with the Committee, the Government considers that extending the geographical scope of the Agency to include potential candidate countries and third countries (in other words, the rest of the world) would have serious negative repercussions on the Agency's limited resources, take the Agency's main focus away from the European Community and duplicate the work of the Council of Europe. This topic is the subject of intense negotiations in the Council Working Group where there is very little support for an Agency's third country remit.

The Commission is leading the discussions on the Memorandum of Understanding between the European Union and the Council of Europe. The Government, like the other Member States, will have the possibility to view the final draft but it is ultimately the Commission which will adopt it on behalf of the Union.

## Thematic Remit

*Paragraph 136. The very limited general role envisaged for the Agency by the Commission does not add much, if any, value to existing mechanisms, it only serves to reinforce the views of its critics who argue against the proliferation of useless agencies in the EU. The Agency must have the power to seek specific information from EU institutions and Member States and to probe them should they delay in providing it (para 70).*

*Paragraph 137. The Agency could play a valuable role in providing external monitoring of Commission proposals. Although we agree that a systemic assessment of the human rights implications of every legislative proposal would be too onerous a task, the Agency should be permitted to carry out legislative scrutiny as it sees fit (para 73).*

*Paragraph 138. In order to assist the Agency with this task, EU institutions should be obliged to provide it with information as to whether they consider that their actions are compatible with the protection of fundamental rights and draft legislative proposals which raise obvious human rights concerns should be referred to the Agency for an opinion (para 73).*

*Paragraph 139. The Agency should have an Article 7 TEU remit. We would be in favour of a right of initiative for the Agency in this area provided that the necessary Memorandum of Understanding with the Council of Europe is in place. However, given that Article 7 is rarely invoked in practice, we are satisfied with the current provision (para 76).*

*Paragraph 140. It is essential that the Agency be empowered to carry out its activities in third pillar areas given that proposals in the third pillar regularly engage fundamental rights. We are, however, satisfied that the Agency is to have no second pillar remit at the present time (para 80).*

The Government considers the remit of the Agency to have been appropriately defined by the Commission in the proposed Regulation. The Agency's primary focus should remain assisting Community Institutions on fundamental rights issues. The Regulation itself sets out the mechanisms to achieve this goal and ensure the co-operation of both the EU Institutions and the Member States. I do not wish to anticipate my answer to the Committee's recommendations on the Agency's independence, but I would like to stress that it is precisely to strengthen the link between the Agency and the Member States that the Government would prefer to retain the National Liaison Officers[32] and to ensure that the Agency's Multiannual Framework is adopted by the Council on a proposal from the Commission and in consultation with the European Parliament. These steps, the Government believes, will ensure adequate interest and support from Member States to the work of the Agency.

The Government is clear that the Agency should not play a formal pre-legislative scrutiny role on Commission proposals nor it should be transformed into a commission of inquiry on fundamental rights. The treaties are very specific on these issues and provide detailed procedure on the monitoring of EC legislative proposals[33] (both before and after they become EC law) and on the EU Institutions involved in the procedure in the case

[32] Officials appointed by Member States and acting as contact points between the "European Monitoring Centre on Racism and Xenophobia" and national governments.

[33] Articles 226, 230 and 250 TEC. In particular, under the current proposal, the Agency cannot take the following actions:
- Scrutinise the legality of Commission proposals adopted under Article 250 TEC.
- Concern itself with the review of the legality of EC legislation carried out by the European Court of Justice under Article 230 TEC.
- Consider whether a Member State has failed to fulfil an obligation under the TEC. Thus the FRA will not have the powers that the Commission has under Article 226 TEC, namely the power to submit an opinion to Member States about alleged failures or to bring infraction proceedings (although the Agency's reports could be used by the Commission to do so).

of serious human rights breach by Member States.[34] As regards the proposed role for the Agency under Article 7 TEU, the UK considers that there is no legal base for such a role as no provisions can be found either within the TEC or the TEU that would empower the Community or the Union to adopt further rules supplementing the procedure under Article 7 TEU.

The Government also believes that there is insufficient legal base for the Agency's proposed third pillar remit. The proposed legal base for the third pillar remit (Articles 30, 31 and 34(2)(c) TEU) is inadequate as it refers to the fields of police and judicial co-operation in criminal matters (including specific agencies such as Europol and Eurojust) and not the general promotion of fundamental rights. Therefore the Council does not have, under the current treaties, the necessary powers to adopt the proposed decision on the third pillar remit. Furthermore, the Government considers that expanding the Agency's focus outside Community law would not "add value" since the Agency would duplicate existing human rights monitoring effectively carried out by the Council of Europe and other international bodies.

### Reference to the Charter

*Paragraph 141. We do not consider it to be possible to monitor fundamental rights across the EU without reference to the European Convention on Human Rights as this is the seminal instrument in this field. Although the Agency would almost certainly have regard to the Convention in practice, Article 3(2) should refer explicitly to the ECHR in recognition of its special position in the European human rights framework (para 82).*

*Paragraph 142. We agree that the Agency should use the Charter as its principal point of reference. We would not, however, expect the Agency to become involved in the monitoring of the Treaties generally; this should remain the job of the Commission (para 84).*

The Government agrees with the Committee that fundamental rights issues across the European Union should be considered also in the light of the European Convention on Human Rights (ECHR). However, it considers that a reference to the ECHR in the Regulation would be inappropriate as it might give rise to confusion regarding two separate legal orders: EC law and ECHR.

The Government agrees with the Committee that the Agency should refer to the Charter of Fundamental Rights as an important political declaration reaffirming rights already agreed by Member States in previous ,treaties, including the ECHR. The Charter is not, at this stage, legally binding and, to avoid any confusion with regard to its legal status, any reference to it should be moved from the Regulation to the Recitals and accompanied by the official explanations. The Government fully agrees with the Committee that the use of the Charter as an important reference document does not imply that the Agency will have a monitoring role on treaties.

### Mechanisms for Co-operation

*Paragraph 144. The negotiation of the Memorandum should be a priority for Member States and the creation of the Agency should be conditional upon its conclusion and its agreement by the Council of Europe (para 92).*

*Paragraph 145. The Agency could play a valuable role in helping to alleviate the caseload of the European Court of Human Rights through ensuring better compliance with fundamental rights. We trust that the Agency will work closely with the Court to identify the nature and content of that role. In particular, the relationship between the Court and the Agency should be clarified in the Memorandum of Understanding to be agreed (para 93).*

The Government agrees with the Committee's recommendation that clear and defined mechanisms of co-operation between the Agency and the Council of Europe are essential if any overlap between the two institutions is to be avoided. As mentioned earlier, the Commission is leading the negotiations with the Council of Europe on the drafting of a Memorandum of Understanding (MoU). At my last appearance in Sub-Committee E to discuss the Fundamental Rights Agency,[35] the Committee was already reviewing a first draft of the MoU dated 18 January 2006. To my knowledge, discussions are still underway between the Commission and the Council of Europe and no final MoU has been agreed yet. Although I share the Committee's concern about the shape of the MoU, I must remind the Committee that the Commission is ultimately responsible for negotiating and adopting this document as part of its role of external representation of the EU. However, the Government is clear that, if the Agency's remit is confined to Community law and its geographical scope to the EU and candidate countries, the risk of overlap with the Council of Europe would be greatly reduced.

[34] Article 7 TEU.

[35] Oral Evidence on "European Fundamental Rights Agency", House of Lords, EU Select Committee (Sub-Committee E), 1 March 2006.

The Government does not see how the Agency can play a direct supporting role to the European Court of Human Rights as the latter is not part of the European Union and the Agency's main role will be assisting Community institutions. However, provided that there is no overlap between the activities of the Agency and those of the Council of Europe, the Government agrees with the Committee that, by promoting better compliance with fundamental rights, the Agency can indirectly help reducing the caseload of the European Court of Human Rights.

### The European Institute of Gender Equality

*Paragraph 149. We do not agree that gender rights would be "marginalised" were they to be dealt with by a general fundamental rights agency. It would be somewhat inconsistent to absorb the work of the EU Monitoring Centre for Racism and Xenophobia within the Agency and at the same time seek to establish a separate body to look at gender equality. The Agency could effectively carry out the work envisaged for the Institute (paras 108–109).*

*Paragraph 150. We see positive advantages in having a single body to cover human rights and all equality strands. This would strengthen the ability to promote a culture that respects the dignity, human rights and worth of everyone and deliver some economies of scale (para 110).*

*Paragraph 151. We do not consider the possible future merging of the Institute and the Agency to be an attractive alternative to the establishment of a single body from the outset. If the Council does proceed to establish two separate agencies, we recommend that the Institute be established in Vienna to maximise co-operation and facilitate merging the two bodies at a later date (paras 111–112).*

*Paragraph 152. The Agency and the Institute should co-operate closely with one another on a regular basis. The Institute should make full use of its powers to attend the management board meetings of the Agency as an observer. We would be in favour of a more direct consultation between the Agency and the Institute in the preparation of the Agency's Annual Work Programme and the Institute's annual programme of activities and suggest that the Directors of the two bodies could play a role in achieving this (para 113).*

As I stated during my oral evidence in Sub-Committee E on 1 March, the Government takes the view that gender equality would be best served by a separate body able to address issues specific to gender equality in the European Union, such as employment discrimination and child care. Merging the proposal for a European Gender Institute with the proposal for a European Fundamental Rights Agency might result in a loss of focus in these areas, and also give rise to a legal problem based on the different legal bases of the two bodies: Articles 13(2) and 141(3) TEC for the European Gender Institute and Articles 308 TEC for the European Fundamental Rights Agency.

The subject of the location of the Institute has not been formally raised yet although several Member States have begun campaigning to host it. I totally agree with the Committee that the Agency and the Institute should closely co-operate but it is something that the two Agencies, particularly the two Directors, should be discussing as soon as they are in place.

### Independence

*Paragraph 153. It is imperative that there be no unnecessary interference in the running of the Fundamental Rights Agency and an express provision to this effect should be included in the Regulation (para 118).*

*Paragraph 154. Although there may be possible tensions between the stipulation in Article 15 that the Agency is to perform its tasks in complete independence and the role of the Commission in elaborating the Agency's work programme under Article 5, we are not persuaded that these will have an impact on the Agency's independence in practice and are satisfied that the Commission should adopt the Agency's Multiannual Framework provided that the European Parliament is consulted prior to the adoption of the Framework (para 119).*

*Paragraph 155. it would not be prudent to increase the role of the Council in the running of the Agency. In particular, the Council should not have the power to approve the Agency's Annual Work Programme (para 120).*

*Paragraph 156. The Agency should be accountable to the European Parliament. Should the management board be composed of Member States' representatives, its members should be subject to the approval of the European Parliament. The appointment of its Director should likewise be subject to the European Parliament's approval, as should his dismissal (para 121).*

I have already anticipated my point on the Agency's independence in my answer to the "thematic remit". The Government agrees with the Committee that the Agency should be as independent as possible. However, the Committee surely recognises the need to maintain a strong link between the Agency and the national governments, something that was also recommended in the 2002 evaluation of the European Monitoring

Centre on Racism and Xenophobia.[36] It is essential for the success and effectiveness of the Agency that Member States are interested in its work and findings and provide their full assistance to the Agency, as the Committee has acknowledged. The Government is clear that this goal can be achieved by empowering the Council to adopt the Agency's Multiannual Framework (MF) on a proposal from the Commission and in consultation with the European Parliament. The Agency's Annual Work Programme should also focus on the thematic areas indicated in the MF and the National Liaison Officers should be retained.

Making the Agency accountable to the European Parliament would only distance the Agency from Member States with potential negative consequences on the degree of support the Agency will receive from Member States in carrying out its primary task of data collection and analysis.

### Management Structure

*Paragraph 157. The management board of the Agency should comprise a maximum of eleven members. It should be composed of representatives of the Council, representatives of the European Parliament, representatives of the Commission and representatives of the Council of Europe (para 126).*

*Paragraph 158. We would expect the Parliament and the Council to be equally represented on the management board and would welcome the inclusion of two representatives of the Council of Europe, which we envisage would be filled by the Human Rights Commissioner and the Secretary General (or their representatives). This would ensure that no one institution had control of the management board and enhance the Agency's independence and cooperation with the Council of Europe (para 127).*

*Paragraph 159. The composition of the executive board of the Agency should also be altered to ensure fairer representation. It should be composed of one representative from each of the Council, the European Parliament, the Commission and the Council of Europe, plus the chairperson of the management board (para 128).*

The Government fully shares the Committee's suggestion to appoint "representatives" instead of "independent persons" to the Agency's Management Board. In order to ensure close co-operation with the Council of Europe, the Government also supports the presence of the representative of the Council of Europe in the Executive Board as well as in the Management Board. However, for the reasons stated in my reply to the section on the Agency's independence, it cannot support the Committee's recommendation for an equal representation of the three EU Institutions inside the Management Board. Apart from creating the problem of which Member State, among 25, should be represented on the Board, it would also make the Agency equally accountable to the three Institutions with again potentially negative repercussions on the degree of support that Member States would be willing to extend to the Agency's work.

Let me conclude by stating my full appreciation of the Committee's concerns with regard to the independence of the Agency and its effectiveness in the field of fundamental rights within the European Union. However, I am equally concerned about not going beyond what the current treaties allow us to do and what Member States are prepared to accept at this stage. I envisage a Fundamental Rights Agency starting with a clearly defined primary focus: assisting Community Institutions on fundamental rights issues.

*18 April 2006*

## Letter from the Chairman to Rt Hon Baroness Ashton of Upholland

Thank you for your response to our Report *Human Rights Protection in Europe: the Fundamental Rights Agency*. We are pleased to see that you have answered our recommendations in some detail; we are, however, disappointed that you are unwilling to take on board many of our comments. We make our detailed comments below.

### Legal Base

We look forward to hearing from you on the question of legal base once the Agency's role has been finalised.

In respect of the involvement of the European Parliament, we did not intend to imply that the proposal is subject to the rules and procedure of co-decision; our reference in the Report to the Parliament's participation in the elaboration of the proposal referred to the agreement between the institutions that a series of trialogues, a feature of the co-decision (and not the consultation) procedure which allows the European Parliament to participate in informal meetings with the Council and the Commission intended to broker an early deal between the institutions, would take place. We trust that this clarifies the matter.

[36] Centre for Strategy and Evaluation Service (on behalf of the European Commission), *Evaluation of the European Monitoring Centre on Racism and Xenophobia*, May 2002 (Recommendations 16–21 pp 87–89, Recommendation 24 p 91).

### Geographical Scope

We note what you say regarding the geographical scope of the Agency. However, we believe it important to recognise the distinction between States entitled to "participate" in the Agency (candidate countries) and States which may be monitored by the Agency (third countries), outlined in paragraphs 22–24 of our Report. We remain unconvinced that the Agency will be overwhelmed in the way you suggest.

### Thematic Remit

As we said quite clearly in our Report, there is little value in creating an Agency which has no real power and can therefore add no value. We note that you remain firmly against a formal legislative scrutiny role; in your evidence before this Committee you did, however, envisage an informal scrutiny role for the Agency. Do you consider that the Agency will have the competence to carry out such a role, given the wording of article 4(2)?

We are disappointed that you continue to oppose a Third Pillar remit for the Agency. We do not share your view that such a remit would necessarily lead to duplication with the work of the Council of Europe. Do you not agree that there are cases, such as the European Arrest Warrant, where advice on compliance with fundamental rights at both the legislative and implementation stages might be very helpful? Is there not a role here for a body with detailed knowledge of EU law?

### Reference to the Charter

We do not agree that an express reference to the European Convention on Human Rights in the proposal would lead to confusion regarding the two European systems (the Council of Europe and the European Union). Indeed, a reference to the European Convention on Human Rights in the proposal could serve to flag up the difference between the two separate systems. We note that the Prime Minister of Luxembourg, in his recent report on EU-Council of Europe relations, recommended that the Statute of the Agency contain an express reference to the European Convention on Human Rights.[37]

You say that the Government would like reference to the Charter to be moved from the body of the text to the Recitals. We do not see how its inclusion in the text can affect its legal status and would be grateful for clarification of your concerns.

### Mechanisms for Co-operation

We are concerned by your suggestion that Member States will only see a final draft of the Memorandum of Understanding with the Council of Europe. We would expect Member States to participate actively in identifying what the content of the Memorandum should be. While responsibility for concluding the Memorandum of Understanding rests with the Commission, the Council remains responsible for the adoption of the Regulation establishing the Agency. It is therefore for the Council to satisfy itself that the appropriate protections against duplication are in place and to take steps if they are not.

We do not suggest in our Report that the Agency would assist the Court in a formal way. Rather, in line with the general message conveyed by the Report, the Committee seeks to promote meaningful dialogue between the Agency and Council of Europe institutions to minimise overlap and ensure the maximum effectiveness of the Agency. Do you agree that dialogue between all institutions concerned—Council of Europe and EU—will be important in preventing overlap?

### The European Institute for Gender Equality

We note your position on this but remain of the view that there should be one body only. Any legal base issues would be more easily resolved at this stage than at a later stage, should the amalgamation of the two bodies be agreed.

[37] Juncker, Jean-Claude *A sole ambition for the European Continent*, published 11 April 2006.

### Independence

The Committee is in favour of strong support from Member States for the Agency; however, we do not agree that this should come at the cost of the Agency's independence and integrity. The Agency's success in the international framework of human rights bodies will be jeopardised if it seen to be merely an agent of the Member States. The Report to which you refer for support in arguing for more Member States control does not appear to make recommendations of the specific nature you imply and we continue to maintain that the Agency should be accountable to the European Parliament and not to the Council.

### Management Structure

We are pleased that you are in favour of Council of Europe representation on the Agency's executive board. However, we are aware that the management structure of the Agency remains under discussion and look forward to hearing from you in due course on the emerging consensus. We trust that you will give full consideration to the management possibilities of the Agency to ensure that the final structure chosen maximises the daily efficiency of the Agency and the proper participation of the Council of Europe.

### Trialogue Update

We understand that we are supported in a number of our recommendations by the LIBE Committee of the European Parliament. In particular we are advised that the Parliament favours a Third Pillar remit for the Agency. How many Member States oppose a Third Pillar remit? Would the Government maintain their objections on this in the face of support from a majority of Member States?

We are aware that the proposal has been the subject of detailed discussion in the Council. Our Report dealt with the Commission's original draft. We would expect a new draft of the proposal to be submitted for scrutiny if substantial changes have been made. This should be provided in time to allow Parliament to scrutinise the document prior to any agreement in the Council. We would be grateful if you would in any case provide us with an update of the negotiations and the current shape of the proposed Framework Decision prior to the 8 June debate.

It would be helpful to, have your response to this letter by close of play Friday 2 June to allow the Committee to consider your comments prior to the debate.

*18 May 2006*

## Letter from Rt Hon Baroness Ashton of Upholland to the Chairman

Thank you for your letter of 18 May 2006 in which you highlight the issues on which the Committee has concerns. I am also most grateful to the Committee for bringing forward the debate on the FRA to 8 June 2006 in view of the Austrian Presidency's decision to take the dossier to the General Affairs and External Relations Council of 12–13 June 2006 for political agreement.

I would also like to inform you that the Government is considering your letter of 15 March 2006 on "Human Rights Proofing of EU Legislation" and my Department is co-ordinating a separate response. I apologise for the time this response is taking. This is due to the potentially wide implications, well beyond my Department, that your suggestions may have. I believe Government officials have recently met with the Committee's Clerk to clarify the outstanding issues. We are aiming to respond to your letter before the summer recess.

Following my reply of 18 April 2006 to the Committee's Report,[38] I would like to take this opportunity to clarify further the Government's position on the FRA.

### Legal Base

Although discussions on the Agency's role are still in progress, I can confirm that there is consensus among Member States to use Article 308 Treaty establishing the European Community (TEC) as the legal base of the Regulation establishing the Agency.

[38] House of Lords European Union Select Committee, *Human rights protection in Europe: the Fundamental Rights Agency*, 29th Report of Session 2005–06, 4 April 2006.

### Geographical Scope

There now seems to be consensus among Member States to extend the Agency's geographical remit to six potential candidate countries that are part of the Stabilisation and Association Process (SAP), Croatia, Albania, Bosnia and Herzegovina, Serbia, Montenegro and the former Yugoslav Republic of Macedonia. As prospective Member States of the European Union, these countries will undergo a process of adaptation of their domestic law to Community law. The Agency may play a role in assisting these countries on fundamental rights issues arising from this process.

For the reasons already stated in previous correspondence, I remain sceptical about extending the Agency's geographical remit any further to include third countries as the Committee suggests in paragraph 23 of its Report. Most Member States are also opposing an Agency's third country remit.

### Thematic Remit

I agree with the Committee that an Agency with no real power would not add value to the system of human rights protection in the European Union. The Committee should know that Article 4(2) of the proposed Regulation (as amended by the Presidency) now allows for a limited legislative scrutiny role. According to this Article, the Agency will be able to formulate opinions on specific thematic topics, at the request of the European Parliament, the Commission or the Council, in relation to Commission legislative proposals under Article 250 TEC. However, the Agency will not be empowered to scrutinise the legality of Community law nor to question whether a Member State has failed to fulfil an obligation under Community law.

I have to disagree with the Committee on the need to retain the Agency's third pillar remit (Title VI of the Treaty on European Union—Provisions on Police and Judicial Co-operation in Criminal Matters). I acknowledge that advice on compliance with fundamental rights in Third Pillar matters might be helpful but I do not consider that the current treaties allow the Agency to have such a remit. In contrast to those matters covered by the TEC, the Member States chose to retain the more intergovernmental processes of the Treaty on European Union (TEU) for police and judicial co-operation in criminal matters. There is no equivalent in the TEU to Article 308 TEC, which enables the establishment of an Agency that will exercise its functions in the field of Community activity. It is not the case that the area of police and judicial co-operation in criminal matters would be free of any scrutiny concerning fundamental rights if the Agency did not have a third pillar remit. Well-established mechanisms exist through the Council of Europe and national law and these would continue to operate as they do now.

Four Member States currently support the UK Government in its opposition to the Agency's third pillar remit.

### Reference to the Charter

The Government is considering whether a reference to the European Convention on Human Rights should be retained in the body of the Regulation. The Government maintains its view that it would be inappropriate to include a reference to the Charter of Fundamental Rights in the body of the Regulation as this might cause confusion about the legal nature of the Charter. The Charter remains an important political declaration but it is not legally binding. Therefore, in the Government's view, any reference to it should be moved to the Recitals.

### Mechanisms for Co-operation

I agree with the Committee that the Council remains responsible for the adoption of the Regulation establishing the Agency and that it should satisfy itself that "the appropriate protections against duplication" with the Council of Europe are in place. It is also for this reason that the Government is concerned not to widen the Agency's geographical scope to third countries and not to extend the Agency's remit to Third Pillar matters. I believe that, in both cases, the Agency would duplicate the work carried out by the Council of Europe. As the Committee states, the European Commission is responsible for concluding the Memorandum of Understanding which will establish the principles under which the co-operation between the two bodies will take place. However, it should be noted that, because all Member States are also part of the Council of Europe, Member States will have the possibility to review and amend, where necessary, the Memorandum of Understanding prior to its adoption.

I fully agree with the Committee that dialogue between the EU and the Council of Europe will be essential to avoid any overlap between the FRA and the Council of Europe. I am therefore pleased that there seems to be consensus among Member States on the need to ensure a person appointed by the Council of Europe sits on both the Management Board and the Executive Board of the Agency. This mechanism and the continued primary focus of the Agency on advising Community institutions on fundamental rights issues, will minimise the risk of duplication.

European Institute for Gender Equality

I am afraid that the issue of merging the Institute for Gender Equality with the Agency remains an area of genuine disagreement with the Committee. I will not repeat the argument against the merger but I would like to stress that merging together the two Agencies would mean re-opening the discussions on the Agency's legal base. At this final stages of the Council negotiations on both dossiers, it would be politically unrealistic to aim to reach a consensus on the Agency's legal base, other than Article 308 TEC, by the end of the Austrian Presidency to enable the Agency to start its activities on 1 January 2007.

I remain very much in favour of close co-operation between the two Community bodies. To this effect, the Director of the Institute for Gender Equality will attend the meetings of the Agency's Management Board, as an observer. I also expect the officials of both bodies to work closely together.

Independence

There now seems to be consensus among Member States to appoint "independent persons" instead of "representatives" of Member States to the Agency's Management Board. Although negotiations are still in progress, most Member States now seem in favour of ensuring that the European Parliament will be consulted on the adoption of the Agency's Multiannual Framework. The European Parliament will also have a greater role in the appointment of the Director.

Management Structure

There seems to be consensus among Member States on a management structure composed of: Management Board (with "independent persons" instead of "representatives"), Executive Board (with one representative of the Commission, instead of two), Director (appointed by the Management Board after consultation with the European Parliament), Scientific Committee (composed of independent human rights experts appointed by the Management Board as guarantors of the scientific quality of the Agency) and a Fundamental Rights Platform (a network of human rights NGOs that will maintain the link with organised civil society). The person appointed by the Council of Europe would sit on both the Management Board (with restricted voting rights) and the Executive Board (as an observer).

For your information, I attach the latest Presidency text of the proposed Regulation (not printed) with the caveat that negotiations are still continuing and the text will undoubtedly be revised again in the next few weeks.

*2 June 2006*

## 32nd REPORT: ILLEGAL MIGRANTS: PROPOSALS FOR A COMMON EU RETURNS POLICY

### Letter from Liam Byrne MP, Minister of State, Home Office tp the Chairman of Sub-Committee F

I am grateful to the Committee for the report on its inquiry into the EU proposal for a Directive on common standards for the return of illegally staying third country nationals.

I enclose a memorandum on the Government response.

I shall arrange for copies of the response to be placed in the library of the House.

*4 August 2006*

### Government Response

Introduction

The Government welcomes the above Report issued on 9 May 2006 on the Community proposal for a Directive on common standards for the return of illegally staying third country nationals. We commend the hard work of your Committee in producing this Report, and also thank the Committee for the various opportunities afforded both Ministers and Officials of Her Majesty's Government to provide evidence. The

Government is also very grateful for the opportunity to participate in the 11 May 2006 House of Lords Debate on the report, attended by Baroness Scotland on the Government's behalf.

We have set out in turn below, our response in relations to the conclusions and recommendations contained in your Report.

## General Conclusions

1. I am pleased that the Committee shares the Government's general assessment of the Draft Directive and endorses our decision to exercise our option not to opt-in at this stage.

2. We agree that the current draft directive is deeply flawed in a number of respects and may result in the lowering of standards in a number of Member States. Furthermore, we consider that the Draft directive does not strike the right balance between safeguards and assistance to Member States on return. We believe that it would impose unnecessary burdens that would reduce the effectiveness of our returns and undermine much of the good work done by EU governments.

3. Negotiating the Draft Directive within a process that involves co-decision between the Council and Parliament is challenging. The UK Government intends to continue to participate actively in negotiations as far as possible, and will seek to bring about the changes that are required to make the Draft Directive viable. I thank the Committee for its recommendations. We will seek to incorporate them in our policy where possible.

## Scope

4. The Directive describes the categories to which it applies as "illegally staying third-country nationals". The Committee in its report emphasised that this Directive deals with widely differing categories of persons, some of whom will have entered the EU legally or resided there legally. It also stated that the definition must in any case clarify the position of those with pending appeals, and those whose rights of appeal have not been exhausted.

5. The Government acknowledge the fact that the term "illegally staying" in the description of third-country nationals covers a range of persons including those who may have initially entered and resided in a Member State legally. We agree that grouping these persons together with others who have entered and resided in a Member State illegally is unfortunate.

6. Following clarification of the Commission, it is the Governments understanding that persons subject to the Directive, as currently drafted, would have already exercised or exhausted all their rights of appeal and would therefore be subject to removal.

## Readmission Agreements

7. The UK has opted into all Commission mandates for the negotiation of EC Readmission Agreements, whilst continuing to pursue bilateral resolutions to returns issues, with Readmission Agreements, Memoranda of Understanding and other informal arrangements to address pressing operational issues such as those concerning re-documentation. In general, where bilateral co-operation is good, we prefer to maintain that relationship, and possibly reinforce it with Bilateral Memoranda of Understanding (MoU) rather than formalising arrangements.

8. Formal agreements do not necessarily guarantee the acceptance of EU Letters as alternatives to passports. The promotion of the use of EU Letters as alternatives to official passports is and remains a feature of both EU and bilateral policy. We actively seek to persuade third countries to recognise EU Letters as viable alternatives to official passports, and we support and encourage the Commission in its efforts to this end. We will continue to follow the Commission's handling of Community Readmission Agreement closely and constructively.

## Country of Origin Information

9. Accurate and accessible Country of Origin Information (COI) is essential for taking decisions on asylum claims. The UK recognises the value of close cooperation between Member States in determining the conditions prevailing in countries to which irregular migrants and failed asylum seekers are to be returned.

10. The Government intends to ensure that the UK is able to continue to collate its own COI, but is happy to work with other states. The Government supports allowing other EU states access to our existing COI as part of a Common Portal and indeed all COI reports are publicly disclosable and accessible on the internet.

The British system is open and public. Any COI from other countries that might be used in determining claims would have to conform to British standards including openness.

11. However, we have concerns about the value of setting up a potentially expensive electronic repository, particularly if parts of the information contained in it cannot be used by the UK and other countries that operate open to scrutiny systems, or which might not allow for absolute transparency. We would however support plans for a feasibility study to be carried out, before any further consideration is given to establishing an EU COI database as proposed by the Commission.

### Period for Voluntary Departure

12. The Committee stated that it agrees with the requirement of Article 6(2) that a return decision should "provide for an appropriate period for voluntary departure". The Home Office already has provisions in place to allow an individual to depart voluntarily where it is appropriate to do so. These provisions are available throughout the asylum process. We do not agree that a separate period for voluntary return should generally be provided for at the end of the process when the decision to return is made as this would provide people with additional scope to frustrate the removal process.

### Detention

13. The UK Government acknowledges the seriousness of a decision to detain. Detention is used sparingly and for the shortest period necessary. Where an individual has not made arrangements to leave the country voluntarily, or is assessed as unlikely to do so, detention may be considered as appropriate action to enforce removal. The power to detain must be retained to preserve the integrity of immigration control and detention is usually appropriate:

- initially to establish the basis of a person's claim or identity;
- where there are grounds for believing that the person will not abide by any conditions attached to the grant of temporary admission or release;
- to effect removal; and
- as part of a fast track asylum process.

14. Whilst detention is kept under continual review and will not be longer than necessarily there are exceptional cases where a prolonged period of detention is required.

15. We are pleased that the Committee agrees with our view that an absolute and non-extendable maximum to the period of detention will give Member States insufficient flexibility. Our assessment is that a fixed upper limit would significantly diminish the possibilities of effecting removal in a number of cases.

16. The Committee stated that the requirements of Article 15 in relation to conditions of temporary custody should apply to the manner in which third-country nationals are taken into custody, as well as to their treatment when in custody. We agree with this point and regret the unfortunate but rare incidents highlighted in the report.

17. Before a family is due to be removed the Immigration Service will undertake a pastoral visit. The visiting officers will aim to assess the family's circumstances and identify whether there are any special needs which must be catered for when it comes to the removal process. The fact that a mother is breast-feeding is one such factor to be taken into account.

18. The officers will also aim to establish an appropriate time to effect the removal of the family in order to cause the least possible disruption and to safeguard the wellbeing of all those concerned.

19. An individual risk assessment is conducted in each case in order to determine the risk of absconding. The risk may vary according to the stage in the process and a reporting centre may be the best location for detention to take place if it is considered that, for instance, service of a negative decision may prompt a family to sever contact with IND.

20. Other than in exceptional cases where it would be in the best interests of an individual to remove them more quickly, there is a minimum period of 48 hours between the service of removal directions and removal, during which time an individual/family may arrange for property to be delivered to a detention centre/point of embarkation.

21. Immigration officers are required to allow the family sufficient time to prepare when they arrive to effect removal.

22. One of our main priorities is to ensure the safety and welfare of those we are attempting to remove and it is of course preferable that a child remains with a parent during the detention and removal process. If a child is not present at the time of the visit, our aim is to reunite the child with his/her parent as soon as possible.

23. Families do of course have the option of departing the United Kingdom voluntarily once their application has been refused and all of their appeal rights exhausted. This option would negate the risk of family members being separated at the point where the Immigration Service are required to enforce their removal.

24. If a family has demonstrated a willingness to depart voluntarily, discretion can be exercised as to the precise timing of removal in order to allow for example, a family member to complete examinations leading to a significant qualification for which he or she has already undertaken a substantial amount of study.

25. We must balance these considerations with the need to maintain the integrity of the immigration control and enforce the removal of those people who no longer have any lawful basis to remain in the United Kingdom.

26. The United Kingdom's published asylum statistics contained data on the periods of detention on a snapshot basis. The latest Quarterly Asylum Statistics now include information about the length of time individuals stay in detention. The Committee stated that the Directive provides a good opportunity to make the systematic collection of comparable data on detention a mandatory EU-wide requirement. We agree and will aim to pursue this during negotiations.

27. Whilst we recognise the Committee's recommendation to incorporate into the Directive's substantive provisions, the Council of Europe Guidelines on Forced Returns, the Committee will of course be aware that when these guidelines were adopted the UK indicated a reservation with regard to a number of those guidelines, notably 2, 4, 6, 7, 8, 11 and 16. The UK has no intention of lifting its reservations to those guidelines. The guidelines mirror the proposed provisions of the Directive in many areas and our reservations reflect the serious concerns we have to those issues raised by both documents.

## Children

28. We agree with the Committee's recommendation that the Directive should define a child, and minor, as a person under the age of 18.

29. We agree that children should only be detained as a measure of last resort, only where necessary and for the shortest period of time. As the most recently published statistics demonstrate, the vast majority of families with children spend seven days or less in detention. Each case is considered on its merits and the presumption is always in favour of granting temporary admission or release wherever possible.

30. It was also the Committee's view that children should be removed to their country of origin only in the company of a family member or other responsible adult. The Committee also stated that where unaccompanied removal is unavoidable, the child should be handed over only to a person with proven parental responsibility, and that the legal guardian in the Member State in question must be informed of the identity of the person. We agree that unaccompanied children should be returned only where appropriate arrangements exist in their country of origin.

31. There is a long-standing Ministerial commitment that unaccompanied minors will only be returned if we can either trace their families or establish adequate reception and care arrangements in the proposed country of return. In the latter case, the arrangements would not necessarily require the presence of a person with parental responsibility. But they would involve a package of reception, care and reintegration support, an appropriate escort on the flight home and collection by a suitable partner organisation at the airport.

## Status of Those Not Removed

32. It is a matter of policy that leave, or equivalent provisions for protected persons, are not granted on the basis that there is, for the time being, no practical way of removing a person.

33. Once the appeal process has been exhausted, unless they have been granted some form of leave on non-asylum grounds, failed asylum seekers and other persons subject to removal no longer have a right to remain in the UK and there is a reasonable expectation that they should return to their country of origin voluntarily. As already stated asylum applicants and irregular migrants may opt for voluntary return at any point of the respective process.

34. To provide leave or other status equivalent to that provided for protected persons to those who cannot be immediately removed from the UK would undermine the immigration process. It is important for the integrity of our asylum and migration system that we do not create additional barriers to the removal of an

individual who lacks any lawful basis of stay in the UK, even if there are (for example) practical difficulties which, for the time being, are impeding or delaying the making of arrangements for his removal.

35. IND carefully considers all asylum and human rights claims on their individual merits in accordance with our obligations under the 1951 UN Refugee Convention and the European Convention on Human Rights (ECHR) against the background of the latest available country information. If an applicant demonstrates a need for international protection and they meet the definition of a refugee under the terms of the 1951 Convention, asylum is granted. If they are otherwise vulnerable they may engage our obligations under the ECHR, in which case they will be granted Humanitarian Protection or Discretionary Leave. If their application is refused, they have a right of appeal to the Asylum Immigration Tribunal against the consequent immigration decision. In this way we ensure that we provide protection to those asylum seekers who need it.

## Appeals Against Return Decisions and Return Orders

36. The Committee stated that it thought that the drafting in Article 12(2) is defective. It recommended that it be amended so that in all Member States, appeals which are not rejected at a preliminary stage as clearly unfounded should result in suspension of the return decision or removal order until the appeal is disposed of. We do not agree with this view.

37. All decisions that require the departure/removal of a person unlawfully in the United Kingdom or a member of the family of such a person attract a statutory right to appeal to the independent Asylum and Immigration Tribunal (AIT), and that the persons are aware of this right. Unless the appellant claims that his removal would breach the ECHR, the Refugee Convention or the Community Treaties, our position is that an out-of-country right of appeal is an effective remedy. While judicial review is available in relation to any act of a public body we would argue that permission to apply for judicial review should be refused where there is a statutory right of appeal to the AIT against the same decision.

38. Judicial review provides a route for an effective remedy in those cases where an asylum and/or human rights claim is made, such that the statutory appeal to the AIT would normally be required to be an in-country appeal, but we decide to certify the claim as clearly unfounded under section 94 of the Nationality, Immigration and Asylum Act 2002, denying an in-country appeal. Judicial review is not, in law, a suspensive remedy but removal action will always be suspended in this type of case.

39. We do not therefore agree that all appeals—except where asylum or human rights claims certified as clearly unfounded—should result in the suspension of the return decision or return order pending the decision on a substantive appeal.

40. It is possible to pursue effectively an appeal from outside the UK. At paragraph 93 of your report, you quoted the Government as informing you that between 2003 and 2005 only four persons had successfully brought an out-of-country appeal. We would like to clarify that these figures relate to appeals brought under section 94 of the Nationality, Immigration and Asylum Act 2002 following a denial of an in-country appeal for claims certified as clearly unfounded. The AIT deals with numerous appeals brought by people outside of the United Kingdom where the appellant has never been present in the United Kingdom. It also deals with a number of appeals brought by persons previously in the UK. Whilst the issues in an appeal may be different where the appellant has previously been in the UK, the access to the appeal system is the same and is effective.

## Judicial Oversight of Detention

41. We agree that detention is a serious matter and there should be an effective opportunity to test whether or not the administrative decision to detain is correct. Detained persons may apply to the Asylum and Immigration Tribunal (AIT) for bail irrespective of whether there is a pending substantive appeal before it. This right to apply for bail is notified to the detainee. Applications for bail can be made as many times as a detainee wishes and, in most cases, at any point of their detention. Bridget Prentice clarified this point in a letter to the committee so the statement in paragraph 103 that judicial review (or habeas corpus) is the sole possibility of judicial oversight is in fact not the case. The Quarterly Statistical bulletins for the last two quarters of 2005 show that 395 (quarter 3) and 415 (quarter 4) individuals were bailed from detention.

42. The Committee has commented on information and answers given about the substantive appeals and judicial review process. It is important to distinguish these against opinions given on detention and legal remedies for this. The Committee refer to the information quoted in paragraph 111 as a statement on availability for legal assistance to make a bail application whereas actually it refers to the availability of legal aid for substantive appeals and judicial review proceedings.

43. Legal aid is available for an individual to challenge the lawfulness of the detention decision before the courts. This ensures proper access to justice. Legal aid is also available, subject to the statutory tests, for proceedings to appeal against, or seek a review of, a return and/or removal order. We do not however accept that funding should be provided in cases that fail to satisfy the statutory tests. It is important that resources are focused on cases that have merit.

44. As stated in the evidence given to the Committee, the decision to detain is administrative and detention decisions are also kept under review at successively higher levels within the Home Office. We do not agree that the decision to detain should be subject to automatic or direct judicial supervision. There already exists provision for any detained person to challenge the lawfulness of their detention before the courts. That is still the position and automatic judicial oversight of detention where no application is made is not something we would advocate.

45. The current available remedies, together with legal assistance provisions and our administrative structure, comply fully with Article 5(4) of the ECHR.

### The Re-entry Ban

46. The Committee raised a legal base point in relation to Article 9 of the Directive (re-entry ban). As the Committee says, the test is whether the re-entry ban provision is incidental to the returns component of the proposal in which case Article 63(3)(b) of the EC Treaty may be used as the single legal base—or whether it should be regarded as pursuing a separate objective requiring Article 63(3)(a) as an additional legal base. This test can be difficult to apply in practice. In this case we consider that the predominant purpose of this proposal is to set standards and procedures relating to the return of illegally resident third country nationals. We regard the provisions in Article 9 providing for removal orders and return decisions to include re-entry bans as being incidental to this predominant purpose. We can confirm, therefore, that it is our view that this proposal can be adopted on the basis of Article 63(3)(b) alone.

47. We nevertheless consider that EU instruments should not be made if there is a real question of Subsidiarity, which we consider exists. The fact that some of the matters provided for by the Draft Directive, including the re-entry ban are best left to Member States to deal with internally, forms part of our argument for not opting into the Draft Directive. Among other things, the time limits would be arbitrary in nature and involve considerable administration in monitoring the bans.

48. At paragraph 170, the Committee stated that it believed that the re-entry ban should be imposed only on those persons who represent a serious risk or have been convicted of a serious crime. We think that Member States should have the flexibility to decide how long a ban should be, considering the different circumstances in each case.

49. Like the Committee, we could not accept that a person previously removed from the UK could have their ban effectively withdrawn by simply paying the costs of the removal. This is an area of concern as it would condone the abuse of the control by those who are financially well off, while those without such financial means are excluded.

50. Additional difficulties would arise for the UK in the implementation of re-entry bans as we have no access to the relevant areas of the Schengen Information System. Lack of access to the relevant SIS data is one part of the reason the Government opposes the EU-wide re-entry ban.

51. Whilst we note the Committee's concern regarding the lack of equivalence of the immigration data entered onto the SIS, the UK does not itself enter immigration data onto Article 96 of the SIS as a consequence of the Commission and other Member State's interpretation of our non-participation in the border-related elements of the Schengen acquis. We therefore cannot influence negotiations on how Member States enter data onto this part of the system.

52. The UK has made clear on several previous occasions that it would be beneficial for the UK and Schengen States to share immigration data. Our proposals to do so, however, have been refused. It has been made explicit that the UK will not be permitted to access SIS immigration data unless we first join the immigration parts of the Schengen acquis, and consequently give up our current frontier controls.

53. As you are aware, the UK participates in the judicial and police co-operation elements of the Schengen acquis but has chosen not to take part in the visa and border related provisions.

54. We have no plans to become a full member of Schengen. The Government remains convinced that as a result of our geographic position and the threat posed to the UK by irregular migration and cross border organised-crime, maintaining the UK's frontier controls is the most effective way for us to manage our borders. We are working to deliver stronger, more secure UK borders through, for example, our e-Borders

programme and the Border Management Programme. We will of course, where possible, continue to seek arrangements for sharing of immigration data.

**Letter from the Chairman of Sub-Committee F to to Liam Byrne MP**

Thank you for your letter of 4 August 2006 enclosing the formal Government Response to this report. Once Parliament resumed after the recess Sub-Committee F, which I chair and which was responsible for the report, was able to consider the response on 11 October and again on 1 November.

The usual manner of proceeding is for reports to be debated in the House once the response has been considered. However this report has already been the subject of a Take Note motion when, shortly after its publication, it was debated together with the earlier report on *Economic Migration to the EU*. Because of this, the Committee has decided that it will not seek a further debate on this report. The members of the Committee did however have a number of comments on the Government's response.

### Detention

You acknowledge the seriousness of detention, and set out in paragraphs 17 to 24 the practices which the Home Office attempts to follow in order to make the detention and subsequent removal of illegal immigrants as humane as is consistent with the need to "enforce the removal of those people who no longer have any lawful basis to remain in the United Kingdom". Certainly those practices, if adhered to, would go a long way to address our concerns about the manner in which people are taken into detention, the length of their detention and the conditions of their detention.

We doubt however whether those practices are adhered to as strictly as they might be. In paragraph 16 of the response you describe cases of the type we refer to in paragraphs 66 and 67 of the report as "unfortunate but rare". We regard them as more than unfortunate, and less than rare, and we deprecate the Government's unwillingness to publish statistics on the length of detention, as they have been requested to do in the course of debates on Immigration Bills. We would be glad to know what steps you propose to take to ensure that these guidelines are indeed strictly adhered to. When cases of the type we highlighted do come to light, what steps are taken to investigate what has gone wrong, and to ensure that the lessons are learned, so that such cases do not recur?

We were indeed aware that the United Kingdom has entered reservations with regard to a number of the Council of Europe Guidelines on Forced Return, and that these would have to be lifted before the Guidelines could be incorporated into the draft Directive; we noted as much in footnote 142. You state that the Government have no intention of lifting any of the reservations. To give just one example, we cannot see why the Government should have entered a reservation against Guideline 11 which, if incorporated in the Directive and in national law, would have the potential to improve the detention conditions of children and families. We would welcome an explanation.

We hardly need to emphasise the importance of improving the conditions of detention of children: you will be are aware of the recent report of HM Chief Inspector of Prisons following her unannounced inspection of Yarl's Wood Immigration Removal Centre on 13–16 February 2006, to which reference was made during Questions in the Lords on Monday 23 October. In a number of respects her report remains critical of the conditions of detention of children in the centre.

### Children

It seems that you are not prepared to undertake that unaccompanied children should be returned only to a person with proven parental responsibility; instead you point to a Government commitment to remove them only if their families can be traced or "adequate reception and care arrangements" can be established. The point of our recommendation was to avoid children being returned to persons who purported to have parental responsibility, but in fact did not. The Ministerial commitment you describe includes "collection by a suitable partner organisation at the airport", but it is not clear whether this would meet our concerns with regard to the policy of returning trafficked children to reception institutions in their country of origin. I wonder if you could give us more details on this.

We were kindly given sight of an earlier draft of the Government response. This included an undertaking to "offer round-the-clock support for returnees, and long-term monitoring arrangements to ensure oversight of child protection issues". We are disappointed to see that this undertaking was deleted from the final draft which you sent us, and wonder what the reason was for this change. Does this imply that you are no longer prepared to offer returnees such support?

### Appeals Against Return Decisions

On the question of the effectiveness of out-of-country appeals, there is certainly some confusion over the evidence we were given, The original evidence given to us by Tom Dodd (whose letter of 15 February 2006 is printed on page 44 of the evidence section of the report) was that "a total of four persons have been successful in out-of-country appeals and been returned to the UK". This figure surprised us so much that the Clerk sought confirmation of it. The figure was confirmed, and we were told that this covered the years 2003 to 2005. This is the evidence we quote in paragraph 93 of our report.

Now however you offer a further clarification, explaining that the figure we were given applies only to appeals under section 94 of the Nationality, Immigration and Asylum Act 2002, ie those cases where the Secretary of State has certified (wrongly, as it transpires) that a human rights or asylum claim is "clearly unfounded". It seems that there are, as we had initially suspected, many more out-of-country appeals, but that these relate mainly to persons who had never been in this country, and never would be unless their appeals were successful.

This in your view shows that access to the appeal system from outside the UK is "effective"; you also state in paragraph 37 of the response that "[your] position is that an out-of-country appeal is an effective remedy". It would be useful if you could give figures showing the proportion of out-of country appeals which succeed, and any evidence to counter our view that an appeal should suspend the return process.

### Judicial Oversight of Detention

We are grateful to you for pointing out in paragraph 41 of your response the extent to which bail applications can be made, and the fact that they are successful in a significant number of cases. But perhaps you could comment on the statement in the evidence of Bail for Immigration Detainees, which we quote in paragraph 102 of the report, that "many detainees have no legal representation and therefore cannot access elective bail procedures".

We do not understand paragraph 42 of the response, where you say that we "refer to the information quoted in paragraph 111 [of our report] as a statement on the availability of legal assistance to make bail application". We do not refer in that paragraph to bail applications; we were discussing there the need for legal aid for substantive appeals.

One provision of the draft Directive which we strongly supported was that there should be automatic judicial oversight of detention; we recommended that this should be adopted in United Kingdom law, and we set out in paragraphs 103–107 and 114–115 our reasons for this view,-which was particularly supported by the Council of Europe Human Rights Commissioner. In paragraph 44 of your response you state that automatic judicial oversight of detention where no application is made "is not something [you] would advocate". You do not however give reasons for this; we would be glad to know them.

We look forward to receiving your reply on these points.

*2 November 2006*

## Letter from Liam Byrne MP to the Chairman of Sub-Committee F

1. Thank you for your letter of 2 November 2006. Please accept my apologies for the lengthy delay in responding. I have responded to the issues you raise below.

### Detention

2. There are a number of ways in which the Border and Immigration Agency quality assures the work of its staff and their compliance with guidance and instructions. The UK Borders Bill contains provisions to establish a Chief Inspector of the Border and Immigration Agency, who will have oversight of practice and procedure in relation to the exercise of enforcement powers (including powers of arrest, entry, search and seizure) as part of their broader remit to assess the efficiency and effectiveness of the Agency. In addition, three statutory bodies oversee and inspect the Agency's work: The Independent Police Complaints Commission will oversee the powers exercised by police in pursuance of immigration functions; the remit of HM Chief Inspector of Prisons already extends to the detention estate and escort functions of the Agency; and the Children's Commissioner for England has exercised his powers to inspect Yarl's Wood Removal Centre and maintains a close interest in the treatment of children who are subject to immigration control.

3. Specifically in Enforcement and Compliance there is a Business Assurance Team which conducts thematic reviews of particular business areas and compliance with instructions is a major part of these reviews. In cases of particular concern an independent internal investigation is commissioned by the Head of Profession for

Enforcement and Compliance [or the Office of the Children's Champion]. In addition, the Border and Immigration Agency's Children's Champion keeps matters affecting children under scrutiny. His role has included the examination of particular areas of practice, drawing up commendations and the monitoring of their implementation. You will also wish to be aware that ministers are currently considering the report of a review of the family removals process which was designed to identify potential improvements to the process.

4. All these methods are designed to ensure that lessons are learnt when mistakes are made and that all reasonable steps are taken to minimise the possibility of a recurrence.

5. You mention Guideline 11 of the Council of Europe's Guidelines on Forced Returns. Whilst we have no particular difficulty with the principles outlined in Guideline 11, which deals with the detention of children, we would be concerned as to the possible adverse impact of incorporating these principles in a binding Directive or in UK law. We would take the view that the implementation of the principles concerned is not dependent on them being made mandatory. Indeed, it is already the case that the general principles in Guideline 11 underpin and inform decisions about the detention of families with children. But, if they were to be made mandatory requirements, we could expect them to be deployed in legal challenges designed simply to prevent or delay removal. That would not be acceptable.

6. In connection with the detention conditions for children you mention the report by HM Chief Inspector of Prisons (HMCIP) following her unannounced inspection of Yarl's Wood Immigration Removal Centre in February 2006. We react positively to the results of inspections by HMCIP, making improvements to areas of deficiency that have been identified wherever possible. In the Yarl's Wood report, HMCIP made a total of 12 recommendations relating either directly or indirectly to children at the centre and all were accepted. The majority of actions required as a result have been implemented, or we are satisfied that we have addressed the concern through other means. We remain committed to ensuring that the conditions in which children are detained with their families are appropriate.

## Children

7. You refer to an earlier draft of the Government response and request clarification as to the reason some areas addressed in that draft were not included in the final Government response. I am sure you will understand that I cannot comment on an earlier draft of a response that may have contained opinions from persons other than the policy leads on this subject. You may be aware that the Government issued a consultation paper on changes to the wider unaccompanied asylum seeking children policy on 1 March this year. When the consultation period ends on 31 May the Government will consider all responses and develop policy accordingly.

8. When returning those unaccompanied children with no basis to stay in the UK, safeguarding the welfare of the child would always be a key consideration in any decision to return. However we do not consider that the only safe way to remove a child is to someone with proven parental responsibility. A child with no legal right to remain in the UK would only be returned to their country of origin if the Border and Immigration Agency was satisfied that safe and adequate reception arrangements were in place. If it were not satisfied that the reception arrangements were suitable and safe for that particular child then the return would not take place.

9. I should clarify that the Ministerial commitment itself did not include "collection by a suitable partner organisation at the airport". This is part of our consideration of what could be necessary if we were to return a child to something other than their family. Where we know of evidence of trafficking and that there is a real risk of re-trafficking, we will consider this as part of the overall consideration of whether return to the home country would be in the interests of safeguarding the welfare of a child.

## Appeals Against Return Decisions

10. We have previously given you figures for the number of out of country appeals which arise after certification under section 94 of the Nationality, Immigration and Asylum Act. Between November 2002 and September 2006 there were 228 out of country appeals following certification and just 4 have been allowed. You have asked for further figures to show that out of country appeals are an effective remedy. Between April 2005 and December 2006 there were 85,000 Tribunal decisions in out-of country non-asylum appeals. This figure does not include appeals against refusal of entry clearance as a family visitor which are counted separately. Of these 85,000 appeals, 34 percent were allowed. This figure is provisional as a final statistical reconciliation of 2006 data is currently being undertaken.

Judicial Oversight of Detention

11. So far as detainee access to legal representation is concerned, the Legal Services Commission has recently completed a pilot project to provide legal advice surgeries in removal centres for two days a week. The pilot was assessed as successful and its permanent roll-out across the immigration detention estate is now under consideration.

12. You asked for the Government's reasons for rejecting automatic judicial oversight of detention. I should first say that immigration detention has never been subject to judicial authorisation or direct oversight. This is fully in line with ECHR Article 5, which does not require there to be such judicial involvement in immigration detention decisions. Introducing judicial authorisation or some other form of automatic, direct oversight would inevitably create a significant burden for the courts and would simply add another layer to the immigration and asylum processes that we are constantly seeking to simplify. We believe that our decision making process on the appropriateness of continued detention is robust so we do not believe that judicial scrutiny of every decision to authorise or maintain detention would be an appropriate use of resources. It is for these reasons that we do not regard judicial authorisation or automatic oversight to be appropriate. Indirect oversight does exist: individuals are able to challenge the lawfulness of their detention through the processes of judicial review and habeas corpus, and can also apply to Immigration Judges for release on bail. This satisfies the requirement in ECHR Article 5(4) that detained persons should be able to bring proceedings before a court to challenge the lawfulness of their detention. We are satisfied that the current position provides an appropriate level of judicial oversight.

*22 May 2007*

**Letter from the Chairman to Liam Byrne MP**

You wrote on 22 May 2007 to Lord Wright of Richmond, the Chairman of Sub-Committee F of the House of Lords Select Committee on the European Union, in reply to his letter of 2 November 2006. The Sub-Committee considered your letter at a meeting on 13 June 2007. Lord Wright has asked me to reply since it is standard practice that correspondence on all European Union Select Committee matters should be addressed to me.

A delay of over six months in replying to a letter is, as you concede, a lengthy delay; we accept your apologies. However your letter deals fully with the majority of the points the Sub-Committee had raised, and we are grateful for this.

You mention that ministers are considering the report of a review of the family removals process which was designed to identify potential improvements. We would be interested to see a copy of that review, and to learn in due course your reaction to its suggestions for improvements, and how you propose to take these forward.

We are puzzled by paragraph 5 of your letter, dealing with guideline 11 of the Council of Europe Guidelines on Forced Return. We asked why the Government would not lift the United Kingdom reservation to this guideline, and your reply is that the principles in the guideline "underpin and inform decisions about the detention of families with children", but that if they were to be made mandatory they might be used in legal challenges to prevent or delay removal.

We accept that if, as our Report recommended, the Guidelines were to be incorporated in the Directive, this would create statutory rights and obligations which might be the subject of litigation. However it is plain from paragraph 27 of the response (although not stated in terms) that the Government has rejected this recommendation. It follows that lifting the reservation would simply indicate the intention of the United Kingdom to follow these principles, but would not impose any legal obligation to do so. The guideline sets out only the minimum requirements for the humane treatment of children and families in detention. Unless the Government has no intention of complying with this guideline, it seems to us that the reservation could and should be lifted. We would be grateful for your comments.

As regards our recommendation that children should be returned unaccompanied only to someone with proven parental responsibility, we are glad to note that a child would be returned to its country of origin only if the Borders and Immigration Agency was satisfied that safe and adequate reception arrangements are in place. However we do not understand your statement that the "long-standing Ministerial commitment" mentioned in paragraph 31 of the response does not in fact include "collection by a suitable partner organisation at the airport". We do not know the wording of the "long-standing Ministerial commitment" to which you refer. However it seems to us that paragraph 31 constitutes an express commitment to us, and more widely, that a child will not be removed unless there is a suitable package of reception, care and reintegration support in its home country, and that this package would include "collection by the International

Organisation for Migration (IOM) and/or a suitable partner organisation at the airport . . .". We would be grateful if you would confirm our understanding of this Ministerial commitment.

We look forward to receiving your early reply on these points.

*14 June 2007*

## 32nd REPORT [bis]: EU LEGISLATION—PUBLIC AWARENESS OF THE SCRUTINY ROLE OF THE HOUSE OF LORDS

### Letter from Rt Hon Geoff Hoon MP, Minister for Europe, Foreign and Commonwealth Office to the Chairman

Thank you for the copy of your report on EU Legislation—Public Awareness of the Scrutiny Role of the House of Lords. The Government welcomes the quality of analysis and expertise, reflected in this report, that the Committee contributes on European issues.

You asked to be kept informed of the Government's European Union public communications initiatives. The Government welcomes the Committee's support and interest in the Government's commitment to engaging and informing the UK public on EU issues and the future of Europe debate. In April, as well as the new website we also published an updated "Guide to the European Union". In June, we produced a short, animated one-minute guide to the EU which can be viewed on the website at www.europe.gov.uk.

The Government also continues to work in partnership with the European Commission and European Parliament to co-ordinate activities, including on implementation of Plan D. In particular, the Govenuent is working closely with the Commission to make the Europe Direct project a success. The first of these information centres was launched on 7 July in Plymouth, and we look forward to the remainder of the centres opening over the course of the next year.

The Government will provide the Committee with further updates on our EU communications initiatives upon request.

Your report recommended that more time should be made available for debates on your committee's reports and wider European issues. I understand that in this session 21 reports by your committee have been debated on the floor of the House of Lords. This compares well with 11 reports for all other committees of the House.

*25 July 2006*

## 33rd REPORT: SEVENTH FRAMEWORK PROGRAMME FOR RESEARCH

### Government Response

The Government welcomes the thorough and wide-ranging work undertaken by the Committee in its examination of the Seventh Framework Programme (FP7) proposals and in the production of the associated Report.

Since the Report was published there have been positive steps forward in the negotiation of FP7.

The European Parliament completed its First Reading of the FP7 proposal on 15 June 2006. The Commission published a revised proposal for FP7 on 28 June 2006. In response to these events and to keep the legislative process on track the Presidency produced a compromise text, consistent with UK priorities, with the aim of reaching Political Agreement at an extraordinary Competitiveness Council on 24 July 2006. Political Agreement was achieved and on the basis of this agreement the Council established a Common Position at the Competitiveness Council on 25 September. This will be forwarded to the European Parliament for consideration in accordance with the codecision procedure. The European Parliament is aiming for a Second Reading of FP7 in November and Council hope to formally adopt FP7 at the December Competitiveness Council.

We expect to mark the start of FP7 with a launch event in London in early 2007, it is hoped that the Science Minister Lord Sainsbury, the Chief Scientific Advisor Sir David King and an EC Commissioner will attend this event.

## Budget

*Conclusion 1: We welcome the increased funding for research and development from roughly €5 billion per annum under FP6 to around €7.7 billion per annum under FP7.*

The Commission's revised FP7 proposal of 28 June 2006 maintains the amounts proposed by the Commission in the amended proposals of 24 May 2006. These—set the FP7 budget at approximately €54 billion, equating to roughly €7.7 billion per annum.

At the Competitiveness Council on 24 July 2006 Political Agreement was reached on a text that included the same total amount for FP7 as that contained in the Commission's revised proposal.

## UK Value Added

*Recommendation 1: We were concerned that some areas of industry believed no competitive gain for UK business had been attributed to EU research programmes. We understand that FP7 aims to make research and development more industry-driven and the funding less bureaucratic and complicated. We urge the Government to ensure this aim becomes a reality and that industry supports these new instruments.*

The Commission has been receptive to the concerns expressed by the Government and shared by industry across Europe about the need to ensure that FP7 is driven by the needs of the ultimate end users of research in industry. It has sought to strengthen the industry input into the policy making process through such instruments as the European Technology Platforms (ETPs) and is seeking to make FP7 more industry-friendly in its programmes and structures. The Government welcomes this increased openness to the needs of industry.

The Commission has made a strong and public commitment to tackle bureaucracy in FP7. It has undertaken to improve communication with participants, simplify procedures and speed-up processes. Its proposal for the FP7 Rules of Participation puts forward a number of measures to help improve the implementation of the programme such as giving greater autonomy to consortia, removing complex cost reporting models and the relaxation of some of the existing requirements surrounding dissemination, use and access to results from funded projects, which should make FP7 a more attractive proposition for industry. The Government has and will continue to support the Commission in its efforts to improve the delivery of the programme and monitor its performance once the programme is launched.

## Joint Technology Initiatives

*Conclusion 2: We welcome the proposal for the European Technology Platforms, involving a range of stakeholders including industry, to identify large scale industrial challenges and agree a strategy for tackling them (a Strategic Research Agenda). We also welcome the intention to implement a strategic research agenda through public-private partnerships (Joint Technology Initiatives) as this is most likely to ensure that the research projects are industry-driven. This method of funding will allow important programmes of research requiring substantial sums of money to be taken forward.*

The Government also welcomes the increased effort to engage industrial end users in the process of establishing the priorities for FP7 funding in the Cooperation Specific Programme. European Technology Platforms, which are industry driven, can play a key role in identifying a Strategic Research Agenda (SRA) for their industrial sector. This should also feed into the process of setting the work programmes and defining the fields in which calls for proposals for FP7 funding will be made, though the individual projects undertaken to advance SRAs will be funded through these calls and using established FP funding instruments, as well as other potential sources of funding.

Joint Technology Initiatives (JTIs), which involve FP funding in support of large scale public/private partnerships, are also driven by industry but go a stage further in terms of integration and combining private sector, national and European level funding. The Government supports the concept of JTIs in cases where the criteria (eg of scale, European added value, importance of the subject etc) set out in the FP7 proposals are met.

Six possible JTIs have been identified by the Commission. It is not yet clear how many of these will ultimately be funded and on what scale; it is for instance possible that there will be a staggered start with some JTIs being launched before others. Our expectation now is that the Commission will come forward with proposals on this subject in the first half of 2007. The Government's preference at this stage (and subject to further information about the scale, scope and structure of individual JTIs) would be that the JTIs on innovative medicines, aeronautics and hydrogen and fuel cells should be priorities for an early launch.

*Recommendation 2: The Minister was unsure what monitoring and reporting systems would be in place to safeguard these projects. It is essential that appropriate systems are in place and we ask the Government to ensure that this happens.*

There are still no concrete proposals in this field. The Government shares the Committee's concern about the importance of the governance structures for JTIs. There will be a need to balance the need for proper oversight by Member States (and indeed by the European Commission) with the need for JTIs to have adequate flexibility and industrial leadership in order to address industrial priorities and secure significant private investment. We shall of course make every effort to ensure that the most appropriate balance is struck in each case.

## European Research Council

*Conclusion 3: We welcome the implementation of an ERC as an instrument which could add value at an EU level.*

*Recommendation 3: We accept the Minister's assurance that the quality of the members of the ERC governing body would ensure the ERC was independent. However we accept the CBI's point that it will be impossible to assess the independence of the ERC until it was operational. We accordingly urge the Government to seek a post-implementation review of the ERC's independence to meet the concerns of industry.*

The current FP7 proposals include a provision for a thorough mid term review of the operation of the ERC by 2010. This review will consider whether the legal base upon which the ERC has been established and the governance structures which derive from this are adequate to ensure the effective independence of the ERC from outside influence which we wish.

*Conclusion 4: We welcome the peer review system which replicates best practise in the UK's research councils and the USA's National Science Foundation.*

The ERC Scientific Council has recently published further information on how the peer review process will operate. This, along with updates on how the Council intends to implement the funding actions under the FP7 Ideas Specific Programme can be found on its website (http://ec.europa.eu/erc/index_en.cfm)

## European Institute of Technology

*Conclusion 5: The Minister told us that the Government is "very sceptical" over the Commission's proposal to establish a European Institute of Technology. On the basis of the evidence received so far, the arguments against remain persuasive. However the proposal for an EIT remains under scrutiny and we will report further in due course.*

The Commission proposes to bring forward proposals relating to the EIT shortly. The Government will examine these in detail when they appear and will report further to the Committee in the course of the scrutiny process. The UK's success criteria for the EIT relate to clarity of purpose, clarity of the criteria for selecting both research topics and universities/institutes and clarity of expected outcomes. We continue to stress these criteria to the Commission and to other Member States.

## National Mobility Programmes

*Recommendation 4: National Mobility Programmes should enhance the number and calibre of researchers in the EU. We urge the Government to consult with industry to ensure that its concerns about National Mobility Programmes are addressed.*

The Government continues to work with the Commission to clarify how its proposals for co-funding national programmes would work in practice to ensure that it is possible for industry based researchers to participate on the same terms as they would be able to participate in the corresponding UK funding actions.

COMPETITIVENESS AND INNOVATION PROGRAMME

*Conclusion 6: We were pleased to note that the Government shared our concern that there should be a synergy between the CIP and EU industrial policy and the structural funds. This is essential if the CIP is to deliver its objectives.*

The Government is pleased to see that the Political Agreement text for FP7 agreed by the ,European Council at the Competitiveness Council on 25 September draws synergies with both the Structural Funds Regulation and CIP.

SPACE AND SECURITY PROGRAMME

*Recommendation 5: We note that the budget line for space and security under the Seventh Framework Programme for Research has not yet been agreed but will need to be reduced.*

The budget for the different areas of research in FP7 will not be finalised until the programme is agreed via the codecision procedure. The Government is content that the budget included in the political agreement text reflects UK priorities.

*Recommendation 6: We attach great importance to the undertakings given in Commissioner Verheugen's letter, in particular that there should be a "clear and exclusive focus on civil research". These undertakings should be reflected in FP7. We recommend that the Government seek agreement on the following:*

— *The Commission should engage with Member States at an early stage on all research proposals under the programme in order that the scope of the proposed research can be determined prior to commencement.*
— *COREPER should refer proposals on the space and security programme which it considers to be outside the civilian scope of that programme to the GAERC which should make a final determination on whether the research may be carried out.*
— *When proposing to carry out research on dual-use technology, the Commission should be mandated to co-operate with Member States and the European Defence Agency.*

The Government agrees wholeheartedly with the Committee that the focus of FP7 must be on civil research. It is worth noting that the Framework Programme does not have the necessary legal basis to fund defence research; projects funded by the programme must be of a civil nature. Decisions concerning defence matters can only be taken by intergovernmental cooperation under the Common Foreign and Security Policy pillar of the European Union.

The Government will be able to closely scrutinise and monitor the Commission's management and implementation of the space and security programmes through participation in the relevant programme committee. The committee will fulfil a number of important roles, foremost being the development and approval of the Work Programme, which sets out the detailed objectives, specific scientific and technological priorities and the timetable for implementation. It will also have access to a wide range of information including details of submitted proposals and consortia, full evaluation reports and the lists of projects that will be funded. The Government believes that the committee will be able to carry out the functions foreseen by the Committee.

*Recommendation 7: We recommend that the Government provide updates on the negotiations of the space and security programme as soon as they become available.*

The Government will continue to keep the committee up to date on the development of the negotiations relating to the space and security thematic area, and the whole of FP7.

**Letter from the Chairman to Lord Sainsbury of Turville, Parliamentary Under-Secretary of State for Science and Innovation, Department of Trade and Industry**

Thank you for your Government Response which Sub-Committee C considered at its meeting on 26 October. The following comments relate only to that part of the Response dealing with space and security.

We noted in our Report that in your letter dated 10 May 2006 you stated that the Government wished to see the budget line for space and security reduced in favour of other thematic areas such as health, energy and transport. However, in your Response you now state that "The Government is content that the budget included in the political agreement text reflects UK priorities". Can you confirm that the budget for space and security in the political agreement text has been reduced? If not, have your priorities changed?

We welcome your agreement that the focus of FP7 must be on civil research and that the Framework Programme does not have the necessary legal basis to fund defence research. We were also concerned, however, with the potential involvement of the Commission in research into dual-use technologies. We therefore proposed three safeguard mechanisms which could be built into the Framework Programme.

We recommended that the Commission should engage with Member States at an early stage on all research proposals under the space and security programme in order to determine the scope of the proposals. The information you have provided in your Response on the programme committee reassures us that this engagement will take place.

However. we also proposed a further two safeguards—reference to the GAERC and consultation with the EDA—which your Response does not address. We ask that you respond specifically to these proposals stating whether you raised them in negotiations and whether you agree that they would assist in ensuring that the FP7 retains its civilian focus.

*30 October 2006*

**Letter from Malcolm Wicks MP, Minister for Science and Innovation, Department of Trade and Industry to the Chairman**

Thank you for your letter of 30 October to Lord Sainsbury in which you raise certain points concerning the space and security elements in the Seventh Framework Programme as reflected in the political agreement text. I am replying as this matter falls within my portfolio.

The budget for space and security in the original Commission proposals to which David Sainsbury's letter of 10 May referred was set at €2.858 billion. In the political agreement text these budgets (which have now been divided into separate programmes in line with UK preferences) stand at €2.78 billion–€1.43 billion for space and € 1.35 billion for security. This overall reduction took place in the context of an overall increase in the sums allocated to the Cooperation Specific Programme, so in percentage terms the share of Framework money going to these areas has been reduced in line with UK preferences. While the political agreement text may be subject to minor adjustment as it goes through the co-decision process with the European Parliament, it is unlikely that these figures will be substantially modified. This therefore represents a satisfactory outcome from a UK perspective.

You also raise the issue of safeguard mechanisms to enable Member States to ensure that the security research element is solely focused on civil security research and that they are fully involved in the consideration of all research proposals. I can report that we are pleased with a number of recent developments.

Firstly, it has been agreed that due to the particularly sensitive nature of security research, a Regulatory Committee should be established as the Programme Committee for the security research part of FP7. This will provide Member States with a greater say in the scope of the programme, with recourse to the Council if agreement cannot be reached with the Commission.

Secondly, under the draft Rules of Participation, for security research it is envisaged that specific provisions will be laid out in the grant agreement relating to "*changes to the consortium's composition, confidentiality, classification of information, and information to Member States, dissemination, access rights, transfer of ownership of foreground and use thereof*".

This is an important development, as it will allow UK and other Member States to scrutinise in detail any project proposals which involve the use or creation of classified information or that may require export licences. Member States will be able to flag up any proposals of concern and scrutinise them to ensure that all security issues have been complied with.

Finally, the draft Council Decision on Framework Programme 7, also explicitly mentions the need to consult the EDA.

*24 November 2006*

## 34th REPORT: THE EU AND AFRICA: TOWARDS A STRATEGIC PARTNERSHIP

### Department for International Development and Foreign and Commonwealth Office's Joint Response

We welcome the publication of the European Union Committee's 34th Report, Session 2005–06: *The EU and Africa: Towards a Strategic Partnership*. The Government accepts many of the Committee's conclusions and recommendations. We appreciate the important role the Committee has played in highlighting the continuing need to keep Africa at the top of the European Union's agenda.

STRATEGY

[Paragraph 442] *"We strongly agree that the problems of Africa's lack of development have been fully analysed and the necessary actions to be taken identified. The challenge now is to deliver. It is for the EU, acting under its Strategy for Africa, to make this happen".*

We agree and that is why the UK continues to push for implementation of the commitments in the Strategy. The UK is also playing its part. The Foreign and Commonwealth Office and the Department for International Development (DFID) are leading efforts across Whitehall government departments to implement specific areas of the strategy. The Government's recent White Paper on Making Governance Work for the Poor (Cm 6876) sets out how the UK will work with others to deliver on the development promises made last year on Africa at the Gleneagles summit, the UN World Summit and the European Council.

[Paragraph 443] *"The United Kingdom Government, as promoter of the Strategy, should take the lead in ensuring that the Strategy is fully implemented".*

The leaders of all 25 Member States and the Commission agreed on the need for a Strategy and on the Strategy itself. EU partners have praised the UK's input to the Strategy. The mechanics of the EU are such that the Commission, Council Secretariat and the rotating Presidency will play a particularly important role in monitoring implementation. But the UK remains strongly committed to working closely with all of these to ensure full implementation. We are actively engaged with the current Finnish Presidency and are making appropriate contacts with future Presidencies who will be responsible for ensuring that reviews of the Strategy are undertaken.

[Paragraph 444] *"The EU has to acknowledge the many challenges noted in this Report and work with the Africa that exists, and not the Africa that Europeans would like to see. If this happens, there is a real chance that a genuinely joint strategy for Africa will emerge and be of value to all concerned".*

The Report identifies many challenges to progress on the Strategy for Africa and to African efforts to build a peaceful, democratic and prosperous future. The EU Africa Strategy is founded on the principles of partnership and African ownership to ensure that the EU works with the Africa that exists. As the new joint strategy is negotiated with the African Union we will continue to urge that these principles are respected.

DEVELOPING THE EU-AFRICA PARTNERSHIP

[Paragraph 445] *"We believe that a second EU-Africa Summit is important for enlisting African support at the highest level for the establishment of a strategic partnership, and to ensure that EU policies are in line with African objectives. A second Summit would also considerably enhance prospects for the effective implementation of the Strategy. The should continue to explore avenues to enable the holding of the Summit In the meantime, the EU should vigorously pursue all other mechanisms for dialogue with Africa in particular, but not solely, through the ministerial Troika meetings".*

We look forward to the holding of the next EU-Africa Summit as soon as possible. The Summit must be well prepared in advance, and the issue of Zimbabwean attendance needs to be resolved satisfactorily. Any solution should be consistent with the EU's Common Position on Zimbabwe and the travel ban list. The EU has encouraged African states to propose creative solutions which respect EU policy.

As set out in the Strategy, and more recently in a written declaration at the June 2006 European Council, we are committed to the EU/Africa dialogue. Regular meetings are held between the European Union and African Union (AU). In our experience, we have found the troika format to be the most effective format. We are nevertheless open to practical solutions for further enhancement of the dialogue. One method could be further meetings between the EU and African ambassadors in Brussels. Our main concern is the necessity for the AU, in keeping with its own decision-making process, to be able to focus on priorities. We would therefore welcome co-ordination being focused in Addis Ababa as well as contact in Brussels.

[Paragraph 446] *"In providing detailed targets the joint implementation matrix agreed in Vienna on 8 May is an important development in the implementation of the EU Strategy. We agree that it also has symbolic value due to its joint formulation by both the EU and the AU. However, it remains essential for realisation of the partnership that a full joint EUAfrica strategy be agreed by heads of state and government, preferably at a second EU-Africa Summit".*

The Finnish Presidency is discussing this with the African Union. We expect to see an outline document in October.

[Paragraph 447] *"The matrix should specify, in relation to each commitment, who exactly within the EU is responsible for its implementation. Where there is joint responsibility between the Commission and the Council, further details should be provided as to what action each institution will take".*

The Commission, Council Secretariat and Member States will continue to use their regular contacts to ensure coherent and coordinated implementation of the different commitments in the Strategy. The Finnish Presidency is discussing the level of detail to be recorded in the matrix, including on identified commitments, with Member States and the Commission.

[Paragraph 448] *"The focus on the EDF as the primary source of funding for the Strategy for Africa is understandable but not inevitable, Although certain sources of funding, including from Member States through the CFSP budget and bilateral assistance, cannot be incorporated into plans being drawn up by EU officials, the EDF is not the only budget available to the EU The proposed new financial instruments, once agreed, should also be available for fulfilling the commitments under the Strategy".*

Negotiations continue between the Council, Commission and the European Parliament, but it looks likely that the Commission will be able to draw on six of nine external spending financial instruments to help fulfil the commitments under the Strategy.

[Paragraph 449] *"In making proposals for new initiatives under the Strategy, the Commission should determine which source of funding would be most suitable for each initiative, and justify that decision as part of its proposal".*

This is standard Commission practice.

[Paragraph 450] *"We welcome the EU's commitment to including information on Member State bilateral aid within the joint implementation matrix".*

The Finnish Presidency is discussing the level of detail to be recorded in the matrix, including on identified commitments, with Member States and the Commission.

[Paragraph 451] *"Close monitoring and review by the Council of Ministers of the commitments made in the EU Strategy for Africa are essential for its implementation. The Strategy and its implementation should be reviewed annually, with progress measured against the more specific commitments set in the joint implementation matrix".*

We agree that it will be important for the Council to monitor closely and review implementation of the Strategy. The matrix will provide a valuable tool against which to judge progress. An initial review will be undertaken at the December 2006 European Council. Reviews by Head of Government are envisaged at least every two years thereafter, as agreed at the December 2005 European Council. We see this as a satisfactory way forward. We anticipate, and if necessary will press for, less formal reviews through the EU Council Of Ministers (Foreign and Development Ministers) and through the regular EU-AU dialogues.

EU-Africa Dialogue

[Paragraph 452] *"In the absence of a second EU-Africa Summit, the dialogue and co-operation which has taken place at all levels between the EU and AU has been a positive development and its continuation will be essential to the implementation of the EU Strategy for Africa. Dialogue needs to be pursued more widely outside the level of the two Commissions and the Ministerial Troikas".*

The response above to Paragraph 445 explains the importance of the EU Africa dialogue and steps towards a second EU Africa Summit. The Report suggests greater interaction on a parliamentary and civil society basis. Parliamentary discussions on issues affecting Africa are held through the Joint Parliamentary Assembly. In addition, organisations such as the inter Parliamentary Union or Commonwealth Parliamentary Association work to ensure individual member states' parliamentarians work with their opposite numbers. Relationships between civil society in Africa and in Europe are also important. The UK encourages such links through DFID's Civil Society Fund.

[Paragraph 453] *"Although it is essential that the EU engage with all the various institutions within Africa, the African Union is the organisation which can best promote a pan-African consensus and the EU is accordingly right to focus on the AU as its principal partner in the EU-Africa dialogue".*

The EU's ideal partner is the AU, hence the EU's focus on this relationship. However it is important to remember that not all countries in Africa belong to the African Union. Provision should be made to ensure all African countries are involved in dialogue with the EU. On some issues including trade there is a role for the regional bodies. They may have, on specifics, more latitude than the AU.

[Paragraph 454] *"The EU should continue to make every effort to engage with the sub-regional organisations as well as with the AU".*

Sub regional organisations are invited to discussions with the European Commission regularly, for example on Economic Partnership Agreements and regional European Development Fund (EDF) planning meetings. The EU helps to build the capacity of sub-regional organisations and the AU through the EDF.

It should be noted that African Heads of State have agreed to rationalise some of Africa's regional economic communities and organisations. The EU supports this decision and we think it is vital.

[Paragraph 455] *"The EU should, working in co-operation with the African Union, find ways to better engage all elements of civil society in African countries in putting forward ideas for implementation of the EU Strategy for Africa".*

Effective consultation with civil society organisations is highlighted in the European Consensus on Development and in EC programming guidelines. We recognise the importance of engaging African civil society organisations in the development of African countries. This is why we encourage African countries to engage with such organisations when consulting on their national plans for poverty reduction.

The UK supports the African Monitor initiative, led by the Archbishop of Capetown, which aims to establish a civil society network across Africa to monitor implementation of, and the impact of, African and donor commitments to support the continent.

[Paragraph 456] *"The Commission should seek to strengthen its delegations throughout Africa in order to enable full implementation of the Strategy This will require increased numbers of staff in some delegations, and improved levels of training and expertise".*

This is a matter for the Commission, but we agree that delegations should be strengthened whenever appropriate and possible.

[Paragraph 457] *"The EU should create a more unified structure for the different functions performed by the Commission and the Council Secretariat in Addis Ababa. There should be a single overall EU mission which brings together expertise on development, governance and security, and which can be an effective interlocutor with the AU on all these matters".*

EU representation in Addis Ababa should be made as effective as possible. Current EU representatives from both the Commission and the Council are doing excellent work, but their impact could be increased by a more coherent approach. The UK strongly supports increased co-ordination between Council secretariat and Commission officials in Addis, but care must be taken not to "combine" their distinct roles.

[Paragraph 458] *"All EU and Member State missions based in Africa, especially to the African Union, should share their expertise and co-ordinate their structures in order to ensure a harmonised approach to relations with each African state and regional organisation".*

We agree with the recommendation that EU Member States and the European Commission can work better together. And this is already happening. The UK and other Member States participate in a staff exchange programme to help share expertise. A joint donor office has been set up in southern Sudan, including representatives from UK, Netherlands and Sweden, and joint strategies are being agreed between the Commission, Member States and other donors in several countries (eg in South Africa), supporting African countries' own priorities. The UK is involved.

The priority is to get all bilateral and multilateral donors in a country to work together behind a nationally agreed and nationally owned poverty reduction strategy or plan. Different donors will be best placed to play a coordinating role in different countries. We will encourage the European Commission to take on this responsibility where appropriate.

[Paragraph 459] *"There should be close co-ordination and regular meetings held between the Special Representatives based in Africa and the relevant Commission delegations".*

The EU's and Presidency's Special Representatives and the Commission work closely together, both in Brussels and on the ground. The UK is supportive of such co-ordination. We are content with the way each Special Representative (Mano River Union, the Sudan and the Great Lakes) interacts with the Commission, Council Secretariat and Member States.

## The EU and AU Institutions

[Paragraph 460] *"Some rationalisation of both European and African institutional structures will be necessary to avoid duplication and turf fighting. The EU should consider how best it can rationalise its own institutions and instruments and the way they work".*

The African Union, the European Commission and EU and AU Member States have made clear that African regional organisations need to be rationalised and that AU and NEPAD need to work well together. The UK welcomes the decisions made at the July 2006 Banjul AU summit not to recognise more Regional Economic Communities and to integrate NEPAD into AU. We look forward to full implementation of these important decisions. We are however concerned that the effectiveness of NEPAD and the RECs should not be impaired during this period of uncertainty.

The UK strongly supports of joined-up working between EU institutions working on Africa. It is important that the distinctions between pillar one and two activities are clearly maintained and competences respected. Provided there is adequate communication, coordination and cooperation, duplication and turf-fighting can be avoided within existing European institutional structures. The EU is currently in the process of rationalising its external actions instruments. The Fundamental Review of the Budget in 2008–09 and continuing discussion on the Constitutional Treaty will provide further opportunities to review the EU Budget and structures.

[Paragraph 461] *"We endorse the principle of strengthened co-ordination between the Member States and institutions of the European Union and urge the United Kingdom Government to engage fully with the Commission and other Member States in the implementation of the Strategy for Africa".*

See Paragraph 458

[Paragraph 462] *"Zimbabwe underscores the problems relating to the political weakness of the AU; the failure of the AU to respond robustly to the situation in Zimbabwe presents a major challenge".*

The African Union has made attempts to grapple with the Zimbabwe crisis. In 2005, following "Operation Murambatsvina" (the mass housing demolitions by the Zimbabwe government), the AU sent a Special Envoy, Tom Nyanduga, to Harare. The AU Chairman, President Obasanjo of Nigeria, nominated former Mozambican President Chissano to facilitate a dialogue of national unity in Zimbabwe. Sadly, the Zimbabwe government rebuffed both initiatives, but the AU's willingness to engage on the issue is something that can and should be built upon.

It is also encouraging that the African Commission on Human and Peoples' Rights (ACHPR) issued a resolution in December 2005 which condemned the human rights violations currently being perpetrated in Zimbabwe. At its July 2006 Banjul Summit, the AU asked the Zimbabwe government to respond to this resolution.

The EU regularly raises Zimbabwe with the AU, with SADC and with individual African states, urging African action. UK Ministers meet African leaders in their frequent travels to Africa, at international meetings and in the UK. Zimbabwe is regularly among the topics discussed.

[Paragraph 463] *"EU engagement with the AU should recognise the progress in Africa that the AU represents, as well as the scale of the challenges which it faces".*

Agreed. Africa's move from the Organisation of African Unity with its policy of non-interference to the African Union and its policy of non-indifference, is significant progress. The AU is growing in competence in the area of peace and security and is increasingly doing so in other areas. It is important that we continue to support capacity building of the African Union at a pace and level that the AU Commission can utilise effectively. The EU recognises that progress in Africa is challenging but has committed through the Strategic Partnership to work with and to support African countries and the African Union in this task.

[Paragraph 464] *"The EU must support the AU's efforts to rationalise both its internal functions and its interaction with other African institutions".*

The European Commission has set aside a possible €55 million to be committed by 2007, to support African Union institutional capacity building and a separate proportion of the Africa Peace Facility to support capacity building under the peace and security architecture. The UK is willing to contribute to joint funding once the African Union is able to demonstrate that adequate public financial management procedures and functioning systems are in place.

[Paragraph 465] *"EU budgetary assistance to the AU should take account of the level of support provided by the African Union countries themselves, Over time, the EU should oversee a process whereby the AU's financial requirements are fully met by its own member states".*

Agreed. It is important that African countries continue to take responsibility for their international institutions and pay their dues to the African Union and contribute more robustly to the voluntary element of the budget.

### Working with Other States and Multilateral Institutions

[Paragraph 466] *"The EU should use its dialogue with China to encourage the Chinese to participate in encouraging reform in African states in the areas of governance, democracy and human rights".*

Increased trade and investment is essential to Africa's progress towards achieving the Millennium Development Goals. China, as a global economic power with a significant and growing economic relationship with Africa, has a key role. We welcome China's publication in January 2006 of a China-Africa Strategy as an indication of her growing engagement and we encourage China to play a full and active role in multilateral fora relating to Africa and in country level donor groups. The EU hopes to agree a structured ongoing dialogue with China on Africa, including with a view to developing practical cooperation on the ground. All of Africa's partners need to work in Africa in a way that reinforces the principles outlined in Africa's own New Partnership for Africa's Development agenda—improved peace and security, democracy, transparency, economic competitiveness and sustainable development. We welcome Chinese Premier Wen Jiabao's comments in South Africa in June that China "encourages African countries to improve democracy and the rule of law and to maintain social justice and equality".

[Paragraph 467] *"The EU should continue to seek international backing for its work in Africa through the United Nations in order to gain the approval and assistance of third countries for that works".*

Paragraph 3 of the Report notes that achievement of the Millennium Development Goals, as agreed by the international community in the UN, is at the heart of the Strategy. Therefore the EU's work in Africa has the broad backing of the UN. But the UK agrees the EU should look for opportunities to reinforce and consolidate that support in relevant UN fora.

[Paragraph 468] *"The EU and its Member States must work with all relevant UN agencies in both policy formation and programme delivery in a genuine spirit of co-operation".*

Paragraph 34 of the 2005 European Consensus on Development states that the EU will work in close cooperation with multilateral players such as the United Nations to prevent duplication of efforts and to maximise the impact and effectiveness of global aid.

[Paragraph 469] *"It is essential that the EU, through its Member States, encourages the international finance institutions and the OECD to take into account the development and security needs of Africa in formulating and implementing their policies".*

International institutions such as the World Bank and African Development Bank are required to take into account the development needs of Africa when formulating and implementing their policies. The OECD ensures this is the case through its partnership dialogue with UN Economic Commission for Africa. The UK consistently raises the needs of developing countries in meetings with these institutions. In ensuring the needs of Africa are taken into account in international institutions' policy making it is also important that there is greater African voice. The EU has committed in paragraph 54 of the 2005 European Consensus on Development to promote the enhancement of the voice of developing countries in international institutions. For example, the UK has provided support to the Least Developed Country Group within the World Trade Organisation.

[Paragraph 470] *"The EU Commission's participation in the Africa Partnership Forum should be used to ensure that unnecessary duplication of efforts by its members and the EU is avoided".*

In order to help the Africa Partnership Forum carry out its role of monitoring implementation of international commitments made to and by Africa, an Africa Partnership Forum Support Unit has been set up. It is based in, but independent from, the OECD in Paris. The UK was instrumental in setting up this Support Unit and we are providing 20% of its funds. This Support Unit is due to issue its first report at the next meeting of the Forum on 26–27 October 2006 in Moscow (not in the UK as suggested in box 5 on page 20). This first report will focus on delivery by Forum members of commitments made on the themes discussed at the last meeting in Maputo in May: HIV and AIDS, infrastructure and agriculture. The Support Unit will draw on a range of sources to compile its monitoring reports, including the EU-Africa matrix.

The monitoring reports of the Africa Partnership Forum Support Unit and the sharing of information in these meetings will give members a better overview of each others' work. The European Commission and 13 EU Member States are members of the Forum. This Forum should help avoid unnecessary duplication of efforts, including between the EU and other partners.

[Paragraph 471] *"Through its member states, the Forum should work with the EU, particularly in seeking to formulate complementary policies and ensure that their activities are carried out in a co-ordinated fashion avoiding unnecessary duplication".*

As outlined above, the monitoring reports of APF Support Unit and the sharing of information in APF meetings should give members a better overview of each others' work. This should help encourage individual APF members to formulate complementary policies, coordinate activities and avoid unnecessary duplication of efforts. The APF is of course not a policy-making or implementing body itself.

### Policy Coherence

[Paragraph 472] *"We commend the EU's commitment to policy coherence for development and agree that the EU's policies, particularly under the Strategy for Africa, should be formulated taking into account their potential impact upon developing countries".*

[Paragraph 473] *"The European Commission should continue to facilitate discussions on coherence between different Directorates-General. Commission officials should consider the potential impact of their proposals on developing countries at the outset and be prepared to justify their proposals in public, including any negative impact they might have".*

We welcome the EU's commitment to take account of the objectives of development co-operation in all polices which are likely to affect developing countries as set out in the Treaty of the European Council and the European Consensus for Development. To ensure this happens, the UK will continue to work with the Commission and other Member States to ensure the Commission makes full use of existing internal procedures such as the inter-Service quality Support Group, policy coherence working groups and the impact assessment process. All Commission proposals are published and subject to scrutiny and debate by Member States and the European Parliament.

[Paragraph 474] *"The EU must work with African partners, as well as co-ordinating its internal activities, to ensure that its policies are coherent across the whole of Africa".*

The UK will continue to work to ensure that the Commission makes full use of existing internal procedures such as the inter-Service Quality Support Group, policy coherence working groups and the impact assessment process to ensure that its policies are coherent across the whole of Africa. The EU should also use its regular dialogue with the AU and the RECs to this end.

### Development Assistance

[Paragraph 475] *"We welcome the EU Member States' commitments to increase aid and to ensure that half of that increase goes to Africa. We are, however, concerned that some Member States will not be able to meet their commitments. We reiterate the recommendation in our recent Report on the Millennium Review Summit that monitoring procedures should be rigorously applied in order to ensure that the pledges made by all Member States are met".*

We support the Committee's emphasis on close monitoring of the 2005 aid volume commitments. The Commission produces an annual evaluation of Member State progress against aid volume commitments made since 2002. The evaluation is then discussed by the Council of Ministers each Spring.

[Paragraph 476] *"A major review exercise should be conducted by the Commission in 2010 to determine whether Member States are meeting their commitments. If they are not, the Commission should put forward constructive ideas for reaching the 2015 target including, if necessary, increases in the EDF and the EC's development budget".*

The EU undertakes an annual review of its commitments under the 2002 Monterrey Consensus on Financing for Development and the May 2005 Commitments. The Council undertook its most recent review in April 2006. This process provides the opportunity to review Member States' progress towards meeting their aid volume commitments. We fully expect progress to be reviewed in 2010 as it is every year. It remains to be seen whether the review in 2010 will be different to usual. But we will encourage constructive ideas to make progress should the EU be off track from meeting the 2015 target.

[Paragraph 477] *"The United Kingdom Government should set a positive example by being open and transparent in the way in which they achieve their own target; and should encourage others to do the same".*

The new International Development (Reporting and Transparency) Bill introduced as a Private Member's Bill by Mr Tom Clarke MP in June 2005 and which recently passed into law will increase transparency in the reporting of international development in the UK. The Department for International Development will provide Parliament with an annual report on the level, poverty focus and coherence of the Government's international development policy and expenditure, and their contribution towards reaching the Millennium Development Goals.

[Paragraph 478] *"We agree that, in the context of the EU Strategy for Africa, EU donors must take a more coordinated approach to delivery of aid".*

See paragraph 458.

[Paragraph 479] *"Effective co-ordination and harmonisation is essential for the EU when dealing with Africa compared with leaving the many challenges to be resolved by numerous European states acting independently of each other".*

See Paragraph 458.

[Paragraph 480] *"In relation to individual beneficiary countries, the needs and wishes of the particular country must determine who takes the lead in that co-ordination. In many cases the Commission will be the most appropriate coordinator of donor activity and should be allowed to so act by the Member States".*

The priority is to get **all bilateral and multilateral** donors in a country to work together behind a nationally agreed and nationally owned poverty reduction strategy or plan. Different donors will be best placed to play a coordinating role in different countries. We will encourage the EC to take on this responsibility where appropriate.

[Paragraph 481] *"In relation to overall EU development assistance the Commission is best placed to analyse global distribution and remedy any imbalances. Under the Strategy for Africa the Commission should carry out a detailed analysis of how Member States' combined ODA is being spent and produce a report specifying how better co-ordination could help to achieve the Strategy's objectives".*

The Commission uses OECD/DAC data to produce a regular analysis of the global distribution of EC and Member State aid in the form of its Donor Atlas. We support the principle that the EC should take the overall provision of aid into account when allocating its resources and pay particular attention to under-aided countries. The Commission is due to publish a progress report on implementation of the Strategy in the autumn. We would welcome suggestions from the Commission about ways to accelerate achievement of the Strategy's objectives.

[Paragraph 482] *"The Commission should present a communication setting out how it intends to fulfil its commitments under the Paris Declaration on aid effectiveness for consideration in Council before the end of 2006".*

In March 2006 the Commission presented a package of Communications including "EU Aid: Delivering more better and faster" (COM 2006 (87)) which set out how the Commission and EU as a whole could fulfil its commitments under the Paris Declaration. In April the Council welcomed the proposals and agreed on the importance of implementing without delay the commitments and principles set out in the Paris Declaration.

[Paragraph 483] *"We agree that budget support provides a better means of supporting the aim of African ownership in the Strategy for Africa than programme support".*

Budget support is a key tool for the UK and the European Commission's development assistance in developing countries. Paragraph 26 of the 2005 European Consensus on Development sets out the Commission and Member States' commitment to increasing the use of general or sectoral budget support where circumstances permit. This includes where the assessment of the effectiveness of the recipient government's systems and practices and level of risk is acceptable, and where appropriate steps are in place to mitigate and monitor the risks. In 2004, 27% of the commitments made under the 9th EDF were in the form of budget support.

[Paragraph 484] *"NEPAD could devise a programme to support parliamentary oversight of ODA spending in Africa whilst EU (including Member State) parliamentarians should share their expertise and experiences. AWEPA, the organisation of European Parliamentarians for Africa, is already going some way towards achieving this, but its resources are limited".*

Parliament to parliament contacts and networking is to be encouraged. The Pan-African Parliament, the European Parliament, national parliaments On Africa and Europe), and parliamentary organisations such as AWEPA all have a role to play based on their various comparative advantages. There is also a Joint

Parliamentary Assembly bringing together parliamentarians from African, Caribbean, Pacific (ACP) countries and Members of the European Parliament.

The UK supported a meeting of parliamentarians from Africa, Europe and the G8 during 2005 to discuss their role in holding their own governments to account. The UK is currently considering how best to support the Pan-African Parliament directly.

[Paragraph 485] *"Further consideration should be given by EU Member States to direct budget aid, including an examination of the Governance and Economic Management Assistance Programme (GEMAP) and its potential to control finances in poorly governed African states".*

Paragraph 26 of the 2005 European Consensus on Development sets out the Commission and Member States' commitment to increasing the use of general or sectoral budget support where circumstances permit. We agree that useful lessons can be learned from GEMAP and in specific cases applied in other African countries.

## Governance, Democracy and Human Rights

[Paragraph 486] *"The implementation of governance initiatives requires a better understanding of what constitutes good governance. The EU should work with Africans and the international community to achieve a common definition of good governance".*

The European Commission's Communication on Governance released on 30 August offers a broad definition of good governance. The EC also proposes. that Member States and the Community agree practices and principles for dialogue and cooperation with developing countries on governance. The UK is committed to supporting good governance as stated in its White Paper "Making Governance Work for the Poor", We will continue to work with our partner countries and other donors to achieve this aim.

[Paragraph 487] *"We believe that the APRM (African Peer Review Mechanism] holds great potential to make a significant difference in enhancing good governance in Africa. The EU should take a close interest in the development of the APRM, with a focus on helping the Africans to develop it It is important that the EU acknowledge the scale of the challenges facing the APRM".*

The EU will support the APRM secretariat and is hoping to be able to support the reforms that come out of the peer review's recommendations through support in country. The 30 August Communication on governance proposes how the EU might support the APRM including from the 10th EDF.

The UK has provided $2 million to the APRM Secretariat Trust Fund. At country level in Ghana, Kenya and Rwanda we have also provided support to the national process underpinning the review. We fully recognise the difficulties in implementing such a peer review and are providing support where possible and feasible.

[Paragraph 488] *"The EU needs to encourage more AU member states to participate in the APRM. It should provide programming and other support for countries participating positively in the APRM process, both as part of the reporting process and in terms of support for the implementation of recommendations made".*

The EU has an important role to play in supporting Africa in taking forward its plans with respect to improving governance as set out in its recent Communication on Governance. Measures include supporting the African Union and Africa Peer Review process and the emergent national plans of action. We believe such support should be conducted within the existing framework of co-operation at country level and aligned to the budget and planning processes of the country.

[Paragraph 489] *"The EU should also, when allocating aid, take account of whether countries participate in, and implement the recommendations of, the APRM".*

It is not appropriate for allocations of aid to be based on whether a country has signed up to a mutual peer review process. However in its governance initiative, European Commission allocations of aid from the 10th European Development Fund will include an incentive tranche linked to good governance. The UK in its recent White Paper has also said it will focus further on countries with good governance.

[Paragraph 490] *"However, EU engagement with the APRM should be careful not to undermine African ownership of the process. Accordingly, the EU should not seek to influence the outcome of Peer Reviews nor to specify the means by which countries implement any recommendations made".*

The UK's consistent line is that donor support for the APRM should not undermine African ownership. Rather support should be conducted within the existing framework of co-operation at country level and aligned to the budget and planning processes of the country itself.

[Paragraph 491] *"The EU should make robust use of existing provisions under Cotonou on governance issues".*

[Paragraph 492] *"However, the fact that Cotonou primarily engages at the country level on issues of governance provides significant potential for useful dialogue".*

The EU has used the provisions of the ACP-EC (Cotonou) Partnership Agreement to address breaches of the essential elements (human rights, democratic principles, the rule of law) and/or the fundamental element (corruption) in a number of countries. The revision of the Agreement in 2005 included an enhancement of the provisions for regular political dialogue (Article 8), with the objective of strengthening relations between the parties and preventing situations arising where a breach of the Agreement might be considered. The EC also holds dialogue with ACP states on migration issues under the terms of Article 13 of the Cotonou agreement.

[Paragraph 493] *"The programming process for the 10th EDF can be used effectively to support good governance: extra funds should be made available for countries that commit themselves to promoting good governance; consultations under Article 96 of the Cotonou Agreement should be invoked for countries that are failing to promote good governance, although the emphasis should be on dialogue in the first instance".*

The EU Governance Initiative is a positive step forward. The Governance Initiative will allocate part of the 10th European Development Fund on the basis of governance performance. We believe the Governance Initiative could be further improved by ensuring wider consultation during the compilation of governance profiles for each country. We are pushing for a review of the Governance Initiative in 2007 with all key stakeholders.

[Paragraph 494] *"The EU should use dialogue with the AU to encourage and assist the AU's governance role. The EU is also well-placed to support the continued development of the AU's institutional capacity in this area. Co-ordinated bilateral agreements within the framework of the EU Strategy for Africa should encourage AU Member States to take forward and implement the political commitments it has made to promoting good governance".*

The EU will continue to provide assistance in this area both through regular dialogue and financial support.

[Paragraph 495] *"European efforts to support governance through Cotonou and the European Neighbourhood Policy should be sufficiently flexible to accommodate diverse levels of governance in different African states, and should support relevant African structures".*

The above-mentioned Commission Communication on Governance is not limited to sub-Saharan Africa and recognises diverse levels of governance within and beyond Africa.

[Paragraph 496] *"A firm response by the AU to the situation in Zimbabwe is critical to the credibility of the institution as an effective mechanism to promote human rights in Africa and as a viable interlocutor for the EU: The EU should strongly support any such response by the AU in relation to Zimbabwe".*

As indicated in Paragraph 462 the African Union has made some attempt to respond to the Zimbabwe situation. The EU continues to encourage the AU to do more and will certainly strongly support any further response.

[Paragraph 497] *"We commend those leaders who have demonstrated a commitment to good governance and expect that the EU will support them in sharing best practice with their neighbours".*

The EU strongly encourages sharing of best practice, and the Africa Peer Review Mechanism is such a tool. The EU also recognises the constructive role that can be played by significant regional actors, such as South Africa, where the EU is in the process of discussing a Strategic Partnership that reflects its prominent role in the region.

[Paragraph 498] *"Implementation of the EU Strategy for Africa should support the involvement of civil society in the promotion of governance in Africa, particularly the role of African civil society groups in helping to build African institutional capacity in this area at national, sub-regional and continental levels".*

Effective consultation with civil society organisations is highlighted in the European Consensus on Development and EC programming guidelines. We recognise the importance of engaging African civil society organisations in development of Africa. This is why we encourage African countries to engage with such organisations when consulting on their national plans for poverty reduction.

The UK welcomes and has provided support for the African Monitor initiative, led by the Archbishop of Cape Town, which aims to establish a civil society network across Africa to monitor implementation of, and the impact of, African and donor commitments to support the continent.

## Peace and Security

[Paragraph 499] *"We commend the AU's various initiatives to promote peace in Darfur, which should be helpful in providing the political context for a peace process in the region but, sadly, we acknowledge that the violence continues in many areas and that the AU has suffered from severe resource and logistical constraints The EU should urge the AU to co-operate with the UN in planning a UN peacekeeping operation in Darfur".*

The AU's contributions both in facilitating the peace talks and brokering the Darfur Peace Agreement, and in deploying AMIS (African Mission in Sudan) have been immensely important. The EU is a strong supporter of the AU's efforts. The Africa Peace Facility is providing a large proportion of the finance (the UK is also of course a large bilateral donor); the EU, AU and UN co-hosted a donors' conference for AMIS in July; and EU experts are involved in providing direct technical assistance as part of the EU's supporting action to AMIS. But it is clear now the AU mandate is too wide for current force structures, and the AU has stated that it intends to hand over the mission to the UN. The EU supports this plan and has offered encouragement to the AU Commission and UN Department of Peace Keeping Operations (DPKO) joint planning mission which took place from 9–23 June 2006. The Security Council pawed UNSCR 1706 on 31 August which called for a UN force for Darfur. Major diplomatic efforts remain focussed on gaining Sudanese acceptance for the new force. The EU and the UK are assisting where we can.

[Paragraph 500] *"We believe that ESDP missions have been an effective means of promoting peace and security in Africa and should continue to be deployed where appropriate. EU Battlegroups have the potential to play a significant role in supporting peace operations in Africa".*

The EU is operationally active in Africa. In addition to the supporting action to AMIS in Darfur, it has three operations/missions in the Democratic Republic of Congo (DRC): EUFOR continues to provide support to the UN over the election period, EUSEC is providing support in the area of Security Sector Reform (SSR) and assisting with the payment of DRC soldiers' salaries, and EUPOL Kinshasa is monitoring and mentoring Congolese police units. These activities demonstrate the effective and important role that the EU is playing in international efforts to promote stability. This will be complemented by the significant role EU Battlegroups will be able to fulfil on reaching full operational capacity in January 2007. They will be able to deploy globally, including in Africa, in response to a sudden crisis. This capacity should be in addition to the EU's ability to generate forces, including reserves, when timescales permit.

[Paragraph 501] *"The EU should continue its efforts to develop integrated approaches to peace and security initiatives in Africa, developing more systematic co-ordination with the UN, with NATO and with other operational partners".*

The EU is currently considering specific measures to implement the EU Africa Strategy in the field of peace and security. The UK is encouraging principles of co-ordination with other key actors to be included in EU implementation strategies. The division of labour between the EU and NATO in assisting AMIS (providing capability and support for civilian policing elements and logistics provision respectively) is a good example of where co-ordination has worked to good effect. Co-operation and co-ordination with UN, G8, NATO and other donors on capacity building for AU and Sub-Regional Organisations are also being developed in the context of support for the African Standby Force.

[Paragraph 502] *"We believe that the Africa Peace Facility has made a very significant contribution to African-led promotion of peace and stability in Africa and welcome its renewal as part of the 10th EDF. The review process for the APF should evaluate the status of the African Standby Force and the other elements of the Africa peace and security architecture, in deciding how to take the APF forward beyond 2010. If necessary, the EU should be prepared to supplement the current APF in the meantime".*

The UK strongly agrees that the Africa Peace Facility (APF) has made a remarkable impact on the ability of the AU to promote peace and security. It has been the key external factor in allowing the AU to deploy a peace support mission to Darfur. The decision to renew and reinforce the APF is an important contribution to the international community's commitment to provide predictable, flexible and long term financing for African Peace Support Operations. The UK also considers that the APF has a vital role to play in helping fund longer-term capacity-building within the AU and the sub-regional organisations and agrees that the developing security architecture will need to be carefully considered when the future of the APF is considered beyond 2010.

[Paragraph 503] *"The EU must continue to assist in operationalising the African Standby Force by supporting the establishment of its key components in Addis Ababa and in the RECs. Capacity-building programmes for the ASF should pay careful attention to the specific functions of the AU relative to other operational partners active in Africa, based on a broader process to develop a more rationalised, interlocking and integrated international peacekeeping system; this will help to maximise the effectiveness both of African capability and donor support for capacity building".*

The UK agrees that the EU has an important role to play in helping to develop African Standby Force structures. The EU is already playing a key part in funding policy workshops and in co-ordinating donor input (including non-EU) in Addis. It will become increasingly important for international donors to act in a complementary and co-ordinated way, especially as plans develop in the UN on the UN Secretary General's 10-year capacity building plan for the AU, and in the light of future co-operation with NATO. EU support for African Standby Force development through the Africa Peace Facility will continue to be based on dialogue with the AU on priorities in their plans, and will focus on the areas where the AU carries the most comparative advantage.

[Paragraph 504] *"The EU is well placed to provide institutional support to build the AU's preventive capacity and should ensure that capacity building programmes support the preventive components of the African peace and security architecture effectively, paying particular attention to civilian and police elements".*

Preventive capacity is just as important, if not more important than conflict management capacity. Some EU member states (including the UK) are already engaging with the AU on their developing plans for realising the full range of the African Peace and Security Architecture, including the Panel of the Wise and the Continental Early Warning System. The EU through the Africa Strategy has shown that it stands ready to support this growing preventive capacity through the capacity building funds available in the APF. Assistance to develop the civilian policing components of peace support missions is already underway, with EU police officers deployed with AMIS in Darfur, and parallel work to boost capacity at the AU headquarters in Addis to deploy and manage civilian policing elements.

[Paragraph 505] *"We believe that the EU has a key role to play both in helping to build the peace and security capacity of the AU and in providing direct, operational support in Africa where necessary. Achieving an appropriate balance between the provision of operational support and longer term support for indigenous, African structures should be a key component of EU policy, taking into account the roles of other key partners in this area".*

The EU and other international support for initiatives to promote peace and security in Africa must recognise that lasting stability will be most effectively achieved through strong African political leadership in mediating and resolving violent conflicts. The EU Africa Strategy makes clear that commitments will be implemented wherever possible in support of African plans and initiatives to provide long-term capacity to tackle conflict. However, pressures will continue to respond to immediate conflicts and instability, either with support for AU deployments or via direct EU deployments. Member states will need to weigh carefully proposals that funds for longer-term capacity building be diverted to immediate operational needs, both within the EU and in other international fora.

[Paragraph 506] *"The EU should find ways to engage across the whole spectrum of activities supporting security sector reform initiatives in Africa".*

During the UK Presidency, the EU agreed a generic concept for undertaking ESDP support to security sector reform. The Commission recently published its own guidelines. Taken together, they provide a comprehensive framework for EU support. As mentioned above, the EU is also operationally active in security sector reform through its EUSEC mission in the DRC. This mission is widely regarded as being effective not only in the delivery of support, but also as a means of co-ordinating the international community's efforts. The EU stands ready to consider other cases as appropriate. Under the current Finnish Presidency, the EU is also examining ways in which it might enhance its ability to support Demobilisation, Disarmament and Reintegration (DDR) in Africa and elsewhere.

[Paragraph 507] *"The EU and AU must work with the new UN Peacebuilding Commission to make a genuine difference to countries emerging from conflict, by drawing together and co-ordinating the activities of the key peacebuilding actors in Africa, including the UN and the AU, and by developing a close working relationship with the International Financial Institutions".*

The UK strongly supports the newly established Peacebuilding Commission, which should play an important role in sustaining and providing more effective international assistance to countries emerging from conflict. One of the strengths of this new institution is that it brings together institutional donors, including the World Bank and the IMF, and regional organisations as well as Member States. Its membership can vary depending on the country under discussion to ensure that all key political, military and development stakeholders are represented.

The UK supports an effective role for the EU and AU in all relevant discussions of the Peacebuilding Commission. We have supported the designation of the European Community as an "institutional donor" in recognition of its global role in development assistance, which would entitle it to attend all meetings of the Peacebuilding Commission. We will also support representation of the EU by the Presidency in those cases where it is playing a significant political role alongside the Community's development assistance. The UK also believes that the central role of the African Union should be recognised when the Peacebuilding Commission is discussing African countries, and we will support its membership in all such cases. The Peacebuilding Commission has now selected the first two countries for consideration: Sierra Leone and Burundi. In both cases, the European Commission, European Union and African Union will all be represented.

## 36th REPORT: CONSUMER CREDIT IN THE EUROPEAN UNION: HARMONISATION AND CONSUMER PROTECTION

### Letter from Rt Hon Ian McCartney MP, Minister for Trade, Investment & Foreign Affairs, Department of Trade and Industry/Foreign and Commonwealth Office to the Chairman

Further to my letter of 29 July,[39] I am pleased to enclose the Department's official response to the Inquiry Report.

I apologise for the delay in sending the response but as my officials explained to your clerk, we have been in the process of seeking EP Committee clearance for our wider strategy on the Directive negotiations and it was agreed that it was sensible for that to be agreed so that it could inform our response to the Report.

We will shortly be publishing a Government response to the supplementary consultation on the Directive that was carried out earlier this year. I will ask my officials to forward a copy to the Committee as soon as it is finalised.

*29 September 2006*

[39] Letter to Chairman of Sub-Committee G, Baroness Thomas of Walliswood.

## Government Response

### Chapter 1—Introduction

The Government welcomes the Committee's Report, which is timely in view of ongoing negotiations on the European Commission's proposal for an *EC Directive on credit agreements for consumers amending Council Directive 93/13/EC*. The Report exposes the key issues which we believe the proposed Directive raises and the Government endorses many of the Committee's conclusions and recommendations. The response to Department of Trade and Industry's supplementary consultation on the Directive earlier this year has raised similar concerns.

In particular, the Government shares the Committee's view that an, amending Directive should maintain existing high levels of consumer protection and make a real contribution to opening up markets. It also endorses the Committee's call for full impact assessment.

### Chapter 5—Full Harmonisation as a means to Promote the Internal Market

Paragraph 227: *We do not doubt the important potential benefits to business and consumers of developing an internal market in consumer credit, but only how best this is to be achieved. The Commission's focus is on the development of a market in cross-border credit, and it sees full harmonisation as advancing that objective. But we conclude that the Commission's case for a move to this approach in the field of consumer credit is based on a questionable premise that this will promote an internal market in cross-border credit by facilitating the use of a single EU-wide credit agreement. That premise is not supported by a proper impact assessment, or by any other evidence that we have seen.*

Paragraph 228: *On the basis of the evidence we have been given, we further conclude that:*

— *At present the lack of a market in cross-border consumer credit is mainly due to other factors, such as language, culture and the impracticability of penetrating a foreign market except by scale entry requiring an establishment in the target country, and that full harmonisation is unlikely either to displace the need for separate credit agreements for each Member State or to facilitate an internal cross-border market for other reasons.*

— *The most effective way of creating an internal market is to encourage a greater convergence of market development and practice through other means, such as the establishment or acquisition of branches and subsidiaries and the borrowing of foreign market products and practices by local lenders, as is already happening, and the removal of local obstacles such as legal and administrative impediments to establishment, employment, conduct of business and taxation policies.*

— *Full harmonisation may well be appropriate at the point when a broadly similar range of products is available throughout the European Union on competitive terms.*

Paragraph 229: *We therefore strongly recommend that further work on the present draft Directive should be suspended until a proper impact assessment has been carried out. Unless this provides compelling evidence that the full harmonisation proposed would be likely to promote an internal market in cross-border consumer credit, the principle of targeted harmonisation should be retained but the scope of the Directive should be extended to cover a wider range of issues.*

The Government shares the Committee's view that the proposed Directive's objectives of opening up markets and maintaining a high level of consumer protection are laudable, but that it is not clear that harmonising consumer protection legislation in this field will necessarily achieve these objectives. Like the Committee, the Government would welcome a full impact assessment and the United Kingdom has put the case for an examination of the extent to which the Directive would meet its stated objectives in Brussels. At the very least we believe that it will be important for Member States and the Commission to determine whether or not any final package would meet these objectives prior to adoption of a Directive.

As the Report observes, there is probably little likelihood that harmonising consumer protection legislation on consumer credit would lead to cross-border trade in the classic sense—i.e financial institutions in one Member State lending to consumers in another Member State. The industry has said that it would simply not do this because of the high level of risk involved in lending to consumers other than in a market with which the lender is familiar. Moreover, the industry has indicated that the way in which a single market in consumer credit is likely to develop in the European Union is through the removal of barriers that currently make it difficult for individual lenders to set up in other Member States, eg through acquisitions, mergers or joint ventures. Were this to be made easier, lenders would have the security of understanding local custom and practice as well as access to available data about their potential customers. According to the industry, a "scale entry" approach, in which the potential risks are balanced by the potential returns, makes sense, whereas lending to individual applicants for credit from other Member States does not.

Of course, it could be argued that a Directive harmonising consumer protection legislation would nevertheless help lenders wishing to set up in other Member States by enabling them to design products, information etc which could be more easily adapted for use throughout the EU. But the industry has also indicated that differences between national rules on consumer credit are less of a barrier to lenders setting up in other Member States than other factors such as differences between legal and administrative systems, local custom and practice, language and consumer preference. They would argue that the cost and effort required to overcome these barriers is such that mere differences between consumer protection legislation on consumer credit are relatively insignificant and that harmonisation would therefore make very little difference in terms of paving the way for lenders to enter new markets.

In view of these significant doubts concerning the potential benefits of the Directive and the lack of evidence that harmonising consumer protection legislation in the targeted areas would contribute to a single market, the Government shares the Committee's view that a full impact assessment should be undertaken. At the very least, as a first step, a study of the potential benefits of the Directive needs to be undertaken. If such a study found that the current approach would not achieve the objectives of opening up markets while maintaining a high level of consumer protection, a further study might be conducted to determine what alternative action, if any, would achieve these benefits.

In the absence of such a study, it is difficult to predict what further action should be taken and the Government cannot, therefore, at this stage agree with the recommendation in Paragraph 229 that the solution would be to broaden the scope of the Directive to cover a wider range of issues. If a study found that the current Directive would not deliver the desired benefits because it did not address the real barriers to the creation of a single market, the right approach would be to undertake a thorough examination of those barriers and consider what, if any, action would overcome them.

## Chapter 6—Does the Directive provide a High Level of Consumer Protection

Paragraph 230: *We conclude that, while the draft Directive possesses many good features and may well provide a high level of consumer protection in those Member States whose consumer credit markets and legislation are relatively undeveloped, it's very limited scope means that it affords a level of consumer protection which falls well short of that provided by legislation in such countries as the UK.*

A difficulty with the harmonising approach adopted in the draft Directive is the significant differences between national consumer credit markets within the EU. The credit products on offer as well as consumer preferences differ considerably from one Member State to another. As a result, the problems faced by regulatory and enforcement authorities in individual Member States also differ and national administrations have understandably designed their consumer protection legislation to deal with problems encountered in their national markets, including specific abuses which have arisen.

Hence, for example, some of the detailed requirements on consumer information in the United Kingdom have been designed to reflect the kind of products on offer (including, for example, hire purchase and 0% balance transfers, which are not to be found in all Member States). In other Member States different products and practice have resulted in a different approach to consumer information. Trying to find a single model which will suit the markets in all 25 Member States is challenging and there is the danger that the result will impose unnecessary burdens in some Member States while at the same time undermining important consumer protection provisions in others.

As it stands, the Government believes that the draft Directive would require the removal of important UK consumer protection provisions—for example on advertising and pre-contractual and contractual information—while imposing unnecessary provisions in other areas—for example with regard to overdrafts and credit unions—which will be costly and burdensome and could lead to significant consumer inconvenience.

However, we do not believe that the limited scope of the Directive will be detrimental to UK consumers. Member States will be free to continue to legislate on matters outside the scope of the Directive according to the needs of individual markets and local conditions as they already do.

## Chapter 7—The Full Harmonisation Provisions of the Directive and their Potential Effect on the Level of Consumer Protection in the UK

Paragraph 231: *We recommend that:*

— *the definition of the word "surety" in the 2004 draft should be reinstated, and the term "mortgage" or "security interest" used to denote security in an asset;*

We agree that the meaning of "surety" in Article 2(2)(a) is unclear and that the drafting could be improved and have made these points during the negotiations. The Government's priority here is to maintain the distinction between secured and unsecured loans while ensuring that unsecured home purchase plans in the United Kingdom—and, notably, Islamic home purchase products—are excluded from the scope of the Consumer Credit Directive (though they will continue to be regulated in the UK).

— *hire purchase agreements should not be excluded from the scope of the Directive;*

It is our view that hire purchase agreements would not be caught by Article 13 in its current form. Our preference would be to include hire purchase agreements within the scope of the Directive as they are undoubtedly mainstream credit products and in terms of a consistently regulated consumer credit sector, the exclusion of hire purchase agreements is not to be welcomed. The Government is however conscious that equivalent "leasing" products in some other Member States may not be caught within the scope of the Directive even though the outcome from the consumer's point of view is the same—i.e, that ownership of a product transfers from the supplier to the consumer.

Although we would prefer to see hire purchase agreements covered by the Directive, the current text of Article 13 concerning the universal right of withdrawal would pose particular difficulties for hire purchase and conditional sales agreements as consumers would be able to withdraw from all credit agreements (including face-to-face agreements) without penalty for a period of 14 days following their conclusion (see also the discussion of paragraph 234). If the only way to overcome these problems is through the exclusion of hire purchase agreements from the scope of the Directive, we would have to consider this approach. Of course, regardless of whether or not hire purchase agreements fell within the scope of the Directive, they would continue to be fully regulated in the United Kingdom alongside other credit agreements.

— *the provisions relating to contract and pre-contract information should not apply to overdrafts which should continue to be governed by the other provisions of the Directive so far as applicable;*

Overdrafts are regulated in the United Kingdom in a way which ensures that consumers are adequately protected without compromising convenience and flexibility. Their treatment in the draft Directive is a major concern for UK industry which has made strong representations that overdrafts should be outside the scope of the Directive.

The Government acknowledges this concern and believes that the additional provisions which would apply to overdrafts under the proposed Directive would reduce their flexibility and would inconvenience consumers without offering any additional consumer protection. We also believe that the requirement to apply an APR to overdrafts could be positively misleading and might, in some circumstances, point consumers in the direction of alternative credit products which would prove to be considerably more expensive. Other key difficulties with the proposal are the need for advanced written information (which would undermine flexibility); and the need to notify consumers individually of interest rate changes (which would prove unduly burdensome in the case of changes to the base rate and would provide little additional benefit to consumers). Our ideal position would therefore be to exclude overdrafts altogether from the provisions of the Directive and to continue to apply the provisions of the 1986 Directive, which form the basis of UK regulation. DTI and the Treasury are continuing to work with the banking industry to prioritise our concerns here.

— *ideally credit unions should be excluded from the Directive altogether on the basis that it would be open to any Member State to regulate credit unions in its domestic legislation if it considered that local conditions make this desirable;*

— *but if credit unions are to be kept within the Directive the concept of the common link embodied in Article 2(4)(b) should be expanded to encourage this other types of link on which credit unions are based and the "light touch" regime applicable to credit unions should be made lighter;*

We agree. Credit unions do not engage in cross-border trade and, at least in the UK, do not compete directly with other mainstream lenders. They are also relatively small organisations for whom the requirements of the Directive would be excessively burdensome—especially given that there is no evidence of consumer detriment caused by credit unions. Finally, credit unions serve an important role in combating financial exclusion in the United Kingdom and their promotion is therefore an important plank of Government policy in this area.

However, other Member States which have credit unions—principally Poland and Ireland—want their credit unions to be regulated by the Directive, The reason for this may be explained by the fact that in Poland and Ireland, credit unions tend to be larger organisations, more akin to mainstream lenders, than is the case in the UK. Hence the arguments for excluding from the scope of the Directive Credit Unions in Poland and Ireland are less compelling than in the UK.

Officials are therefore working with their Polish and Irish counterparts to find a solution which will be acceptable to all parties. Our aim would be to exempt UK credit unions from the provisions of the Directive.

The United Kingdom is also working to improve the definition of credit unions to ensure that this is sufficiently broad to cover all existing UK credit unions and sufficiently flexible to allow for the approval of credit unions formed on the basis of new kinds of common bond, We believe that this element of future proofing is necessary to support the Government's policy of encouraging the growth of the credit union sector.

— *the wording of Article 3(c) should be amended to distinguish the provision of pay-as-you-go services from services provided on credit;*

The Government agrees that a distinction should be made between genuine credit agreements and pay-as-you-go arrangements. We believe that this is what is intended by the definition of "credit agreement" in Article 3(c), but the wording may need improving. The requirement that goods or services should be supplied "in the same quantity" has, with the United Kingdom's support been deleted in the most recent Presidency text and we believe that this may help resolve the issue.

— *the definition of "credit intermediary" should be narrowed to exclude those for whom it is inappropriate, for example, mail order traders.*

The Government's view is that the provisions of the Directive should not apply to individuals such as mail-order catalogue agents and home credit agents where the principal lender takes responsibility for their actions. The European Commission and some Member States argue that, in its current form, the only article of the Directive which applies to intermediaries is Article 20 concerning transparency with regard to the independence of an intermediary and the issue of fees, but we are not convinced. Articles 5 and 6 specifically refer to "the creditor and, where appropriate, the credit intermediary's" obligation to adhere to the principle of responsible lending and to provide pre-contractual information and adequate explanations. Although Article 7 disapplies these provisions in the case of suppliers of goods or services acting as credit intermediaries in an ancillary capacity, it is not clear that this would include mail-order catalogue and home credit agents. A specific provision making clear that the provisions of the Directive do not apply where the principal lender takes responsibility for an agent may be needed. This would probably need to extend to Article 19 concerning the supervision of intermediaries.

Paragraph 232: *We recommend that:*

— *if Article 4 is intended as a full harmonisation measure, that should be made clear, for example by substituting the word "state" for "include";*

The Government agrees that substituting the word "state" for "include" would make clear that Article 4 constitutes full harmonisation. However, it is not clear that full harmonisation would be in the United Kingdom's interest. As discussed in relation to paragraph 230, trying to impose a single set of consumer information requirements on all Member States is difficult to achieve and may lead to the undermining of essential consumer protections in some cases and the imposition of unnecessary burdens in others. We are concerned that the search for a standard set of advertising requirements may lead to the sweeping away of the existing UK requirement for an APR to be indicated in certain circumstances where the advertiser makes implied claims concerning the advantages of his products or supplies some other inducement. We are working to achieve alignment of the provisions in Article 4 with the UK consumer credit advertising rules and have had some success, Depending upon the outcome of the negotiations, minimum harmonisation may, nevertheless, be more appropriate in this case to enable Member States to maintain essential consumer protections.

— *Article 4(4) could usefully be clarified to show its link with Article 4(2) and the fact that use of a representative example is permitted;*

— *in the case of low introductory rates consideration should be given to a requirement to state the go to rate (ie the higher rate charged at the end of the introductory period) instead of a blended rate.*

Further discussion with the Commission and in the Council Working Group have suggested that the intention behind a "representative example" is actually very similar to the UK notion of a "typical APR". The European Commission has even indicated that it believes the UK typical APR requirement could continue to be used as the means of implementing the requirement for a representative example. The word "representative" is, we understand, deliberately not defined to allow Member States some flexibility in interpretation. However, given its opposition to be used of blended rates, the Government would prefer a more straightforward requirement for the go-to rate to be quoted rather than allowing a combination of an introductory offer and the go-to rate.

Paragraph 233: *We recommend that:*

— *Article 9 should be made a minimum harmonisation provision since, as a full harmonisation measure, it would deprive UK consumers of a number of items of information currently required to be included in consumer credit agreements, thereby significantly reducing the level of consumer protection;*

The downside of minimum harmonisation is that it can had to different legal provisions in different Member States and can therefore be less effective in overcoming barriers to trade. Differences between the ways in which Member States have implemented the existing 1986 Directive is cited as one of the reasons why the Commission is now proposing a full harmonisation approach. However, the Government nevertheless believes that full harmonisation is not the only approach to overcoming barriers to trade and should not be used where it would disrupt market by imposing unnecessary burdens on business and removing essential consumer protections. Our doubts about the extent to which the proposed Directive even targets the real barriers to trade (and would therefore deliver significant compensating benefits) make it even more imperative that there should be no disruption of markets.

The Government therefore agrees that, if the quest to standardise contractual information across the EU would result in a set of requirements which would undermine existing consumer protection and impose additional cost on business, minimum harmonisation would be preferable. As it stands, Article 9 of the draft Directive would, indeed, deprive UK consumers of information currently required under UK law—for example, the requirement to provide information about the allocation of payments.

— *Article 9 should also be amended to cater for cases where the relevant facts required, other than for the calculation of the APR, are not known at the time of the agreement, eg by providing assumptions or permitting the use of estimated information;*

We agree that Article 9 needs to make some allowance for times when the creditor will not know the exact amounts to be included in the agreement and in such situations the use of assumptions or estimates should be permitted.

— *Article 9 should also be amended to address the exchange-rate problem in stating the total cost of credit when one party is based in a Member State outside the Eurozone and the other is in a Member State within the Eurozone;*

This seems a sensible proposal and the Finnish Presidency has now come forward with a form of words dealing with the exchange rate issue.

— *the creditor should not be required to provide details of costs incurred by the consumer to third parties which do not enter into the total cost of the credit as defined by Article 3(f);*

Paragraph 131 of the Report suggests the reason why there should be no such requirement is that the creditor could not be expected to know the amount of costs in all cases. However, Article 9.2(j) already makes clear that costs only need to be indicated where they are known to the creditor so we do not see why it would need amending with regard to this concern.

— *the requirement to provide an amortisation schedule should be dropped.*

The Government believes that that the inclusion of amortisation tables in credit agreements would be very burdensome for business and of limited value for consumers and should therefore be dropped from the Directive.

Paragraph 234: *We conclude that there appears to be general support for uniform rules on the consumer's right of withdrawal as provided by Article 13, and we recommend that the DTI should consider and report to the Committee whether the detail is satisfactory in the light of responses to its supplementary consultation paper.*

The Government is not convinced that the case has been made for an across-the-board 14-day right of withdrawal from credit agreements. Special arrangements already apply in the case of distance and doorstep sales because of the peculiar features of such arrangements—for example, in the case of distance selling, the consumer does not have access to full information at the point of agreement (and, in the case of goods cannot examine the product) and, in the case of doorstep selling, a consumer is recognised to be at a greater potential disadvantage because of the physical presence of a trader in his or her home and the fact that business may not have been proactively invited. In the case of face-to-face transactions these factors do not apply and we believe that the proposed withdrawal period would therefore become more akin to an extension of the pre-contractual phase We are concerned at the possibility that consumers will simply be more willing to sign credit agreements before they have fully made up their mind and at the legal uncertainty that this could create for businesses given the risk of consumers bringing goods back after 13 days, particularly ones that devalue quickly or would be costly to put on the market due to having to repackage them.

As mentioned in response to Paragraph 231, the right of withdrawal could create particular difficulties in the case of hire purchase and conditional sales agreements (although as discussed in relation to paragraph 231, hire purchase agreements would appear to be outside the scope of the Directive at present), where the supply of goods/services and the provision of credit are integrally linked. Hire purchase is an affordable means of obtaining credit for consumers who might find it difficult to source a loan for the same purpose elsewhere and we would not want to see consumer choice and competition reduced by the withdrawal of such products. As it stands, the Commission's proposal could leave the supplier of goods—especially high value electrical goods and cars—exposed to a level of risk normally borne by the lender. This could lead to considerable consumer inconvenience if suppliers of goods refused to release them until the 14-day withdrawal period has expired or even to the demise of hire purchase. Officials have been working to reduce this risk but most other Member States do not recognise the problems.

Responses to the supplementary consultation largely concurred with our concern. Even those who supported a 14 day right of withdrawal for the most part admitted that it would have an impact on hire purchase agreements—either forcing consumers to wait to take possession of goods or leading to alternative, possibly more expensive, credit products displacing hire purchase altogether.

Paragraph 235: *We conclude that Article 16, which requires notice of assignment to be given in all cases where the creditor assigns its rights under the agreement, does not represent the present law in the UK and would cause confusion to consumers and disturb a practice of very long standing by which suppliers who block discount consumer credit agreements to finance houses continue to maintain customers' accounts and responsibility for collections without giving notice of assignment.*

Paragraph 236: *Article 16 would function perfectly well if limited to cases where the assignee wishes to take steps to collect payment, at which point notice of assignment would be required. We therefore recommend that Article 16 be amended accordingly.*

The Government agrees that, as drafted, Article 16 of the proposed Directive does not reflect the current position in UK law. It would require consumers to be informed of assignment in a wider set of circumstances than we believe to be necessary. We share the Committee's view that informing consumers in the case of block discounting, where the consumer's relationship with the creditor has not materially changed, could cause unnecessary confusion and, indeed, even alarm. The important thing is that consumers should be informed where assignment of debts has a real impact. The United Kingdom has already proposed that Article 16 should exempt block discounting from the requirement to inform consumers. A possible solution would be to replace the specific exemption for "securitisation purposes" with a more general principle that consumers would not need to be informed where the original lender, in agreement with the assignee, still performed the functions of creditor vis-à-vis the consumer on the assignee's behalf. The Finnish Presidency has recently proposed an amendment along these lines.

Paragraph 237: *We therefore recommend an amendment to Article 19 to restore the exemption contained in the 2004 draft by which credit institutions authorised in a Member State under the banking consolidation Directive 2000 do not require authorisation to conduct business in another Member State.*

The Government agrees with this recommendation and the European Commission has already indicated that the omission of a reference to the Banking Consolidation Directives is an oversight and this has been put right in the latest working text.

Paragraph 238: *We conclude that the current UK legislative provisions and cross-border collaboration arrangements appear adequate to fulfil the requirements of the Directive relating to out-of-court dispute resolution. We therefore have no recommendations to make concerning Article 23.*

Like the Committee, the Government supports Article 23 as drafted.

Paragraph 239: *In addition to the difficulties of full harmonisation to which attention has already been drawn, we are concerned that it would remove the flexibility which Member States currently have to respond rapidly through new regulations to the emergence of new products and practices. We therefore recommend that, except in relation to those full harmonisation provisions which we have identified as generally acceptable, the concept of minimum harmonisation should be retained.*

As discussed in answer to the Committee's recommendation concerning the level of consumer protection in paragraph 230, a difficulty with devising an inflexible set of rules to cover 25 different consumer credit markets is that the result risks not being fit for purpose in any one of them because it may fail to deal with the very different problems which regulators face in different Member States. In the same way a single inflexible set of rules will not be able to cope with the new challenges which will arise as a result of future innovations and the

Government agrees that Member States need to retain the possibility of taking urgent action in order to protect consumers from hitherto unforeseen problems. From time to time the UK Government has had to consider updating its consumer credit legislation in order to deal with new problems and maximum harmonisation would probably not allow us to continue to do this.

However this is an issue which applies to pretty well all prescriptive aspects of the Directive which regulate lenders' behaviour. Hence, it is equally applicable to Article 4 concerning advertising and Articles 5 and 9 concerning pre-contractual and contractual information. Even where a full harmonisation provision may be acceptable now insofar as it conforms with the United Kingdom's current practice and would therefore deal satisfactorily with existing potential abuses, market developments may lead to new problems which would need to be tackled by means of new provisions.

## Chapter 8—Mutual Recognition

Paragraph 240: *We conclude that the mutual recognition provisions contained in Article 21(2) are confusing, unnecessary and detrimental to the interests of consumers. To allow a foreign creditor (as regards provisions relating to the right of withdrawal, claims against the creditor for the supplier's breaches, and early payment and rebates), to invoke the mode of implementation of the Directive prescribed by its own law rather than that of the consumer causes serious problems. In the first place, it exposes consumers to two different sets of mandatory rules without their even being aware of that fact. Secondly, it prevents consumers from obtaining local advice as regards the foreign mandatory rules. Thirdly, in the event of proceedings by the creditor in the consumer's Member State, the parties would incur delay and considerable expense in arranging for experts on both sides conversant with the foreign law concerned to give evidence (and possibly conflicting evidence) of its content and effect. This is particularly inappropriate for proceedings against a consumer.*

Paragraph 241: *We therefore recommend that in relation to mandatory rules, the debtor should be governed solely by his or her own law and therefore that Article 21(2) should be deleted.*

In general the Government supports mutual recognition (an established Treaty principle) as one possible means of overcoming barriers to trade. In some circumstances it is to be preferred to harmonisation—especially where full harmonisation may not be appropriate or practicable. We therefore believe that the impact of mutual recognition in the proposed Directive should be examined article by article. This is difficult to do in the absence of an overall impact assessment.

Article 21(2) applies to parts of Article 5 (responsible lending/pre-contractual information), Article 13 (right of withdrawal), parts of Article 14 (linked transactions), Article 15 (early repayment) Article 17 (overrunning of credit), Article 19 (regulation of creditors/credit intermediaries) and Article 20 (obligations of credit intermediaries). It is arguable that mutual recognition would only impact on a consumer's contractual rights in the case of Articles 14 (the exact circumstances in which a consumer could pursue remedies against a creditor where good/services are defective) and Article 15 (the amount of indemnity which a lender could claim for early repayment). Even here, it has to be borne in mind that Article 21(2) does not automatically apply the law of the lender's Member State; it simply says that Member States may not restrict the activities of creditors established in another Member State and operating within their territory in accordance with the Directive. In other words, the lender's national law would only apply where the implementing legislation of the consumer's Member State acted in such a way as to restrict the activities of a foreign lender.

The Government recognises that where a consumer's contractual rights could be governed by the law of another Member State this might be problematic and might not be in the interests of the consumer (although it has to be remembered that this will only be an issue where a dispute arises and in the case of Article 15 (early repayment)—although not in the case of Article 14 (linked credit agreements)—the consumer's rights will be spelt out in the agreement. It also has to be recognised that the out-of-court dispute resolution procedures foreseen in Article 23 should also go a long way to resolving cross-border disputes.

In practice the question of whether or not an element of mutual recognition should be included in the Directive has become largely academic since almost all Member States oppose it. A possible solution may be to apply mutual recognition only to those articles which would not impact on consumers' contractual rights. For example Article 19 concerning the regulation of lenders/intermediaries.

## Chapter 9—Responsible Lending

Paragraph 242: *While the amount of over-indebtedness in the UK does not appear to have risen significantly relative to the amount of credit extended, we conclude that it nevertheless gives cause for concern. Moreover, we see a serious risk of a substantial increase in the level of default if interest rates were to rise or they were to be a significant deterioration in the economic environment.*

Paragraph 243: *We accept that the concept of responsible lending, in the sense of not lending irresponsibly, is accepted by all interest groups in the UK, and that codes of practice already require prior assessment of credit worthiness and the provision of information on key features of products offered. But we conclude that making of offers of credit on the basis of inadequate information in a highly-pressured marketing environment contributes to the causes of over-indebtedness.*

The Government recognises that offers of credit on the basis of inadequate information is one cause of over-indebtedness and is one of the main reasons why there has been an emphasis on improving transparency for consumers in the changes that have been made to the Regulations concerning the advertising of credit products and on the disclosure of information to consumers at both the pre-contractual stage as well as when the agreement is completed. However, evidence suggests that there are a number of contributors to a state of over indebtedness, such as a life changing event—for example, redundancy or illness as well as deeper rooted socio-economic factors.

Paragraph 244: *We further conclude that, while self regulation, including the adoption of codes of practice, has an important role to play in ensuring responsible lending, it should not displace the need for legislation.*

The Government believes that legislation in this area should be cast in general terms to avoid creating loopholes or a culture of minimal compliance. Hence, the approach taken in the Consumer Credit Act 2006 foresees the possibility of action against irresponsible lending without the legislation spelling out exactly what this means. Such an approach is more flexible and can best reflect the needs of the market and consumers at any given point in time. At the same time UK consumers are given appropriate tools to challenge lenders.

Paragraph 245: *On the whole, we accept that, for the time being, necessary measures to protect consumers from irresponsible lending are best left for Member States to evolve in the light of local circumstances, as has been done in the 2006 Consumer Credit Act. Nevertheless, we conclude that there is a need for some Community-wide framework for the regulation of irresponsible lending.*

Paragraph 246: *But we have reservations about the concept of responsible lending as a satisfactory basis for a legal requirement. Moreover, it is unclear from Article 5 whether the requirement of responsible lending is limited to fulfilment of the conditions specified in Article 5(2) and (5) or is a general concept of which these conditions are merely illustrations. We recommend that Article 5(1) be revised to clarify this point.*

Paragraph 247: *If Article 5(1) is intended to prescribe a general duty relating to responsible lending, we recommend that it should be amended to make it a duty not to engage in irresponsible lending. For the time being, the interpretation should be left to Member States through their own national laws, regulations and regulatory practices.*

The Government is concerned that introducing a vague responsible lending principle will be ineffective in tackling the real issue. Encouraging responsible lending and, conversely discouraging irresponsible lending, will not come about by simply saying that lenders must lend responsibly, but will depend upon specific actions—for example, guidance in codes of practice and the ability of regulators to impose appropriate sanctions having regard to the circumstances of individual cases. On the other hand, any attempt to define "responsible" lending in a narrow sense is likely to encourage an attitude of minimal compliance. The way in which Article 5(1) of the proposal is drafted appears to run both these risks. At the same time it runs the risk of creating legal uncertainty for lenders. We are also concerned that, because the Directive introduces maximum harmonisation, the linking of responsible lending to the provision of pre-contractual information and an assessment of the consumer's credit worthiness, might limit the circumstances in which regulators could take action against irresponsible lending, since maximum harmonisation prevents Member States from going further than provisions in the Directive.

The Government therefore accepts the Committee's recommendation that it would be better to frame any requirement in terms of a prohibition on irresponsible lending. Furthermore we believe that it would be more appropriate for the Directive to impose an obligation to take action against irresponsible lending on Member States, rather than impose an obligation on lenders. We also believe that any such provision should be removed from Article 5 (and transferred to Article 19 concerning the regulation of creditors and intermediaries we have submitted a textual amendment to this effect) and that, as the Committee has recommended, it should not spell out specific details of how Member States should tackle the problem.

Paragraph 248: *We also recommend that consumers should be given the information prescribed by Article 5(2), and that Article 5(5) should be reworded so as to limit the lender's duty to the provision of further information about the products offered which the consumer may reasonably require and which is known to the lender and practicable for the lender to furnish.*

The Government agrees with the Committee that consumers should be given adequate pre-contractual information, although we do not agree that the current requirements in Article 5(2) are the right ones. We think there are some important items contained in UK law that are missing from Article 5.2, in particular:

— The total amount payable under the agreement.

— The name, postal address and where appropriate any other address of parties.

— A description of the goods services land etc to be financed by credit.

— Constituent parts of the total charge for credit.

Although we believe that the current wording of Article 5(5) probably provides sufficient flexibility, we recognise that it risks creating legal uncertainty for lenders and we agree that it needs to be clear that the lender's duty to provide "adequate explanations" should be confined to information which the consumer might reasonably require and which is practicable for the lender to furnish. The current provision remains open to very different interpretations and the needs of individual consumers will vary considerably as well as the complexity of individual credit products. We believe it is important that consumers themselves should take ultimate responsibility for the choice of credit product, provided that they have been given the mandatory pre-contractual information and have not been misled.

Paragraph 249: *We conclude that effective regulation is a vital safeguard given the uncertainty of Article 5, which must be taken fully into account when the Directive is reviewed five years after entry into force under Article 24. We therefore recommend that practical guidelines on interpreting responsible lending, recognising important national differences and avoiding being unduly prescriptive, should be drawn up after full consultation with national regulators as part of that review process.*

The response to Paragraphs 245–247 explains why the Government believes that it would be inappropriate to attempt to define responsible lending (in particular, the dangers of encouraging minimal compliance and reducing regulators' scope for taking action). On the other hand informal best practice guidance might have a role to play, taking account of the needs of the differences between individual consumers and credit products as well as differences between national markets, and this is something we will consider further. The Office of Fair Trading will be providing guidance on irresponsible lending as part of its overall guidance on fitness.

## 37th REPORT: MANAGING NUCLEAR SAFETY AND WASTE: THE ROLE OF THE EU

### Letter from Jim Fitzpatrick MP, Parliamentary Under-Secretary of State, Department of Trade and Industry to the Chairman

Thank you for your letter of 5 July, enclosing copies of the European Select Committee report Managing Nuclear Safety and Waste: the Role of the EU. I am replying on behalf of Malcolm Wicks in my capacity as Duty Minister.

Malcolm would like to thank the Committee members for the enthusiasm and dedication with which they approached this inquiry and their rigorous examination of evidence from a vast range of national and international experts in the field of nuclear safety and waste.

The report clearly validates the approach that the Government has taken to the adoption of the nuclear package. At the same time it offers some very helpful messages about the recommendations that should flow from the Action Plan that is due to report at the end of the Finnish Presidency. We shall keep these clearly in mind in taking forward discussions with EU colleagues and the Commission.

The Committee's comments on the long-term management of higher-level radioactive wastes are, of course, particularly pertinent in light of the recent publication of CoRWM's final recommendations. The Government will take the Committee's views into account in developing its policies in this area.

The report also provides some high level messages about the management of findings from the IAEA's peer review processes that we are interested in pursuing within an EU context. Indeed, early indications from the Working Party on Nuclear Safety suggest that there is further work to be done around getting the best possible outcomes from the peer review process.

Thank you again for a comprehensive and interesting report that provides important insights into the challenges that face us in this sensitive policy area.

*29 August 2006*

## 38th REPORT: THE SERVICES DIRECTIVE REVISITED

### Letter from Rt Hon Ian McCartney MP, Minister of State for Trade, Investment and Foreign Affairs, Department of Trade and Industry/Foreign and Commonwealth Office to the Chairman

I should like to take this opportunity to respond to the recommendations in the European Union Committee's Report on The Services Directive Revisited, which was published on 24 July 2006. I would also like to update you, Lord Woolmer and Sub Committee B on the progress of the Directive, and to thank the Members of the Committee for their swift and thorough response.

#### Progress of the Directive

I last wrote to your Committee on 6 June 2006[40] regarding the outcome of the 29 May Competitiveness Council. The agreement reached at the Council is an excellent result for the UK. We achieved our key negotiating objectives and resisted pressures to further reduce the scope of the Directive. Furthermore our economic analysis shows that we have retained at least 80% of the original welfare benefits.

The European Parliament will hold its second reading debate on 15 November 2006. The UK's position is to seek to avoid changes to the current text, and to encourage others to adopt this position. A number of amendments to the Directive have been tabled by the European Parliament's Internal Market Committee, though there is little appetite amongst Member States, the Commission or the Presidency to alter the text. Assuming the text that emerges from the European Parliament is acceptable to the Council then it is possible that the Directive could be adopted before the end of the year.

#### Committee's Overall Assessment (Paras 103–115)

I welcome the Committee's conclusion that the draft Directive should be supported. It is an important piece of legislation which will help to remove barriers to the cross border trade in services and will deliver significant benefits for UK and EU citizens—particularly for small and medium sized enterprises. It is genuinely market opening whilst upholding standards in sensitive policy areas. It remains horizontal in nature and covers a large proportion of service industries. Opening up the EU market in services will stimulate competition and drive productivity.

As I mentioned in my letter of 6 June, the Competitiveness Council saw a strengthening of the screening provisions. The combined effect of a transparent and effective screening mechanism, a Point of Single Contact which applies to temporary service providers, and the clarity provided by the new Article 16 should create substantial improvements to the environment in which service providers do business in Europe. Business will face fewer barriers, and where there are requirements to be met, business can easily find out what they are.

#### Detailed Points on the Committee's Recommendations and Conclusions

*The Freedom to Provide Services (Paras 44–72)*

The UK Government agreed with your Committee in supporting the Country of Origin principle and its liberalising effect. But as noted in the report, the degree of opposition to it meant that its retention could have threatened an agreement being reached at all. However, as I stated when giving evidence, the replacement to the country of origin principle is robust and liberalising.

The new construction in Article 16 (Freedom to Provide Services mechanism) continues to make explicit that there is a freedom to provide services on a temporary or occasional basis. The codification of this important freedom is a significant step towards making the internal market a reality.

Article 16 in practice means that Member States cannot place any requirements on service providers unless they meet three strict criteria: that they are non discriminatory, are proportionate and necessary for reasons relating to public policy, public health, protection of the environment or public security. The Committee notes that these criteria have been interpreted narrowly by the European Court of Justice.

In addition, the Council text has added screening provisions to Article 16 (in Article 39) to further strengthen it. This means that Member States will have to screen their legislation against the criteria set out in Article 16 and justify any requirements they wish to retain. These requirements are reported to the Commission and other Member States for peer review.

[40] Correspondence with Ministers, 40th Report of Session 2006–07, HL Paper 187, Services Directive (8413/06).

This process should result in a vastly reduced list of requirements with which operators will need to comply in order to provide a temporary service in another Member State.

We agree with the Committee's analysis that the onus will be on the operator to identify any formalities they must comply with in the host Member State. However, given the vast list of derogations from the country of origin principle (now reduced in line with the new Freedom to Provide Services mechanism), such research would have been necessary in any event. Indeed, now that the Point of Single Contact has been extended to apply to Article 16, temporary service providers will find it easier to identify any procedures.

### Derogations and Exclusions (Paras 73–80)

The Government agrees with the Committee that the Directive continues to cover a large proportion of the service sector, and we are pleased that services of general economic interest remain in scope for established service providers. The Council also agreed to retain legal services within the scope of the Directive. As the Committee notes the exclusion of certain policy areas and service industries from the scope of the Directive is often because there is already detailed European legislation covering that industry or the policy area is particularly sensitive.

The Committee reported the TUC's view that the labour law carve-out covers EU derived legislation only. The Government's interpretation is that the exclusion is wide enough to cover domestic labour law, and my officials have discussed this with the TUC recently.

### Points of Single Contact (Paras 81–92)

The Committee is right to point out how important it is for all Member States to establish high quality, user-friendly points of single contact. In order to avoid "a bewildering variety of contact points" my officials have been in discussion with the Commission on how consistency can be achieved.

We are already making good progress in planning the development of the Point of Single Contact, which is very likely to be based on the business link system. My officials will gather the views of potential users, particularly smaller services providers, and we will ensure these views are communicated to other Member States. The point of single contact will not just be a point of "information". Service providers will be able to complete all formalities through the portal by a series of deep links. Our approach will meet the Directive's requirements in a cost effective way. Beyond 2010 the Government may consider developing the site further once an assessment has been made of how it is operating.

### Implementation (Paras 93–102)

The report identifies the need for proper implementation. I agree that implementation will be the key to reaping the benefits of the Directive and note the Committee's concerns that we should not underestimate this task. My officials are already heavily engaged in planning the implementation programme to ensure that we can screen the relevant legislation carefully to ensure that it complies with the market-opening criteria in the Directive and that we can implement the Points of Single Contact and Mutual Assistance provisions on time.

We agree that it will be vitally important for us to work with the Commission and other Member States to ensure the Directive is properly transposed across all Member States, if UK business, consumers and employees are to benefit. We are making good progress and have already been asked by a number of Member States to share our plans with them. The Commission assures us that it will hold implementation workshops early in the new year to make sure Member States understand what is required of them. It will also be able to use its infraction powers if Member States are recalcitrant.

In addition to our on-going discussions with the Commission and other Member States through the course of transposition the screening, reporting and peer review process provides a more formal mechanism for Member States to comment in detail on how others have implemented. Peer review will be an on-going process over the implementation period.

The DTI will work with Government Departments, Authorities and all interested parties to implement the Directive. We are encouraging business organisations to work with and influence their European counterparts and European business organisations will contribute Commission workshops on the Point of Single Contact.

Competent Authorities will be registered and will receive training on the use of the internal market information (IMI) system to assist the mutual assistance process by January 2010. The UK will be contributing to the development of the IMI database and the practical application of the mutual assistance provisions.

The Committee will be interested to note that the period for implementing the Directive has been extended from two years to three years. This extension can perhaps be taken as recognition of the scale of the task ahead by Member States and the Commission.

Concluding Remarks

Once again, I am very grateful to the Committee for their thorough, helpful and constructive examination of this dossier. Some pertinent points were raised, which I hope I have satisfactorily addressed. I will ensure that the Committee is kept updated on developments and will write to you following the European Parliament's second reading in November.

*19 October 2006*

**Letter from the Chairman to Rt Hon Ian McCartney MP**

Thank you for your letter dated 19 October 2006. Sub-Committee B considered your letter at its meeting on 30 October.

We were very grateful to you for both updating the Committee on the progress of the Services Directive in the European Parliament and for providing a full response to the issues raised in our report, The Services Directive Revisited.

We were reassured by the addition in Council of screening provisions contained in Article 39, which will require Member States to .justify any restrictions to service providers contained in their legislation against the Article 16 criteria; and require them to report any requirements they wish to maintain to the Commission and other Member States for peer review. We hope that you are correct in predicting that this "should result in a vastly reduced list of requirements".

We were however, concerned that the extension of the implementation period for Member States to three years may imply that some Member States are already significantly behind in preparations for the Directive. Is this a concern which you share?

We understand that on 23 October, the Internal Market Committee rejected all amendments to the Council's text, and look forward to receiving an update from you following the second reading on 14 November.

*3 November 2006*

**39th REPORT: THE 2007 EC BUDGET**

**Letter from Ed Balls MP, Economic Secretary, HM Treasury to the Chairman**

I am grateful for the Committee's overall endorsement of the Government's priorities for the 2007 EC Budget negotiations and for the proposed fundamental review of the EC Budget in 2008–09. The principles for budgetary examination highlighted in your report are fully consistent with those with which the Government approached negotiations on the 2007 EC Budget. As in previous years, we have sought to ensure that all proposed EU spending is assessed for the value that it adds and that total expenditure levels remain below Financial Perspective ceiling levels.

I note the Committee still had concerns regarding the complexity of agreements underpinning structural funds and the predominance of the Common Agricultural Policy in the budget. While the Government strove to ensure that appropriation figures for Structural Funds and CAP remain realistic relative to recorded implementation rates, these negotiations did not provide the appropriate forum to discuss more fundamental reform in these areas. Both these areas of spending will be considered in the 2008–09 Budget Review.

For further detail on these negotiations and their outcome, I would refer you to the updates I have provided throughout the negotiations, and in particular to my letter dated 22 January 2007.[41] This provides the details of the 2007 EC Budget which was adopted by the European Parliament on 10 December and assesses the degree to which the Government was successful in achieving its original objectives.

*16 March 2007*

[41] Correspondence with Ministers, November 2006–April 2007, EC Budget 2007.

## 41st REPORT: THE COMMISSION'S GREEN PAPER, "A EUROPEAN STRATEGY FOR SUSTAINABLE, COMPETITIVE AND SECURE ENERGY"

### Letter from Lord Truscott, Parliamentary Under Secretary of State for Energy, Department of Trade and Industry to the Chairman

I have pleasure in enclosing the Government's response to the Committee's report on the Green Paper. The delay in response means that some of the points raised in the Committee's report have been addressed by the recent publication of the European Commission's recent Strategic Energy Review of 10 January and, alongside this, the Commission's Communication on Climate Change. Departmental officials will be putting together Explanatory Memoranda in respect of the SER itself and its various component parts.

On EU/Russia, the process of agreeing the EU's negotiating mandate for the post-PCA agreement continues. With regard to the PPC meeting that took place in Moscow on 8 December, I am afraid that the formal report of this meeting was circulated to Member States under a "restricted" cover and I am not therefore able to send it to the Committee.

*29 January 2007*

### Government Response

The Government welcomes the thorough, wide ranging and detailed work undertaken by the Committee in its examination of the important topic of the European Commission's Green Paper. As the report notes, this Green Paper is an important legacy of the UK's EU Presidency when a key conclusion of the Hampton Court Summit in October 2005 was the need to develop a strong common EU policy where appropriate against a background of concerns over security of supply, energy prices and the environmental costs associated with some uses of energy.

2. The UK had already sent its interim response to the Commission on the Green Paper in June, shortly before the European Committee produced its report. To reflect the UK's own Energy Review, completed in July, the Government sent a further supplementary response to the Commission at the beginning of October. The Committee's report was very helpful in informing this supplementary response.

3. In broad terms, the Government is in agreement with many of the views expressed in the Committee's report. In particular, we agree on the importance of the role of the market, on the need to uphold Member State subsidiarity especially in the area of energy mix, on the need to avoid political or central intervention except on clear, adequately justified grounds and when such intervention has the agreement of Member States. We agree with the Committee also on the need for further clarification on the part of the Commission in respect of a number of its proposals. The Commission's recent Strategic Energy Review (SER) of 10 January 2007 goes some way to doing this.

#### Government Comments on the Conclusions and Recommendations of the Committee's Report (Chapter 8)

Recommendation 1: *the Commission should more clearly articulate where it believes that a more coordinated approach is required on an item-by-item basis, detailing the benefits arising from implementation of its recommendations and why such benefits could not be achieved at individual Member State level.*

At a general level, the Government believes that under all the three themes of the Green Paper—security of supply, EU competitiveness and sustainable development—there is both benefit in a more coordinated approach and a limit to what the UK or other Member States can achieve on their own. That is why the Prime Minister set this agenda at Hampton Court in 2005, during the UK Presidency of the EU, for a new European approach to address the three challenges of security of supply, maintaining European competitiveness and climate change.

The UK's energy policy is inextricably tied up with our fellow EU Member States, with whom we now share dependency on foreign gas sources. Developments in continental Europe and the EU's neighbours have a direct effect on UK domestic policy and energy prices. By speaking to major supplier and transit countries with one voice, the EU can achieve more to improve security of supply than can individual Member State governments. Acting together more coherently increases the EU's influence internationally in persuading third countries to move towards more sustainable and market-based policies. The Energy Community Treaty, in which the states of south-east Europe have signed up to EU electricity and gas legislation and part of the EU's competition and environmental legislation, is one example of this.

The Government considers that the EU not only needs a sustainable energy policy on its own account but also as a way of driving the international response on climate change, demonstrated by its adoption earlier of the Kyoto protocol and establishment of the EU Emissions Trading Scheme. Again, more can be achieved by the EU collectively than at individual Member State level. And an effectively implemented single energy market is vital for the economic competitiveness of the UK as a net gas importer—and the EU as whole.

As noted above, the Commission's Strategic Energy Review (SER) of 10 January has already put more flesh on the bones of its Green Paper proposals and in doing so addresses at least in part a number of the Committee's points.

*The design and implementation of new policy needs to recognise that markets (rather than the State) are best placed to deliver objectives efficiently and effectively. The degree of EC/government intervention needs to be carefully managed. Political intervention by the Commission or Member States should be cautious, infrequent and long-lasting. Policy needs to be sensitive to national and regional differences and avoid setting specific targets.*

The Government very much agrees on the primacy of the market, as stressed in our initial response to the Green Paper, which underlined the importance of fully implementing existing internal market legislation but also highlighted areas where further legislation was needed to improve the functioning of EU energy markets. We agree that we need to be wary over market intervention, though there may be a role for providing incentives in certain areas to bring new technologies and forms of energy on to the market, such as renewable energy, in order to accelerate their commercial deployment. The role of the Commission and Member States should be to put in place the regulatory framework necessary to enable markets to work effectively and efficiently.

We very much agree that European policy must be sensitive to national and regional differences, notably to enable individual Member States to choose their own energy mix in a way that is compatible with meeting their emission reduction goals.

*The definition and clarity of the main policy objectives, including the understanding and interpretation at a Member State level, needs to be reviewed and revisited, to enable consistent decision making across Europe.*

The publication of the SER alongside its Communication on climate change reflects the Commission's wish to ensure consistency between a range of policy objectives, including competitiveness, jobs and growth as well as energy and climate change. Publication of these two documents together underlines that energy policy and climate change are mutually linked.

## Chapter 3: A Common Approach to European Energy Policy?

— *We recommend that the Commission seek to develop a business case which clearly articulates where it believes that a more centralised approach is required, on an item-by-item basis.*

The Commission has already started this process by providing supporting documents to the different strands of work proposed in the SER. The proposals that will flow from the SER should also be accompanied by a Regulatory Impact Assessment.

— *It is not clear whether all three objectives can be delivered in practice, particularly in a global context. The inherent tensions need to be specifically acknowledged and managed.*

While we agree that it can be difficult to manage the tensions between the three objectives—of energy security, competitiveness and sustainability—we see them as inextricably linked.

As the Commission notes in the SER, an effectively functioning competitive market will cut costs, stimulate energy efficiency and investment, is vital for the effective application of economic instruments such as the ETS, and will promote security of supply. To do nothing about climate change would be inconsistent with our energy goals. Conversely, commitments to reduce emissions should be positive for energy security, in the form of greater diversity through increasing the share of renewables and other forms of low carbon energy sources and increased energy efficiency.

The SER acknowledges that climate change and energy are inextricably connected, given that a large proportion of $C0_2$ emissions come from the energy sector. It recognises the global context to tackling climate change by proposing that the EU sets objectives for the reduction of greenhouse gases by developed countries as part of international negotiations, as well as agrees to a unilateral EU commitment to reduce emissions.

— *More work is needed to properly define unambiguous outcomes for each objective, and fully explore and understand the key drivers of success, including a basis for measuring progress over time.*

The Government agrees on the need for unambiguous outcomes for each objective. The Commission's supporting documents that underpin each of the areas set out in the SER go some way towards this.

Chapter 4: Sustainability

— *The Commission should consider whether responses from other Member States reflect a similar lack of engagement [towards energy efficiency].*

The Committee's report pre-dates the Commission's Energy Efficiency Action Plan which issued in October 2006. The UK and other Member States have welcomed the Plan as ambitious and realistic with a welcome focus on priority areas such as energy performance standards for appliances & other energy using produces, updating the labelling framework, vehicle emissions standards and energy savings from buildings. We strongly support rapid implementation of the Action Plan, particularly on these priorities, which were endorsed by the Council on 23 November last year.

— *The EU ETS is an area whether the Commission has a key role to play, responding to the early experience and promoting its merits on a global basis.*

In the SER, the Commission underlines the key role that the ETS will play in reducing Europe's emissions. We see the ETS as the best long-term mechanism for securing least-cost emissions reductions across the EU, and will work with EU colleagues to strengthen the scheme. The Government agrees that the ETS has the potential to become the hub for a global carbon market, and will work with the Commission and other Member States to that end.

— *Developing an energy policy sufficiently flexible to allow the inclusion of key, low carbon technologies, as and when they reach a commercial scale, is critical to delivering sustainability.*

We very much agree. The Commission's European Strategic Energy Technology Plan, to issue later this year, will aim to be a major step towards this.

Chapter 5: Competitiveness

— *The UK and/or Commission do not appear to have effective high-level contingency plans to deal with issues which arise in the interim as a result of partial liberalisation in Europe.*

The final report of the Commission's energy sectoral inquiry proposes a number of remedies to address the malfunctioning of EU energy markets, including taking action under EU competition law against individual companies, and the Strategic Energy Review proposes new legislation on, for example, more effective unbundling, increase in harmonisation of regulators' powers and transparency. It will, however, be some time before these measures take practical effect and we recognise that we must seek improvements in market functioning in the meantime. This is why the regional market initiatives currently underway in the EU are so important. These will enable practical progress to be made towards greater market integration and improved cross-border flows through voluntary action agreed by the market players.

— *Breaking the price-linkage between gas and oil is likely to result in gas prices finding their own, lower level through competition, which would help to offset the incremental costs associated with internalising the price of carbon.*

The Government's policy objective is indeed to move to full "gas-to-gas competition". This would mean that the price of gas would be more reflective of conditions in the gas market, which would in turn provide the signals needed to drive investment where it is needed. It would not necessarily mean that gas prices are lower at all times and in all circumstances.

Chapter 6: Security of Supply

— *Energy security of supply should not focus on gas alone but be interpreted in a much broader context.*

We agree. The Green Paper and subsequent SER both focus on the importance of energy efficiency, renewable energy, promotion of energy technologies, increasing electricity interconnection and—for those Member States that choose it—the role of nuclear as well as gas.

— *LNG is not a single solution for security of supply and may even work against the UK if gas prices elsewhere are higher.*

We agree that LNG is not a single solution for security of supply but it can play an important role in diversifying the EU's imported gas supplies

Chapter 7: Priority Areas for Action

— *An open and competitive market place through completion of the liberalisation process is imperative.*

The Government very much agrees on the importance of effective liberalisation including new legislation where necessary. The reports and inquiries into the workings of the internal market carried out by DG TREN and DG COMP reflect the Commission's commitment to making the single market work effectively. A fully implemented single market will aid security of supply, lead to more efficient use of energy, improve the competitiveness of EU businesses and enable effective application of economic instruments such as the ETS. The recent SER puts forward a number of useful proposals to strengthen the development of the internal energy market including ways to increase the effectiveness of unbundling, improve the regulatory framework and enhance transparency. Moreover, the Commission is taking action under competition law against individual companies.

— *The Commission's role in the area of interconnection should include completing the unbundling process through the separation of supply and generation assets from transmission and distribution assets.*

The Commission has proposed two options to address unbundling: a full Independent System Operator (where the vertically integrated company remains owner of the network assets and receives a regulated return on them, but is not responsible for their operation, maintenance or development) or ownership unbundling (where network companies are wholly separate from the supply and generation companies). The UK believes that full ownership unbundling is the only certain way to ensure non-discriminatory access to networks and to provide the necessary incentives for network investment and will be pressing the Commission to that end. The Commission is also proposing to re-examine the provisions on unbundling of distribution activities, which currently exempt smaller distributors from most unbundling requirements.

— *We do not support the creation of a single European energy regulator.*

The Government agrees with this point. While not favouring a single European regulator, we do think that powers of energy regulators across the EU should be harmonised at the highest level, and that national regulators should cooperate closely within ERGEG (European Regulators Group) and have the powers to promote the development of the internal energy market and, in particular, greater integration of national markets. A common approach on regulatory issues affecting cross border trade is a major priority.

— *We do not believe the case has been proven for the development of a European Energy Supply Observatory or for a revision of Community legislation on gas stocks.*

The Commission's rationale for the observatory is that in an integrated market there is a greater need for transparency relating to external dependency. In our original response to the Green Paper, whilst we support efforts to bring transparency on supply and demand data, the UK would not support the creation of a new body. The Commission proposes to establish the observatory as an office within DG TREN, aiming to set out later this year its specific responsibilities and a legal base for how it will be financed. We will consider the proposal carefully when we have more detail.

Our current view is that new legislation on comprehensive transparency requirements is needed so that companies in Europe all operate on a level playing field and have access to the same information, so ending the advantage afforded to vertically integrated companies. We think the Energy Observatory will provide a useful function in collecting and making available comprehensive data and monitoring the demand/supply balance so that investment needs are identified in time for the market to respond. We see the observatory and new legislation as complementary and both needed.

The UK is considering the issue of strategic gas storage in the context of our forthcoming Energy White Paper and notes the Committee's views on this. We welcome the Commission's recognition of the high costs that the establishment of strategic stocks would involve and the need to balance this against the benefits gained and will press the Commission for a full cost-benefit analysis to carried out before it brings forward its promised proposal on strategic stocks.

— *We do not believe that a European-wide energy mix benchmark is appropriate but that markets are best placed to determine specific technologies and related proportions within the energy mix.*

The Government agrees. Member States should have the flexibility to deliver their own energy mix commensurate with their levels of emission reductions and to set policies appropriate to national circumstances. Providing the necessary incentives are in place to bring on new technologies and greater use of energy generated from low carbon sources, the market should deliver the most effective solutions.

— *While action to reduce energy demand and increase the proportion of renewables in the energy mix are important, setting targets is not appropriate.*

The Government agrees with the Commission on the importance of increasing the use of renewables and other low carbon energy technologies in power generation and transport for meeting our climate change objectives, but does not believe that mandatory targets offer the most cost-effective way of doing this. The UK is firmly of the view that Member States must have the flexibility to deliver their own energy mix at levels commensurate with their overall emission reductions goals in the most cost effective way—by setting policies appropriate to national circumstances. Though indicative targets can be helpful, the UK does not favour prescriptive targets.

— *The Commission should consider ways to enhance the EU ETS including broadening the scope of the scheme, increasing its terms, reviewing the targets for carbon reduction and considering the basis on which allowances are allocated.*

As noted above, the UK sees the ETS as the best long-term mechanism for securing least-cost emissions reductions across the EU and will work with the Commission to strengthen the scheme for future phases post-2012. In particular, we see the need for greater clarity on when and how caps/limits on emissions will be decided in the future. And we agree with the Committee and a number of other Member States on the need to review the way that allowances are allocated as well as to broaden the scope of the scheme—for example to include aviation. As the largest regional carbon trading scheme in the world, the ETS has the potential to become the hub for a global carbon market but it needs strengthening before it can do this.

**Letter from the Chairman to Lord Truscott**

Thank you for your letter of 29 January 2007. Sub-Committee B considered your letter at its meeting on 19 February 2007.

We were grateful to you for your full response to the recommendations of our report, *The Commission's Green Paper, "A European Strategy for Sustainable, Competitive and Secure Energy"*, published in July of last year. We will consider your response carefully and look forward to addressing the issue further, possibly through a debate in the House. In the meantime, we will continue to scrutinise the Commission's follow up proposals, and share your hope that they do add the necessary clarity to the Green Paper's objectives.

On the EU-Russia Cooperation Agreement, we fully understand your reasons for withholding the restricted report of the PPC meeting; but would of course be grateful for an update from you should any developments in negotiations be made.

*26 February 2007*

## 42nd REPORT: THE CRIMINAL LAW COMPETENCE OF THE EUROPEAN COMMUNITY

**Letter from Gerry Sutcliffe MP, Parliamentary Under Secretary of State, Home Office to the Chairman**

I am writing in response to the above report, published 28 July 2006. Firstly I would like to apologise for the delay in responding, which was due in part to the summer recess and pressure of other work but was also due to our perception that we should allow some time for possible developments, particularly in relation to the passerelle proposals, which we could comment on by way of an update. I would like to thank the Committee for a very well reasoned and comprehensive report, which thoroughly examines the implications of both Case 176/03 and the Article 42 passerelle proposals.

### Community Competence in Criminal Law

As regards case 176/03 and community competence criminal matters, the report eloquently identifies and addresses the issues that are at the heart of the debate on how far the Community can go in defining criminal offences and stipulating penalties and the implications for future domestic and European Union law making. The Government fully agrees with the Committee's overall assessment of the issues and the conclusions drawn. In particular we endorse the committee's view that, in addition to taking a case-by case approach, the Commission should carefully examine need and urgency before introducing legislation that is designed to replace existing Third Pillar instruments or that will include criminal law provisions.

We also share the Committee's concerns about the uncertainty surrounding the interpretation of the judgment in case C-176/03 and agree that it is essential that the European Court of Justice takes the opportunity provided but the maritime pollution to clarify the extent of Community criminal law competence. We also note the concerns about the need for political guidance. The Government would welcome the opportunity to discuss the prospects for guidance within the Council but we have to acknowledge that, partly because a large number of Member States maybe conscious of the need to ensure consistency with their intervention in support of the Council in the maritime pollution case, it is now unlikely that such guidance will emerge before the European Court of justice passes judgment in that case. You will have noted the agreement at the Justice and Home Affairs Council of 5–6 October to resume discussion of the intellectual property Directive at expert level without prejudice to a final decision on the appropriate legal base.

I note the reference to the possibility of a remedial treaty as an option should the ECJ not accept the Council's arguments in the maritime pollution case. I am also reluctant to look too deeply into this crystal ball for the time being, and we will need, of course, to examine all the options if this circumstance arises. But in this regard it is also, of course, entirely plausible that the issue before the ECJ could be overtaken by any resolution on the Future of Europe debate and the fate of the Constitutional Treaty, given that the latter would have collapsed the Pillars.

### The Article 42 "Passerelle" Proposals

We welcomed the Committee's very detailed consideration and balanced assessment of the issues raised by the proposal to use the Article 42 passerelle. Its report provided a useful contribution to the Government's analysis. As the Committee noted at paragraph 172, the proposal deserved "careful examination and caution against any knee-jerk reaction resulting from media coverage".

The Government felt that there should be a real discussion of the issues at the Informal JHA Council in Tampere, Finland and we were interested in hearing others' views. We welcomed the opportunity to consider whether decision-making in justice and Home Affairs could be made more effective. The Government did express serious and substantive concerns about the proposal. Most Member States also expressed significant concerns, or were not persuaded that using the passerelle was necessary or would result in faster or more effective decision making. With this in mind, we consider that discussion on this question has been conclusive and that the EU should now move on, focussing on practical measures rather than institutional change at this time.

The Committee's report amounts to a very comprehensive and useful contribution to the debate on both the implications of the judgment of the ECJ in case C176/03 and the proposal to use the Article 42 passerelle and will considerably assist us in our approach to the future development of EU criminal law business. As regards the former issue it looks very much as if we will now need to await the judgment of the ECJ in the maritime pollution case. As to the passerelle, we consider the current debate to be over, although we expect the European Council conclusions to make some reference to the debate under the Finnish Presidency. In any event we will of course return to these matters should there be any significant developments.

*5 December 2006*

## 46th REPORT: ANNUAL REPORT 2006

### Letter from Rt Hon Geoff Hoon MP, Minister for Europe, Foreign and Commonwealth Office to the Chairman

I am writing with regard to the House of Lords European Union Committee Annual Report 2006.

The Government welcomes the quality of analysis and expertise, reflected in this annual report, that the Committee contributes on European issues.

Your report highlighted a number of procedural issues on which a Government update may be helpful. I attach a short note covering these points.

*26 June 2007*

**Government Response**

Scrutiny of Human Rights

*The Committee expects shortly to receive from the Government proposals designed to provide enhanced information on the human rights implications of proposed EU legislation. This would deliver an undertaking given by the Government in response to our Review of Scrutiny. We await the Government's proposals with interest. (Paragraph 125)*

1. We have now agreed an approach. following Baroness Ashton's letter to you of 26 March 2007 and your reply of 25 April 2007.[42] The Government has undertaken to provide an analysis of compliance with fundamental rights (as described by Article 6(2) of the TEU) in Explanatory Memoranda of EU legislative proposals submitted for scrutiny. Officials are now working on guidance for departments and will liase with the staff of the Committee before this issues. We expect to be able to start providing this information shortly. The Government agrees that it would be sensible to review how the procedure has operated in due course.

Scrutiny During Co-Decision

*The Committee also expects shortly to receive from the Government proposals designed to provide enhanced information during the co-decision process on EU legislation. This too would deliver an undertaking given by the Government in response to our Review of Scrutiny. We await the Government's proposals with interest. (Paragraph 126)*

2. Cabinet Office officials have been liasing with the Clerk of the Committee on the production of new guidance. A draft has been shared with the Clerk and is being considered before it can be presented to the Committee formally.

Scrutiny and Overrides—Summary

*The Committee continues to take very seriously any breach by the Government of the Scrutiny Reserve Resolution (ie by agreeing to proposals in the Council of Ministers before our scrutiny of them is complete). We publish in each Annual Report data on the number of overrides by Department. The Government's statistics for the periods July to December 2005 and January to June 2006 appear in Table 1. This data is supplied by the Cabinet Office on behalf of the Government as a whole. The Committee will, over the year ahead, review the derivation of this data and report to the House again in the next Annual Report. (Paragraph 127)*

3. The Scrutiny Reserve Resolution imposes an important, discipline on Ministers and the Government does not override the work of the Committee lightly. The Government will continue to work closely with the Committee, as it has done particularly in the area of CFSP/ESDP business, to ensure that business is conducted smoothly and to avoid overrides occurring. The Government will continue to take note of any changes the Committee might consider would improve the presentation of the twice-yearly information supplied on overrides. Cabinet Office officials have just recently reminded all departments of the importance of avoiding overrides with a reminder of good practice in keeping the Committee informed of developments on matters under scrutiny, or which might be coming forward for scrutiny on a fast track.

EMs Website

*The Committee continues to place a high value on the exchange of correspondence with Ministers, all of which we "make publicly available. We will continue to press Government Departments to ensure that replies are timely and respond appropriately to our questions and concerns; and to ensure that a dedicated website for Explanatory Memoranda is established. The Parliamentary Under-Secretary of State at the Foreign and Commonwealth Office, Lord Triesman, stated in the debate of 27 October 2006: "The Government are committed to producing that website, which we hope to have up and running early in 2007". We welcome this undertaking. (Paragraph 132)*

4. Prompt replies to the Committee's questions are important, particularly in the context of ensuring that scrutiny can be completed in good time as this can be key to avoiding scrutiny overrides. The website is now ready and contains Explanatory Memoranda submitted from the beginning of 2007. FCO Ministers wrote to you about this on 6 June and a Written Ministerial Statement was deposited in Parliament on 11 June to announce it more widely. Cabinet Office officials have briefed your Clerk on these developments.

[42] Correspondence with Ministers, November 2006–April 2007, Human Rights Proving EU Legislation.

## 47th REPORT: THE EU STRATEGY ON BIOFUELS: FROM FIELD TO FUEL

### Department for Transport's Response

Introduction

The Government welcomes this report from the House of Lords European Union Committee, which makes a valuable contribution to the debate on the European strategy on biofuels. The Government is fully committed to the promotion of sustainable biofuels which have a key role to play in helping to meet the UK's climate change targets, as well as delivering other benefits, including adding to the UK's fuel diversity and generating employment, particularly in rural areas.

The Government broadly agrees with the great majority of the conclusions and recommendations of this report. Indeed, many of the points made in the report have also been made by the Government to the European Commission in our response to the consultation on the future of the Biofuels Directive.

Within the UK biofuel sales, production and availability have grown substantially during 2005 and 2006, and biofuel sales are currently running at 0.5% of total fuel sales, a ten-fold increase since 2004. The Government agrees with the findings of the Committee that additional measures will be necessary to ensure a mainstream biofuel market. This is why, in November 2005, the Government announced it would introduce a Renewable Transport Fuel Obligation (RTFO) that will require transport fuel suppliers to ensure that a proportion of their sales are from renewable sources. The RTFO will be introduced in 2008–09 with the obligation level rising to 5% by 2010–11. We estimate that this policy alone will save one million tonnes of carbon in 2010, the equivalent to taking one million cars from our nation's roads.

The Government is exploring the possibility that the level of the Obligation could rise above 5% after 2010–11, but this will depend on three critical factors being met:

— the development of robust sustainability and carbon standards for biofuels to ensure that they are delivering high levels of carbon savings without leading to biodiversity loss or endangering sensitive habitats;
— the development of new fuel quality standards at EU level to ensure existing and new vehicles can run on biofuel blends higher than 5%; and
— the costs to consumers being acceptable.

The Government believes. that requiring a 5% share of biofuels, the highest inclusion rate allowable under EU fuel quality standards, will move the UK biofuel market from a minor niche market to the mainstream in the shortest practical timeframe.

The Government notes the conclusion of the Committee that the RTFO has "great merit". The UK is also committed to developing reliable ways of ensuring that the carbon and wider environmental aspects of biofuel production are properly addressed. To this end, the RTFO will include from day one a requirement to report on the carbon saving and wider sustainability of the biofuels supplied. The Government has commissioned the UK's Low Carbon Vehicle Partnership to develop a robust and user-friendly carbon saving calculation methodology for different biofuel production chains, and a reporting framework and guidance to encourage fuel suppliers to source their biofuels from sustainable feedstocks. These issues will also be considered as part of the Government's Biomass Strategy which will be published later in 2007.

The combination of measures announced by the UK Government should ensure a strong and sustainable UK biofuel market by 2010–11.

It is within this context that the following responses to specific points made by the EU Committee are framed.

Government Responses to Chapter 8: Summary of Conclusions and Recommendations

Chapter 2: *Stimulating Demand for Biofuels*

*141. We welcome the initiative shown by the EU in adopting reference value targets under the Biofuels Directive. It is undoubtedly helpful for common targets to have been established to which Member States have agreed to aspire, even though without binding commitment. The Directive provides the Commission with a useful policy instrument through which pressure may be brought to bear on Member States to increase biofuels production. (Paragraph 23)*

*142. We consider that in some measure the targets set within the Biofuels Directives are responsible for the increased use of biofuels in the EU in recent years. But the current Directive has failed to enable the EU to reach the 2005 target of a two% market share for biofuels and additional measures will need to be established if the higher target of 5.75% market share is to be reached by 2010. (Paragraph 24)*

The Government agrees, and has made similar points to the European Commission in its response to the consultation on the future of the Biofuels Directive.

Chapter 3: *Economic Factors in the Success of France, Germany and Sweden*

*143. The governments of Germany and Sweden are to be commended for the initiative and originality they have demonstrated in the incentives and exemptions introduced to encourage the use of biofuels. Implementing a strategy flexible enough to accommodate both high and low level biofuel blends has produced significant biofuels market growth in these Member States. (Paragraph 32)*

The Government agrees on the need for a flexible strategy which will allow the market to decide how best to supply the requisite amount of biofuel. Under the RTFO, obligated companies will be free to decide whether to meet their obligations through the use of high or low level biofuel blends. The Government has also provided support for the use of high blend biofuel applications through, for example, infrastructure grants to assist with the installation of new refuelling points, and fiscal incentives to encourage the purchase of vehicles manufactured to run on high blends of bioethanol.

*144. We welcome the Government's plan to introduce Enhanced Capital Allowances to enable those biofuel plants which can demonstrate significant carbon dioxide emission savings to claim 100% first-year capital allowances on their spending on qualifying plant and machinery. This is an innovative and important step towards boosting the growth of the biofuels industry within the United Kingdom. (Paragraph 37)*

The Government has applied for State Aid approval for an Enhanced Capital Allowance scheme to support the most carbon-efficient biofuels plants. Following discussions with the European Commission in summer 2006, the Government launched a further stakeholder discussion process with interested parties in October 2006 to update them on progress and gather views on the best way forward. The consultation process is now almost complete and the Government will update stakeholders on the position very shortly.

*145. Long-term tax concessions are an effective method of supporting the entry of new biofuels producers. Legal guarantees on the duration of duty exemptions give certainty and predictability to investors in the energy market, thus providing for significant investment and growth. We recommend that the Government should take note of this and consider what further incentives can be given within the United Kingdom. (Paragraph 40)*

The Government introduced an Alternative Fuels Framework in the Chancellor's 2003 Pre Budget Report. The purpose of the framework is to ensure that policy continues to reflect the environmental benefits that alternative fuels can deliver, and establish a clear rationale for decisions on Government support. The principal application of this framework is to policy on duty differentials for alternative fuels. In line with the principles set out in the framework the Government has given a commitment to providing future market stability for alternative fuels, with the Government committing to a rolling three-year certainty on the differentials in duty rates on alternative fuels.

*146. We note the success of effective partnerships between government, producers and industries in France, Germany and Sweden. These relationships provide security to the biofuels producer that there is a demand for the product and surety to industry investors that the volumes required can be delivered. This mutual cooperation is essential to the growth of any industry and we recommend that the Member States and the Commission consider what steps can be taken to encourage such partnerships throughout the European Union. (Paragraph 46)*

The Government agrees that effective partnerships are an essential component of a successful biofuels strategy. This has long been recognised by the UK Government who have for several years been developing cleaner transport policies through established stakeholder groups including the Low Carbon Vehicle Partnership. The RTFO has, from the outset, been developed in full partnership with stakeholders and we are confident that it will encourage collaboration between biofuel producers and their raw material suppliers.

Chapter 4: *The Three Justifications for Biofuels*

*147. Those Member States which have established a viable and expanding biofuels industry have done* *so with energy security as their prime objective. As energy security becomes an ever greater political concern, demand for biofuels will grow, but this is likely to concentrate on biodiesel. This will place increased pressure on national governments to ensure demand is met through domestic production or imports. (Paragraph 52)*

*148. The Government place $CO_2$ saving at the top of their agenda in relation to the case for biofuels. If $CO_2$ saving is the primary goal, it is clearly illogical to use biofuels which have caused the emission of more greenhouse gases by their production than are saved by their consumption. We therefore consider some form of carbon certification to be desirable and we would wish to see the European Commission establish a European-wide system of certification for both imported and domestically produced biofuels and feedstocks. (Paragraph 60)*

*149. On the condition that any new environmental regulations do not constitute a barrier to free trade or unfairly restrict the importation of foreign produced biofuel or feedstock, certification will greatly strengthen the policy case for biofuels. However, we believe that in relation to the verification process, the onus should be on fuel companies to account for traceability rather than the exporting countries. A system of certification is a viable means of supporting sustainable development and environmental protection. The EU should draw on best practice and establish a monitoring and assessment programme that encourages the environmental lifecycle performance of biofuels to meet minimum standards. (Paragraph 61)*

The Government agrees that effective and reliable assessments of the carbon and wider environmental aspects of biofuel production need to be developed and have commissioned the UK Low Carbon Vehicle Partnership to develop appropriate calculation methodologies for biofuel production chains, as well as a reporting framework to encourage transport fuel suppliers to source their biofuels from sustainable feedstocks. Given the global nature of the biofuels market, we agree that there is an urgent need for the development of European-wide environmental standards for biofuels. These points have also been communicated by the Government to the European Commission in the response to the consultation on the future of the Biofuels Directive.

*150. We believe that governments, farmers, fuel producers, car companies and oil companies must work together to create a stable biofuels market supported by long-term agreements. This in turn will strengthen consumer confidence and lead to greater awareness and acceptance of biofuels. Whether these coalitions are led by farmers, as in France, or large multinationals, such as Abengoa in Spain, the outcome is the same: a strong national commitment to agricultural economic development through biofuels. (Paragraph 65)*

The Government agrees, as noted in our comments on paragraph 146 above.

Chapter 5: *Importing Biofuels*

*151. If energy security is a nation's main concern, those countries wanting to replace fossil fuels with biofuels may understandably seek imports from countries such as Brazil. A strong international market in biofuels is extremely valuable. Equally, a strong and competitive European biofuels industry is strategically and economically important. We thus support the European Commission's twin objectives of maintaining fair market access for imported biofuels whilst fostering a successful domestic biofuels industry. We do not believe that these objectives are incompatible. (Paragraph 73)*

*152. While imports to the EU are likely to constitute a significant proportion of both biofuels and feedstock for the foreseeable future, further steps will need to be taken to ensure that the overall environmental benefits of imported alternative fuels are properly realised. Although biofuel use produces less carbon dioxide emissions. than use of fossil fuels, this may be partly, if not wholly, negated by environmental costs in their country of origin and by transportation to the point of use. (Paragraph 82)*

*153. Even though Member States can seek guarantees from developing countries about the sustainability of the crops they are importing, accurate monitoring and evaluation is notoriously hard to enforce. A system of certification is therefore a viable means of ensuring sustainable development and environmental protection. Both the biofuels and oil industries clearly view this development as both necessary and workable. We wish to see the European Commission begin work on developing a European wide system of evaluation and certification of the lifecycle environmental performance of both imported and domestically produced biofuels. (Paragraph 83)*

The Government agrees with the Committee's recommendations on environmental certification, as noted in our response to paragraphs 147–149 above, and we recognise the benefits of having a domestic industry as well as imports. In the context of the potential cost, carbon saving and development benefits of increasing international trade in biofuels, the Government would encourage the European Commission to consider improving market access for bioethanol imports over time.

Chapter 6: *Building Domestic Industries*

*154. There is an urgent need for biofuels production capacity to increase in order to meet future demand for biofuels. This will require the European Union to develop an appropriate policy framework and Member States to provide appropriate incentives to encourage further investment in production facilities. (Paragraph 88)*

The Government agrees. Growing demand for biofuels will require significant expansion in production facilities throughout the EU. In the UK the Government has been pleased to note industry's positive response with plans to invest in significant new capacity following the Government's announcement that it will introduce an Renewable Transport Fuel Obligation from 2008. We will continue to work at national and EU level to ensure that the policy framework is appropriate to support investment.

*155. We strongly believe there is a genuine prospect of bringing into use more EU land, including set-aside, to grow energy crops, while respecting biodiversity policies. However, the EU must always remain secure in its food supply. (Paragraph 97)*

The Government agrees that there is further capacity in the EU to grow energy crops, although the effects of expanded production on food markets will need to be monitored carefully. Farmers are allowed to grow oilseeds and other energy crops on set aside land and 76,000 hectares of set-aside land was used for this purpose in England in 2005. However, the Government has signalled its view that constraints on production, such as set-aside, should be eliminated as part of the 2008 CAP reform "health check". If achieved, this will provide a more sustainable base for the development of an EU biofuels industry.

*156. Our evidence indicates that blending limits impede progress towards the 5.75% target. The European Commission should work together with the European Committee on Standardisation and the oil and vehicle industries to review current fuel quality standards, with the aim of increasing blending limits. We urge the European Commission to support changes to the EU Directive on the Quality of Petrol and Diesel and to set new, higher blending limits for bioethanol. (Paragraph 101)*

The Government agrees, and has made the same points to the European Commission. The decision to make the level of the RTFO 5% in 2010–11 recognises the limitation placed by the blending limit.

*157. Car manufacturers have a vital role to play in supporting the growth of biofuels and any changes to blending limits must be carried forward in partnership with the industry. Biofuels are not the only solution to carbon dioxide reduction in the road transport sector and should not be seen as a challenge to alternative "clean technologies". (Paragraph 102)*

The Government agrees, and is participating actively in discussions with the European Commission on the review of the voluntary agreements on $CO_2$ emissions from new cars.

*158. With new plants being regularly announced, and with major oil companies becoming more convinced of the need to be active in the biofuel market, the issue of integrating biofuels with conventional fuels is already prominent, and will become more so. We note with particular interest the development of biobutanol and hope that industry is able to take this technology forward. (Paragraph 109)*

The Government has also noted this development with interest.

Chapter 7: *Looking Forward*

*159. Although we do not advocate the use of subsidies to prop up markets, we acknowledge that, in order to stimulate initial growth of the biofuels market, Government intervention and regulation will continue to be necessary in order to provide long-term assurance to investors that biofuels production will be financially viable. (Paragraph 113)*

The Government agrees and recognises the benefit the 20 pence per litre duty incentive has had in increasing biofuel sales in the UK. From 2008, in the UK the RTFO will be the primary mechanism to deliver a mainstream biofuel market. The RTFO will provide a long term stable mechanism to establish and safeguard a healthy UK biofuels market without breaching State Aid rules which preclude overcompensation.

*160. We believe that the RTFO model developed by the United Kingdom Government is one that has great merit and we are encouraged that the European Commission is considering a similar option. We consider that the European Commission should amend the Biofuels Directive to require Member States to use biofuel obligations as a tool to achieve national targets. The Commission must however ensure that distortions in the Single Market do not arise as a result. If such a situation were to develop, the position would need to be reviewed and the case for Community-wide compulsory fuel obligations examined. (Paragraph 123)*

*161. In present circumstances, however, we do not consider that biofuel obligations should be imposed at Community level on each fuel. Rather, by allowing Member States to select the percentage of the biofuel obligation on a country-by-country basis while retaining a policy framework of indicative targets for market share, it strikes a sensible balance between national rights and responsibilities. Obligations also provide an essential counterweight to the support received by the biofuels industries in Brazil and the United States of America, which currently enjoy a greater degree of Government support than in the EU. (Paragraph 124)*

The Government believes that the RTFO is the best way to ensure that the UK market for biofuels will be amongst the strongest in Europe by 2010–11, However there is a need to recognise that similar obligations may not necessarily work for all Member States who may wish to exercise different options to meet their obligations.

*162. We believe there is scope for second generation biofuels to become increasingly important and to bring greater environmental advantages than currently provided by biodiesel and bioethanol. Further advances in engineering, chemical and agricultural crop technologies will sustain the progress of biofuels and it is here that the EU can add real value. By co-ordinating, financing and organising European research and development as well as facilitation of good practice, the European Commission should act as the catalyst to encourage the market to find and develop new technologies, including the use of by-products and potential feedstocks now classified as waste. We believe, furthermore, that Commission efforts in this area of research should extend to second generation biofuels for aviation, such as synthetic kerosene. (Paragraph 134)*

The Government agrees that the European Commission has an important role to play in European Research and Development into cleaner and more efficient biofuels and production processes.

*163. It is appropriate that Member States should have the flexibility to develop bioenergy solutions that best suit their climatic conditions and agricultural sector. We recommend that the current system of voluntary targets coupled with monitoring and assessment by the European Commission be retained. The present process of setting biofuel market share targets at five year intervals should also continue, with new targets being set for 2015 and 2020. (Paragraph 138)*

*164. However, it is unlikely that the European Commission will be able to set ambitious yet achievable targets for these dates until Member States" progress toward the 2010 target has been assessed. As there is a petrol surplus and diesel deficit in the EU, consideration should also be given to separate targets for the two relevant biofuels to ensure balanced development. (Paragraph 139)*

The Government agrees that, for the reasons set out by the Committee, Member States should have the flexibility to decide on the most appropriate mix of biofuels to suit their needs. The Government does not therefore see the need for separate EU-wide targets for different biofuels.

*165. With regard to obligations, we consider that the European Commission should amend the Biofuels Directive to require Member States to use biofuel obligations, such as RTFOs, as a tool to achieve the national consumption targets they have identified. (Paragraph 140).*

The Government believes that the RTFO is the best way to guarantee a strong and sustainable UK market for biofuels. The Government recognises, however, that similar obligations may not necessarily work for all Member States who may wish to exercise different options to meet their objectives.

## 48th REPORT: EUROPE IN THE WORLD

### Letter from Rt Hon Geoff Hoon MP, Minister for Europe, Foreign and Commonwealth Office to the Chairman

I'd like to thank Sub-Committee C for its excellent report on Europe in the World (48th Report of Season 2005–06, HL Paper 268). It is a positive and significant contribution to the important debate about how the EU can best fulfil its role in the world.

I attach the Government's response to the Committee's recommendations and conclusions.

*24 January 2007*

**Government Response**

Improved Cooperation and Coherence in EU External Relations

1. *"We welcome and endorse the Commission's desire to improve the coherence of the EU's external relations by strengthening cooperation between the Presidency, the High Representative and Council Secretariat, the Commission and the Member States through action within the existing Treaty provisions. We do not regard these proposals as either cherry-picking from the Constitutional Treaty nor as requiring Treaty change".*

2. *"The present Communication may well not exhaust the EU's scope for such action within the existing Treaties. We hope that both the EU institutions and Member States will continue to search for pragmatic ways to strengthen cooperation and that lessons learnt where cooperation has been successful will continue to be applied in other areas".*

The Government shares the Committee's view of the Commission initiative. The UK welcomed the report warmly in June 2006 as being in the spirit of the Hampton Court Agenda and focussed on effective delivery.

The Committee is right to make clear that the Commission's proposals are quite distinct from those of the Constitutional Treaty, and can be implemented within the framework of the existing Treaties. Work will continue on improving cooperation and coherence. The December European Council invited "future Presidencies to take this forward with the High Representative and the Commission to ensure the continuity of this process".

Strategic Planning

3. *"We welcome the Commission proposal that there should be a high-level strategic planning meeting at the beginning of each Presidency between the Presidency, Commission and High Representative enabling issues of coherence and the overall direction of EU external action for the duration of the six month Presidency to be discussed, in order that the EU institutions and the Member States understand each other's priorities".*

The Government agrees with the Committee on the value of this proposal. The Government also notes that the Finnish Presidency usefully held such a meeting in July 2006.

Cooperation between the High Representative and the Commission

4. *"Attendance of the High Representative at meetings of the Relex Group will improve the coherence of EU external relations and is likely to be welcomed. The High Representative cannot be involved in decision-making but will have an influential role and should work closely with the Commissioners to agree priorities in those geographical and thematic areas in which both the Commission and the Council have competence".*

5. *"We hope that these meetings will lead to closer cooperation between Commission and Council officials, both in preparing for meetings, and more generally".*

The Government agrees with the Committee that the High Representative's attendance at the meetings of the Relex Group of Commissioners would be beneficial and help reinforce useful cooperation between Commission and Council Secretariat officials. But the Government also notes that the High Representative necessarily spends a good deal of time away from Brussels and that there may therefore be practical limits on his ability to attend such meetings.

Cooperation between Council and Commission Officials

6. *"We endorse the concept of closer working relationships at all levels within the Commission and the Council secretariat. Officials need to build relationships with their counterparts in order to ensure that strategic objectives and principles are complementary and achievable by both institutions".*

We fully support close working relationships at all levels between the Commission and the Council Secretariat. The Government notes that there are already many good examples of this in practice.

### Joint Papers

7. *"We endorse the concept of joint papers for discussion in Council and its working groups both as promoting closer working relationships between Commission and Council officials and as a means of ensuring that the two institutions reach a common position which takes into account the priorities and expertise of each. Joint papers should become standard practice in areas of overlap between Commission competence and the CFSP".*

8. *"We note with regret that the present Communication was not a joint paper. The United Kingdom Government should, at the December European Council, urge the Commission and Council secretariat to take forward the Commission proposals on cooperation together".*

The Government agrees on the value of joint Commission and Council Secretariat papers for discussion in Council and its working groups on issues where significant Community and CFSP interests are engaged. And the Government notes that the Council Secretariat and Commission have already produced a number of joint papers.

We were pleased to see that at the December European Council there was a broad consensus in favour of taking forward the Commission proposals. It is important to note that the Conclusions invited future Presidencies, the High Representative and the Commission to continue to enhance strategic planning and to ensure coherence in the use of the different external relations policy instruments.

### Information Exchange

9. *"We agree that the function of the Commission's crisis centre and the Council's situation centre are distinct and cannot be amalgamated. However, in crisis situations analyses produced by one should be shared with the other".*

The Government agrees with the Committee that the crisis centre and the situation centre have distinct roles, and that there are therefore limits to the sharing of "reporting and analytical resources".

### EU Participation in Multilateral Organisations

10. *"We welcome the Commission's proposals on upstream preparation for major international meetings into which the EU has an input. Such preparation will facilitate the joint presentation of a coordinated EU position and increase the impact of the EU's message".*

11. *"The Presidency should be able to call upon the assistance of Commission experts wherever necessary, possibly at short notice. The Council secretariat and Commission should work together to determine how best to implement this proposal.*

We fully support effective EU preparation for major international meetings on the basis of the existing Treaties. The Government agrees that this should, where appropriate, draw fully on Commission expertise and advice.

### Commission Representation of the Euro-zone

12. *"We recognise that the proposal for full Commission participation in the external representation of the euro-zone raises sensitive issues for those Member States which are members of the euro-zone. We believe this proposal will need to be carefully weighed, taking into account the comments of those Member States".*

The Government agrees with the Committee that this is primarily a question for those states in the euro-zone to consider, taking into account Treaty obligations.

### Double-hatting of Special Representatives and Heads of Commission Delegations

13. *"We consider that the double-hatting arrangement has been a success in Macedonia, has led to greater visibility for the EU presence, greater impact and coherence, and has contributed to resolving the issue of division of responsibilities. The presence on the ground of a double-hatted EUSR and Head of Commission Delegation means that the EU now speaks with one voice in Macedonia".*

14. *"We accordingly support the proactive consideration of extending this model on a case-by-case basis and adapting it to other situations where a Commission delegation and EUSR are on the ground in the same city, country or region".*

15. *"Due to the high level of responsibility and the political sensitivity of such posts, persons nominated for double-hatting should have a strong capacity to build relationships with the Council, the Commission, and the Member States, and ideally have experience of working for both European Institutions".*

As the Minister for Europe stated in evidence to the European Union Committee (Sub-Committee C) in July 2006, the Government believes that the double-hatting arrangement in Skopje has been a success and has effectively supported the delivery of EU objectives in Macedonia.

The Government will continue to consider proposals for double-hatting on a case by case basis and agrees with the Committee that it is important that candidates for such appointments should have the capacity to build strong relationships with the Council, the Commission, and the Member States.

### Cooperation between Commission and Council 1representatives in the Field

14. *"The Government should take a pragmatic approach to the issue of closer cooperation between Commission delegations and the Presidency Representations, EUSRs, ESDP mission representatives and Council secretariat officials".*

15. *"Commission delegations and EUSR staff offices should explore means of closer collaboration, taking into account each particular set of circumstances. Special consideration should be given to the western Balkans and Addis Ababa where the EU presence stands to benefit from such arrangements".*

16. *"Greater coordination at field level between Commission delegations and EUSRs or ESDP missions should be encouraged. We note that the exchange of reporting information is already being carried out, but the institutions should continue to explore avenues for greater cooperation".*

The Government's approach to the issue of closer cooperation in the field is pragmatic. We entirely agree with the Committee that the work of the Commission and the Council in third countries should "enhance and complement that of the other to make the best use of the Union's resources" within the framework of the existing Treaties.

We take note of the Committee's view that this would be particularly appropriate in the Western Balkans and Addis Ababa and will take this into account when considering the possible development of the EU presence in both areas.

### Consular Assistance

17. *"Consular assistance is the responsibility of Member States. On a practical level, delegations may be able to support Member States" representations in crisis situations, such as in the field of logistics. We would encourage the Commission to develop guidelines in this latter area for its delegations, in close consultation with the Council and the Member States, taking into account the need for a high level of preparedness in the event of an emergency".*

The Government agrees with the Committee that consular assistance is the responsibility of Member States. There are useful ways in which we can cooperate with other Member States" representations and Commission delegations in order to enhance our preparedness to deal with emergencies. A good level of cooperation between EU Member States already exists, and work is underway to further develop it. The Government agrees that we should work with the Commission and Council of Ministers to define the practical support Commission delegations might provide under certain circumstances.

### Sharing of Premises and Support Services

18. *"We welcome the Commission's pragmatic proposal for the sharing of premises and support services between Commission delegation offices and EUSR or Member State missions, where these are in the same city. Decisions should be taken on a case-by-case basis taking into account the needs and capacities of each party".*

The Government welcomes the Commission's readiness to consider the sharing of premises and support services. The Government notes that there are already examples of this in practice, including in Iraq (as the Committee have identified) where Commission Officials and the European Security and Defence Policy mission (EUJUSTLEX) work from British Embassy premises.

STAFF EXCHANGE PROGRAMME

19. *"We believe that the Commission's proposals for the exchange of its personnel with diplomatic services of the Member States and the staff of the Council secretariat will bring real benefits to staff of greater understanding and knowledge of the EU institutions and Member States. The United Kingdom Government should strongly encourage their staff to participate in the exchange".*

The Government supports this initiative, and is considering how best to co-ordinate UK participation in the recently launched full scheme. The Commission aim to begin exchanges later in the summer.

RELATIONS WITH THE EUROPEAN AND NATIONAL PARLIAMENTS

20. *"We welcome efforts by the national parliaments of the Presidency countries, and by AFET, to encourage the attendance of both the High Representative and the Commissioner for External Relations at all meetings of COFACC as well as at joint meetings of the European Parliament and national Parliamentary foreign affairs committees. We would welcome a joint contribution in order to promote discussion of the effectiveness of coordination and coherence".*

The Government notes that the Presidency and the High Representative regularly brief Members of the European. Parliament on Common Foreign and Security Policy developments. The Government notes that Commissioners also do so on other external matters. We support this practice, and see no problem with the High Representative and the Commissioner for External Relations appearing together in the configurations listed by the Committee.

PUBLIC SUPPORT

21. *The United Kingdom should give a political lead by publicly recognising what the EU is doing in the field of external relations and in giving due credit to the EU for its success. Only through greater visibility and increased public awareness in both the EU and third countries will the EU be able to properly fulfil its role in the world.*

The Government is committed to achieving greater public awareness and a more mature debate about of EU issues. Working through the EU to promote stability, security, good governance and the values to which the Union subscribes is a central element of the Government's foreign and security policy. The Government is grateful to the Committee for its recognition of the successes of this policy. The Government will, as the Committee suggests, continue to promote broader awareness of the EU's activities in the field of external relations and the benefits for the UK.

## 51st REPORT: PROPOSED EUROPEAN INSTITUTE FOR GENDER EQUALITY: SUPPLEMENTARY REPORT

### Letter from Meg Munn MP, Deputy Minister for Women and Equality, Department for Communities and Local Government to the Chairman of Sub-Committee G

This is to acknowledge the receipt of the House of Lords supplementary report on the European Institute for Gender Equality.

In my recent correspondence, I informed you that the regulation establishing the Institute has now been adopted. I am pleased to inform you that majority of the recommendations in this report have been taken into consideration.

Concerns were raised about the proposed sized of the management board. We were able to re-negotiate during the next phase of discussion for a medium sized management board, for which the committee has shown support.

The issue of the voting weight has also been resolved. Each member of the management board will now have one vote each and decision will be taken by majority of its members. This will ensure that the Commission does not have overall control over the Institute.

The option of co-locating the Institute with Fundamental Rights Agency did not arise as Vienna did not bid to host the institute. To ensure close working relationship between the Institute and Fundamental Rights Agency, the institute will invite the director of Fundamental Rights Agency to attend its management board meeting as an observer when deemed necessary, particularly when coordinating the working programmes as regards gender mainstreaming. Lithuania will be the location of the institute.

The regulation establishing the Institute gives clear itemisation on the funding of the institute. On this basis, we are satisfied that the institute will be adequately funded to carry out its task properly.

We secured a declaration in the regulation establishing the Institute that the legal based used cannot be construed as a precedent for the establishment of further EU institutions in the equality field. In future there will no longer be a need to enter a minute statement objecting to the legal base as a matter of course, unless the particular circumstances and context of the proposal suggest that the measure would not assist harmonisation.

The Government will be shortly issuing new detailed guidance to departments in order to ensure that a consistent approach is adopted when considering the facts of a particular case with the purpose of reaching a view on the legal base.

I hope this information is helpful.

*9 February 2007*

**Letter from the Chairman to Meg Munn MP**

Thank you for your letter to Baroness Thomas of 9 February in which you set out the Government's Response to our Report published on 30 November 2006 "Proposed European Institute for Gender Equality: Supplementary Report". This was considered by Sub-Committee G at their meeting on 8 March.

We welcome the information in your letter that the majority of the recommendations set out in our Report were taken into consideration in deciding the form in which the European Institute for Gender Equality has been set up. The specific points you list in your letter illustrate well the extent to which this was the case.

However, one of the main reasons for our publication of the Supplementary Report was to put on the record the issues surrounding the override of the scrutiny reserve which took place in connection with this EU document, and to explain the basis on which the House of Lords scrutiny procedure operates. We would therefore find it very welcome if you could write to us with the assurance that you support the recommendation set out in paragraph 67 of the Report. This recommendation relates to the constitutional importance of Parliamentary scrutiny of EU legislation and to the need for the Government to promote a wide awareness of the scrutiny reserve procedures.

In order to help with the smooth running of future scrutiny cases, Simon Burton—Clerk to the EU Select Committee—and Barry Werner—Clerk to EU Sub-Committee G (Social Policy and Consumer Affairs)—would be very happy to visit your Department to talk to your officials about the House of Lords EU scrutiny procedures.

*8 March 2007*

**Letter from Meg Munn MP to the Chairman**

Thank you for your correspondence in response to my recent letter in which I set out the Government's response to the House of Lords' "Proposed European Institute for Gender Equality: Supplementary Report".

Whilst you welcome the Government's response, you also requested an assurance that we support the recommendation set out in paragraph 67 of the report "that the Government should take action to remind all Ministers and officials of the constitutional importance of Parliamentary scrutiny of EU legislation".

I would like to reiterate, as I did during my appearance before the Select Committee, that it is important that Parliament have the opportunity to scrutinise policy proposals and make their views known. The Government recognises this is an important issue. I personally consider the scrutiny process an important part of the legislative process, and overriding scrutiny is not a decision l would take lightly.

I, therefore, express my support for the recommendation set out in paragraph 67 of the Supplementary report. I would also welcome the opportunity for the House of Lords Clerk to visit my Department and talk to my officials about the House of Lords European Union scrutiny procedures. My officials will be in touch regarding setting up such a visit.

*27 March 2007*

## 52nd REPORT: ROME III — CHOICE OF LAW IN DIVORCE

### Letter from Rt Hon Baroness Ashton of Upholland, Parliamentary Under Secretary of State, Department for Constitutional Affairs to the Chairman

I am writing to respond to the Committee's report published on 7 December and to bring the Committee up to date with the state of play on the proposal on jurisdiction and applicable law in matrimonial matters ("Rome III").

I was pleased to receive the Lords Report which was which added further detail to the helpful comments in your letter of 2 November 2006.[43]

First, I can confirm that the Government decided that the on this occasion the UK should not exercise its power under our Protocol to Title IV of the TEC to opt-in to the negotiations on this proposal. It is a matter of record that the Republic of Ireland did not opt-in either.

Turning to the Report, we broadly agree with the comments made by the Committee and have the following additional comments.

#### Applicable Law

The Government considers that there would be significant difficulties in applying foreign law. It agrees that there are shortcomings in the ideas put forward to assist courts in applying foreign law.

#### Practical Need

The Government has questioned the practical need for this proposal since the Green Paper stage. It agrees that the evidence put forward by the Commission to justify this proposal has not done so. We share the Committee's doubts as to the adequacy of the impact assessment.

#### Rush to Court

The Government shares the doubts expressed by the Committee as to whether the new regulation would prevent rush to court where there is no agreement between the parties. A number of countries also share our doubts about whether there really is a rush to court in other than a very few cases.

#### Subsidiarity and Proportionality

We agree with the Committee that although the power exists under Article 65(b) TEC to promote the compatibility of rules concerning the conflict of laws, that the Commission must nonetheless make the case for such action. Among the issues the Commission should demonstrate is that "the measure is necessary for the proper functioning of the internal market". The Government shares the Committee's view that this has not been demonstrated.

We note that the Committee was impressed by arguments to the effect that were the jurisdictional rules to be improved then it might not be necessary to harmonise applicable law rules. This is a matter that would require further study.

I am grateful for the trouble that you and the members of your Committee have put in to studying this proposal.

The UK is keeping a watching brief as the proposal is considered in the Council working group. Other delegations are also experiencing difficulties with the proposed rules on applicable law but do not share our ability not to opt-in. There must be a real risk that one or more of them may veto the proposal, given the requirement of unanimity, unless some accommodation can be found.

*15 February 2007*

[43] Correspondence with Ministers, November 2006–April 2007. Rome III (11818/06).

**Letter from the Chairman to Rt Hon Baroness Ashton of Upholland**

Thank you for your letter of 15 February setting out the Government's Response to the Committee's Report, *Rome III-choice of law in divorce* (52nd Report, 2005–06, HL 272). This was considered by Sub-Committee E (Law and Institutions) at its meeting on 7 March. We are pleased to note such a large measure of agreement between the Committee and the Government on this matter. The Committee was also interested to learn that a number of other delegations are having difficulties with the Commission's proposal. This confirms reports in the specialist press.

We would be grateful if you would keep us informed of developments.

*8 March 2007*

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