



HOUSE OF LORDS

European Union Committee

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6th Report of Session 2006-07

# **Government Responses: Session 2004-05**

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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:

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## **GOVERNMENT RESPONSES FOR SESSION 2004-05**

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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.

# Government Responses

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## 1st REPORT: PROCEDURAL RIGHTS IN CRIMINAL PROCEEDINGS

### Letter from Fiona Mactaggart MP, Parliamentary Under-Secretary of State, Home Office to the Chairman

I am writing in response to the European Union Committee's 1st Report of Session 2004–05 on Procedural Rights in Criminal Proceedings, as published on 7 February 2005. Please accept my sincere apologies for the delay in responding.

I note that the Committee still has concerns regarding this proposal, both in general and on particular articles. It is important to stress that negotiations on this measure are continuing. An Explanatory Memorandum on the most recent text is being prepared and will be deposited for scrutiny in accordance with scrutiny timetables. I can assure the Committee that their concerns will be looked at during further consideration of this proposal. In addition we have undertaken a consultation process on the Framework Decision which should help shape our strategy. A summary of the responses to the consultation paper is being prepared and will be published upon completion.

I trust that the enclosed response satisfactorily provides an outline of the Government's views on the important issues raised by the Committee.

20 July 2005

### The Home Office's Response

#### GENERAL

1. The Government notes the Committee's request to ensure a worthwhile outcome from the negotiations for this Framework Decision. As the Committee's report records, the Framework Decision is subject to unanimity. The outcome will therefore be a matter for negotiation and will need to take account of the views of all the Member States: no one Member State can dictate the contents. However, Her Majesty's Government is committed to using its period of Presidency to focus on the substantive issues and to make genuine progress wherever possible.

#### LEGAL BASE

2. The Government accepts that arguments can be made for and against the legal base proposed for this instrument. The Government has made clear its view that the Framework Decision is justifiable only insofar as its various provisions can be shown to be needed to improve judicial co-operation and believes that this requirement provides a significant limitation on the scope of Union power in this area. The Government asks the Committee to take account of this limitation and the principle of subsidiarity in the context of possible wider ambitions for the Framework Decision, as referred to in paragraphs 200–202 of its report.

#### THE HAGUE PROGRAMME

3. As stated in the Government's response to the Committee's report on the Hague Programme, we agree that the right balance needs to be found between protecting people in the exercise of their fundamental rights and ensuring that they live in a secure and just Europe. Improving security is vital and without it freedom and justice could not flourish, but this should not be at the expense of fundamental rights and the rule of law. The Government welcomed the Commission's Green Paper on Bail and believes that a legislative initiative would be worthwhile.

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#### SIGNIFICANT MATTERS NOT INCLUDED IN THE PROPOSAL

4. The Government agrees that any proposals on the right to silence and other procedural law issues will be difficult and looks to the Commission to begin discussion on these issues.

#### DETAILED POINTS

5. The Government is grateful to the Committee for its detailed consideration of the text of the draft decision, which it will take into careful account as the negotiation proceeds. The Committee may wish to be aware that the United Kingdom has, in its new capacity as Chair of the Working Group, issued a consolidated version of the text, incorporating the various amendments which appear to be required so as to clarify the situation and help identify the issues. A copy of this text has been deposited with the Scrutiny Committees and an Explanatory Memorandum is being prepared in the usual way. We enclose a further copy of that text (not printed) and comment upon it below in the context of paragraphs 208–240 of the Committee’s report. The text should not be considered as more than exploratory at this stage but it appears to offer a convenient reference point for consideration of progress within the Group.

[208] The new text now draws directly upon key elements of the Strasbourg jurisprudence regarding the meaning of “criminal proceedings” but goes on to offer a non-exhaustive illustrative list of certain proceedings which should be regarded as within the scope of the definition for the purposes of the Framework Decision. As the Committee’s report observes, the underlying issues are not straightforward and it remains to be seen how far if at all this text will command consensus within the Group. Account will also need to be taken of the implications of the recent ruling by the ECJ in Case C-105/05: *Pupino* regarding national interpretation of Framework Decisions.

[209] It will be seen that the original text has been amended so it now applies to people subject to any other proceedings mentioned in Article 2. Again, it is fair to say that the debate on this issue is by no means settled and the Government will bear the Committee’s views in mind as matters develop.

[210] Article 1 now makes it clear that the scope is intended to include the European Arrest Warrant, extradition proceedings or other surrender procedures. The Government will keep under careful consideration the Committee’s observation about possible implications for the legal base of this instrument arising from such inclusions.

[211–212] The Government agrees that further clarification would be desirable. The current text would allow Member States to disapply the Framework Decision as regards minor offences. This proposition has aroused considerable concern within the Working Group and will be the subject of further discussion and clarification. The Government will have the Committee’s views in mind during the negotiations.

[213] The Working Group will need to consider whether the text should be better aligned with fundamental rights as set out in the ECHR and will consider proposed amendments to the text.

[214–217] The Government agrees that further clarification would be desirable. As regards qualifications, the original text stated that only lawyers qualified in accordance with Directive 98/5/EC may give legal advice. The new text provides an alternative category, namely those duly qualified under applicable national provisions and we are considering if this is satisfactory having regard to national policy and practice. Turning to arrangements for “ineffective” legal advice, the new text again provides an alternative option, that people have the right to request an alternative lawyer if the legal advice “does not meet the necessary professional standard”. The Government does not claim that this wording wholly resolves the difficulties identified by the Committee but believes that the issues for debate are now clearer.

[218] The Government notes the Committee’s suggestion and considers that the Framework Decision should be interpreted compatibly with the ECJ’s jurisprudence on fundamental rights, see for example Case C-155/79: *Australian Mining and Smelting Europe Ltd v EC Commission* [1982]. The Government will consider if further clarification is needed in discussions within the Working Group.

[219–220] There appears at present to be no consensus within the Working Group which would support enlarging the Framework Decision in the ways suggested by the Committee but the Government will keep the proposals in mind as the negotiation proceeds.

[221] The Government will provide more precise estimates of costs once it is clearer what new burdens the Framework Decision will entail. For example, costs would be likely to be significantly affected by the inclusion of prescriptive recording and monitoring arrangements, or if requirements regarding translation went beyond what the UK currently provides. The Government wishes to reassure the Committee that it has the question of bureaucratic burdens and costs very much in mind and is of the firm view that the value of the Framework Decision provisions must be weighed very carefully against them.

[222] The Government thanks the Committee for this suggestion, which it will seek to take up with the Commission.

[223] The Government agrees with the Committee and there is a strong likelihood of lively debate regarding this proposed rule.

[224–227] The Government notes the Committee’s support for recording police interviews and confirms that it has supported the proposal during negotiations. The debate continues, despite various deletions to the text, but it is fair to record that a number of member states have expressed very strong reservations about adopting such rules at the present time.

[228–229] Article 11(2) is deleted in the new text: the provision has been moved to a separate Article, Article 12bis which applies to all detained people. As regards Article 11(3), the original text provided a discretionary right to have a third person present during questioning. In the new text this has been expanded and now provides for a right for minors and mentally ill people to be questioned in the presence of a parent/guardian and to have that person informed of the prosecution and time of questioning. The rights may be limited where the interests of justice or of the person require it.

[230–231] As regards Article 12, the original text provided an unrestricted right to communicate with a third party. In the new text there has been an amendment so that if the person detained is a minor the parents or guardians must be immediately informed of the detention. The Government welcomes the proposal to subject the rules proposed in Articles 12 and 13 to certain exceptions to safeguard the investigation of serious offending, consistent with the approach under the Police and Criminal Evidence Act 1984, in accordance with the ECHR.

[232–237] It will be seen that a number of changes have been made to Article 14. The original text provided for a standard translation of the written notification of rights translated into all community languages, drawn up centrally and issued to the authorities. The new text provides a far greater Commission involvement and is more prescriptive. It provides that the form shall be sent by the Member State to the Commission and then translated by the Commission into the official languages before being sent back to the Member States. The original text provides that both the suspect and the law enforcement officer sign the letter of rights. The new text provides that the suspect signs a receipt for the letter of rights. The Committee will see from the footnotes to Article 14 that a number of Member States are likely to press for further changes to the text. The Government will bear the Committee’s views in mind as the negotiation proceeds.

The Government asks the Committee to note that the Working Group has not yet discussed the contents of the proposed letter. The Government will bear in mind the ECBA’s suggestion.

[238–240] The Working Group decided to postpone discussion of these Articles. A majority of the Group is unhappy with the proposals and believes that they raise questions regarding subsidiarity and legal base as well as practicability and expense.

*20 July 2005*

## **4th REPORT: LIBERALISING RAIL FREIGHT MOVEMENT IN THE EU**

### **Department for Transport’s Response**

#### **INTRODUCTION**

The Government is grateful to the Committee for its thorough report on liberalising rail freight movement in the European Union (EU). The Government supports the opening up of both the international and domestic rail freight sectors to competition on an equitable basis. The Government considers that experience in Great Britain clearly demonstrates the benefits accruing to freight users and operators from liberalised access to the rail market. The Government is pleased that with the adoption of the Second Package of EU Rail Directives a legislative framework now exists for full market liberalisation, which provides for full market opening for international freight services by 1 January 2006, and for all freight services by 1 January 2007.

An independent study<sup>1</sup> has found that the rail freight market in Great Britain is the most liberalised in the EU, notwithstanding the delay in transposing the provisions of the First Package of EU Rail Directives into domestic law. Work is now in hand to transpose the First Package of EU Rail Directives, including some elements of the Second Package of EU Rail Directives to open up domestic freight markets, by the end of this

<sup>1</sup> The IBM Rail Liberalisation Index 2004 by IBM Business Consulting Services.

year. However, the Government does not anticipate that transposition will have a significant effect in Great Britain given the substantial liberalisation of this industry already.

In the following paragraphs we set out the Committee's recommendations and the Government's response to each of them.

#### RESPONSE TO RECOMMENDATIONS

94. *The Commission must first and foremost ensure that the First Railway Package is fully implemented across the EU-15. The 10 new Member States may need longer to implement the legislation but the Commission should work with them to ensure compliance as soon as possible. (para 68)*

95. *The Commission must maintain pressure on Member States to ensure they implement this package. (para 79)*

As the Report recognises these recommendations are matters for the European Commission. The European Commission has stated that it intends to be vigorous in ensuring the full implementation of the First Package of EU Rail Directives, and that it will scrutinise very carefully Member States' notified implementation measures. In terms of the accession states the European Commission has specific programmes to support them in their implementation of EC rail legislation.

96. *Further consideration should be given to requiring Member States to put rail infrastructure and freight operations into separate companies. (para 24)*

Requiring Member States to put rail infrastructure and freight operations into separate companies would require new legislation. It is for the European Commission to propose any new legislation it considers appropriate. The UK would examine any such proposal on its merits, and would expect that to be accompanied by evidence of the increased effectiveness of more stringent requirements, but the Government would not expect it to have any impact in Great Britain.

97. *We accept that the requirement that rail freight operators should be at arms length from the infrastructure managers and that their funding should be completely transparent may be the best alternative to complete separation. But we believe it is important that track access should be regulated and appeals concerning the conduct of the infrastructure manager should be heard by an independent regulator. (para 81)*

The First Package of EU Rail Directives requires this already. In Great Britain the Office of Rail Regulation (ORR), as the independent rail regulator, is responsible for regulating track access and dealing with appeals against decisions made by Network Rail, as the infrastructure manager. Transposition of the First Package of EU Rail Directive will extend the areas of appeal to areas beyond the existing domestic requirements such as how the infrastructure manager calculates its charges. The ORR has been active in sharing our experience of track access regulation with colleagues in other Member States.

98. *We believe that the relevant legislation should be amended to make it clear that each Member State requires an independent rail freight regulator, independent from the Government, with appropriate powers and resources and tasked with ensuring fair and open access to the rail freight market. (para 84)*

The ORR is the independent rail regulator in Great Britain for both passenger and freight operations. It is for the European Commission to propose any new legislation it considers appropriate. The UK would examine any such proposal on its merits, and would expect that to be accompanied by evidence of the increased effectiveness of more stringent requirements.

100. *Implementation throughout Europe of a charging system reflecting the full costs of road freight transport is urgently needed to ensure that rail is able to compete with road on equal terms. (para 48)*

The Government was disappointed that the European Commission's proposal to revise the existing EU legislation governing lorry charging (the 'Eurovignette' Directive 1999/62/EC) was not based on the principle that lorries should pay the full costs they impose on society. This is the approach the Commission had signalled in its 2001 European Transport Policy White Paper (COM(2001) 370 final). In negotiations in the EU Transport Council, the UK has argued that member states should be free to internalise external costs in charges. But there has been overwhelming opposition particularly from peripheral member states which fear adverse economic consequences from high tolls levied by transit countries.

On 21 April 2005, the Council reached a political agreement on the proposal. This would not allow member states to include external costs in any charges imposed on lorries; although it would provide considerable flexibility for charges to be varied for purposes such as combating environmental damage and tackling congestion. The Council's position will now go to the European Parliament for 2nd Reading. At 1st Reading, the Parliament sought to amend the European Commission's original proposals to allow for the inclusion of external costs in charges. It is too early to say how the differences between the Council's and Parliament's positions might be resolved.

102. *The Government of the United Kingdom's first priority in relation to rail freight must be to implement fully the First Railway Package as soon as possible. (para 85)*

The Government is giving priority to this implementation project. Our current intention is that the First Package of EU Rail Directives, and the elements of the Second Package of EU Rail Directives to open up domestic freight markets, will have been fully transposed by the end of this year. We intend to have a public consultation on our proposals to transpose the First Package of EU Directives in June. The Government does not anticipate that transposition will have a significant effect in Great Britain where the network is already liberalised.

103. *The Government must continue to work with the rail freight industry to identify those rail routes that still require an upgraded loading gauge. (para 92)*

The Government has made good progress in identifying where loading gauge enhancement is a priority, and in November 2004 the Strategic Rail Authority (SRA) set out its proposed priorities in its Gauging Policy Consultation Document.

The Felixstowe-Nuneaton gauge enhancement was completed on time last year at a cost of £30 million. The SRA and industry have done good work to produce a value-for-money proposal for gauge enhancement between Southampton and the West Coast Main Line, and the Government is now considering next steps with the industry.

Network Rail has recently announced they will be developing a national Freight Utilisation Strategy as a key strategic input to their work on Route Utilisation Strategies, which consider capacity usage across different parts of the network. The Government welcomes this and will work with the rail freight industry and Network Rail to try to ensure that there is a shared understanding of the expected nature and level of growth in the rail freight market and of its impact upon the network.

104. *We urge the United Kingdom Government to continue to resist requirement of a full international rail drivers' licence for all train drivers. (para 54)*

The Government will continue to resist such a requirement. The 'General Approach' reached by unanimity in the December 2004 Council meeting includes a provision where, on application by a member state, a decision can be taken that the Directive should not apply to that member state's domestic train drivers should a cost benefit analysis prepared by the European Rail Agency show that its application to such drivers would not be cost-beneficial.

105. *We recommend that Regulation COM (2004) 144 should permit an opt-out from a compulsory compensation regime and that the United Kingdom Government should support this recommendation. (para 33)*

The Government shares the objective of the proposed Regulation—to improve rail freight performance. However, we are not convinced that even with this opt-out the Regulation will do anything to achieve that.

The Regulation would bite where, because of the absence of effective competition, the customer was unable to secure a compensation regime better aligned to his needs. But it is precisely in those circumstances that the train operator could most readily just pass on the costs of complying with the Regulation to the customer.

The Government remains of the view that the most effective way forward for the present is to ensure the effective implementation of the liberalisation measures already agreed, which will see the international rail freight market completely open by January 2006, and the domestic market by 2007.

106. *We urge the Government to work with the French Government to ensure fair and open access through the Channel Tunnel. (para 90)*

107. *Given the complex contractual position surrounding the Channel Tunnel, the issue of compliance with the First Railway Package in respect of the Channel Tunnel is itself a complex one, but one which the British and French governments need to address if international rail freight services between the United Kingdom and continental Europe are to meet the needs of British industry and commerce. (para 65)*

The Government is currently working with the French Government on the transposition of the First Package of EU Rail Directives for the Channel Tunnel, with the aim of completing transposition by the same date—end 2005—as for the rest of GB. The right of access for new entrants through the Channel Tunnel has existed since the Tunnel opened.

Eurotunnel is ready to make train paths available to new entrants. Eurotunnel's network statement—available on its website—sets out the relevant procedures and conditions.

108. *A way needs to be found urgently of securing competitive access charges to the Channel Tunnel so that the rail freight industry as a whole can compete on equal terms with the freight ferry industry across the Channel. (para 66)*

The provisions on access charges in the First Package of EU Rail Directives allow Eurotunnel, as infrastructure manager, considerable flexibility on charging. Within that broad framework Eurotunnel's access charges are a commercial matter for this private company and its customers. Eurotunnel operates in a highly competitive cross-channel market, and is subject to normal market pressures.

109. *We applaud the Rail Net Europe initiative and the European Bull alliance. We hope that the Commission and the United Kingdom Government will do all that they can to help them to succeed. (para 78)*

The Government welcomes these initiatives. The European Commission's Developing European Railway Committee, on which the UK and other Member States are represented, follows market developments closely and is taking forward complementary initiatives, such as establishing common criteria for how regulatory bodies will act, and co-operate in considering appeals relating to international train paths.

**Letter from the Chairman to Derek Twigg MP, Parliamentary Under-Secretary of State,  
Department for Transport**

Thank you for the Government Response to the Committee's report, *Liberalising Rail Freight Movement in the EU* which Sub-Committee B considered at its meeting on 4 July 2005. Members were pleased to note your positive comments regarding most of the Report's recommendations.

We share the Government's disappointment that the "Eurovignette" Directive was not based on the principle that lorries should pay the full costs they impose upon society. We understand that the disagreement between the Council and the European Parliament on this Directive has not yet been resolved but we would appreciate further updates from you as the situation develops.

The Government's intention is that the First Railway Package and the elements of the Second Railway Package which aim to open up domestic freight markets will be transposed by the end of this year. The Government intended to have a public consultation on the proposals to transpose the First Package of EU Directives in June. Did this take place? What was the nature of consultation? Who was consulted? When will a report of this consultation be available? If the Public Consultation is only to happen in June, will transposition by the end of the year really be possible or might this be an overly ambitious target? Once the results of this consultation are available, the Sub-Committee would be very interested to see them.

We are pleased that the General Approach on the international rail driver's licence includes a provision for domestic train drivers to be excluded (should a cost-benefit analysis prepared by the European Rail Agency show that its application to such drivers would not be cost-beneficial). We welcome your commitment to resist the extension of the international rail driver's licence to all rail drivers.

We remain convinced that some kind of a compensation regime for freight customers should be introduced. We recognise your concerns that the cost of this would be passed on directly to the customer but the evidence we received, from rail freight customers amongst others, leads us to believe that the unreliability of rail freight services is a serious issue and that a compensation regime with an optional opt-out on the part of customers would be the best way to address it.

Your response to our report states that, "Eurotunnel is ready to make train paths available to new entrants". Whilst we accept this, you seem to take no account of the fact that EWS currently pays no access charges to the Channel Tunnel (because of a deal agreed when British Rail was privatised) but any competitor would have to pay the access charges advertised on Eurotunnel's website. We also have concerns about the Minimum Usage Charge (paid by the residual British Railways Board) which guarantees Eurotunnel a certain level of income even if traffic levels are below a certain minimum level. This means that Eurotunnel is competing from a subsidised and protected position. In your evidence to us, you said that the extension of these subsidy arrangements to the end of 2006 would provide a breathing space whilst further liberalisation is sought. Will the current arrangements whereby the Minimum Usage Charge applies continue after 2006?

The Sub-Committee has also decided to maintain the scrutiny reserve on the remaining documents comprising the Third Railway Package 7170/04, 7147/04, 7148/04 and 7150/04

8 July 2005

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**5th REPORT: AFTER MADRID: THE EU'S RESPONSE TO TERRORISM****Letter from Rt Hon Baroness Scotland of Asthal QC, Minister of State, Home Office to the Chairman**

I am writing on behalf of the Government in response to recommendations made by the European Union Committee in its report entitled "After Madrid: the EU's response to terrorism". I enclose a full response to each of these with this letter.

The Government appreciated the full and thorough consideration given to the many complex issues involved in this area and agreed with many of the conclusions the Committee drew. We particularly welcomed the emphasis on the contribution of the UK overall to the EU's counter-terrorism effort. While we believe that national security is primarily the responsibility of each Member State, the EU can and does add value to the broader response. In a world where the relatively new phenomenon of international terrorism is a grave threat to us all, raising standards, sharing information and working together is in all our interest.

15 June 2005

**Government Response**

*Committee's view: More effective sharing of information between law enforcement agencies is crucial to the counter-terrorism effort. (Rec 93)*

We agree it is very important that law enforcement agencies share information effectively, subject to data protection requirements. This is an example of where EU activity can complement the work of Member States.

Europol and Interpol are, for example, well placed to make a difference as a resource for national law enforcement authorities. However, security and intelligence information in the possession of a law enforcement authority that belongs to other national agencies must be protected by adequate safeguards.

*Committee's view: There is a need to enhance the exchange of information, and the principle of availability offers a suitable framework for doing so. In developing this idea, it will be essential to ensure that the exchange of information is subject to suitable safeguards; and that it should incorporate the idea contained in the principle of equivalent access that information exchanged with other Member States should be subject to the same restrictions as would apply nationally. (Rec 94)*

The Government supports the Principle of Availability and will develop options for implementing the principle of availability during the UK Presidency.

Safeguards in the Hague Programme attached to the Principle of Availability are very important. In any proposals we will seek to ensure that the privacy of individuals is respected and sensitive information sources and techniques are adequately protected.

*Committee's view: Building mutual trust and confidence within and between [law enforcement] agencies, and internationally, is a crucial and continuing challenge to be addressed through positive leadership and effective training. (Rec 95)*

We agree. Indeed, the more sensitive the information, the more that trust and familiarity are required. Leadership and training do play important roles in the nurturing of such trust.

Positive experiences of previous work, personal contacts and understanding of each others' methods and capabilities are equally important. We actively engage with the development of standards and sharing of best practice in many fora, including work with Europol, CEPOL and the European Police Chiefs Task Force.

*Committee's view: A co-ordinated programme of training, development and work to spread best practice needs to be developed nationally and internationally. CEPOL, the European Police College, has a valuable role to play here. (Rec 96)*

Since 9/11 anti-terrorist work has been an urgent and continuing priority for CEPOL. The work programme for 2005 includes courses and events designed to facilitate co-operation between European police forces and to improve anti-terrorist activities.

In July 2005 Italy and France are organising an Anti-Terrorism Training Course. In November 2005, the UK is hosting a Joint Investigation Team Seminar after pioneering work with the Netherlands. In 2006 the UK, Italy and Spain are organising an Anti-Terrorism Training Course specifically relating to the Madrid bombings.

## EFFECTIVE DATABASES

*Committee's view: Priority should be given to ensuring that existing databases—and those under construction—are effective rather than to developing new ones. (Rec 97)*

We believe it would be better to improve existing databases rather than create new ones. We need to exploit opportunities in existing technical platforms such as the Schengen Information System.

Development of new databases should only be taken forward after a proper analysis of the costs and benefits.

*Committee's view: It is particularly important that databases of information used to combat terrorism are adequately protected and that robust back-up and disaster recovery systems are in place if they should fail. (Rec 98)*

In the event of a disaster there is an increased need for rapid information transfer but this must be balanced against the security risk of information leaking or finding its way into the wrong hands.

We should bear in mind the danger of relying too heavily on electronic systems at times when power and communication networks are themselves likely to be affected.

*Committee's view: As new systems are developed, the Commission should ensure that there is compatibility between them so that, where it is justified, data can be compared and if necessary exchanged. (Rec 99)*

EU databases should be compatible. It is essential that information in one database can be checked against information in another database (so long as data protection considerations are taken into account).

*Committee's view: We support the development of common standards and sharing of best practice across the EU in the area of counter-terrorism. However, combating terrorism requires a swift, flexible response, which is likely to be hampered by the development of excessively bureaucratic centralised structures. The role of the EU should be one of coordination, providing structures to encourage Member States' co-operation, the dissemination of best practice and encouraging the input of information to central databases. There needs to be a clear division of responsibility between the EU and the Member States. We do not favour an EU intelligence policy; if that implies an EU policy separate from that of the Member States, which would cause confusion and duplication. (Rec 100)*

We agree that the EU has a role in setting a framework for co-operation in police and judicial co-operation, facilitating information sharing (Europol and EU Situation Centre), and raising standards (through CT peer reviews).

But EU institutions are not themselves an operational actor in counter-terrorism; real time operational work is for the Member States. Here there is, and must remain, a clear distinction between roles of EU institutions and those of Member States.

*Committee's view: Subject to appropriate safeguards, the retention of communications data may be justified as a weapon in the fight against terrorism and other serious crime, but its application to all crime would be disproportionate. (Rec 101)*

We do not agree with this recommendation. We welcome the endorsement that data retention is a useful tool in fighting terrorism. But Her Majesty's Government believes that the prevention and detection of crime generally is a public interest for which data should be retained.

The provisions in UK law for relevant public authorities' acquisition of communications data—under Part I Chapter II of the Regulation of Investigatory Powers Act 2000—make lawful requirements for disclosure of data for the purpose of preventing and detecting crime that are necessary and proportionate in line with respect for Convention rights.

*Committee's view: Enhanced information exchange in the EU, and the trend towards greater profiling of individuals, necessitate the establishment of a common EU framework of data protection for the Third Pillar. (Rec 102)*

*Committee's view: We agree with the Information Commissioner and the Joint Supervisory Authorities that a tailor-made data protection framework for the Third Pillar is necessary. The standards to be adopted should be subject to full parliamentary scrutiny. (Rec 103)*

*Committee's view: There is a strong case for simplifying the existing supervision arrangements at EU level, especially if a specific EU data protection framework for the Third Pillar is established. If and when the EU Constitutional Treaty comes into force, there would be advantage in entrusting supervision for current Third Pillar matters to a central authority. (Rec 104)*

For three recommendations above:

The existing arrangements for supervision at EU level will be considered in the forthcoming discussions on the Framework Decision on data processing in the Third Pillar, and the Government welcomes this. The Government recognises that there is a case for unifying (which may not necessarily lead to simplifying) the existing supervisory arrangements, but considers that the case must be considered in the context of ongoing developments in the third pillar.

*Committee's view: It is important that national data protection authorities have sufficient audit powers. We regret that in the United Kingdom the Information Commissioner does not have such powers and recommend that this is reviewed. (Rec 105)*

Aspects of the UK Information Commissioner's powers are currently under discussion and this includes the scope of his office's audit powers.

*Committee's view: The expertise of the Joint Supervisory Authorities would be very valuable in developing EU policy on data protection and those responsible should make use of it. (Rec 106)*

The Government agrees that the expertise of the Joint Supervisory Authorities has an important part to play in the current discussions on third pillar processing and looks forward to their contributions.

*Committee's view: The Counter-terrorism Co-ordinator has a vital role in overseeing the work of the various EU groups and committees within the Second and Third Pillars in order to prevent overlap, avoid duplication and ensure that their aims and objectives are delivered. He should have a clear job description which identifies his primary role as internal co-ordination rather than external representation. His work should be subject to parliamentary scrutiny by national parliaments as well as by the European Parliament. The Government should consult the Committee on how this can best be achieved. (Rec 107)*

The Government views the Counter-Terrorism Co-ordinator as important in pulling together many and varied strands of EU work that contributes to the fight against terrorism, including justice and home affairs, transport security, civil protection, and external relations.

The Co-ordinator's primary role should be in bringing coherence to this agenda; in accelerating the agreement and implementation of key EU-level measures which will add real value to Member States' efforts.

It is important that CT Co-ordinator is democratically accountable. His regular appearances before the European Parliament are an important step in this direction.

*Committee's view: There should be critical reviews of Member States' performance in implementing agreed measures and following best practice in relation to sharing information and developing counter-terrorism structures. In the absence of a central authority to undertake such reviews, they should take the form of a rolling programme of peer reviews by groups of Member States analogous to the peer reviews of Member States' capacity to combat serious organised crime undertaken by Heads of Europol national units. (Rec 108)*

The Peer Evaluation of Member States CT arrangements is a valuable tool in identifying examples of best practice.

The process is still underway with a final report on the exercise due to be completed at the end of the UK Presidency.

No decisions have been made as to what happens next, however the process is flexible. It is currently proposed that accession states Romania and Bulgaria should have the opportunity to undergo evaluation, which Her Majesty's Government supports.

*Committee's view: In an area where clarity of roles and responsibilities is vital, we found the structures within the EU for combating terrorism complex and confusing. (Rec 109)*

Yes, EU Counter-Terrorism structures are complex. But this only reflects complexity of EU structures and Treaties themselves, as well as the wide-ranging nature of counter-terrorism policy.

COREPER has taken upon itself the role of co-ordinating body. We will use our Presidency to show how this co-ordinating role should be performed, with regular CT sessions to review progress in specific areas and give strategic direction for further work.

In this COREPER will be assisted by the CT Co-ordinator.

*Committee's view: The Counter-terrorism Co-ordinator, with his overview of the whole system, has a crucial role to play in ensuring that it works as effectively as possible. We believe that he would be best placed to make recommendations for rationalising and streamlining the present arrangements. (Rec 110)*

The CT Co-ordinator does play an important role in bringing strands together.

COREPER (the Committee of Permanent Representatives made up of Ambassadors to the EU) agreed in May 2004 that it would co-ordinate work on counter-terrorism, assisted by the IT Co-ordinator. That arrangement will continue to function for the UK Presidency.

*Committee's view: We welcome the proposal to bring the European Police Chiefs Task Force within Council structures. (Rec 111)*

We welcomed the decision on the proposal to bring the European Police Chiefs Task Force (EPCTF) within the Council Structures that was taken by the Council on 19 November 2004.

Given the differing views from Member States, the Council agreed a compromise. The EPCTF will meet within the Council structures once per Presidency to discuss strategic issues. Operationally focused EPCTF meetings will be held at Europol.

The UK welcomed the move to bring the EPCTF closer to the work of both the Council and Europol. This should improve coordination between strategic and operational priorities in relation to EU policing and law enforcement.

*Committee's view: It is unacceptable that appointment to the crucially important post of Director of Europol should have been left vacant for eight months as a result of individual Member States insisting on their own national candidates. As the Member States seem to have found it so difficult to reach a consensus on the matter, the procedure for appointment should be changed to ensure that the recent deadlock in making the appointment does not recur. (Rec 112)*

Whilst ideally it would have been desirable to have been in a position to appoint a permanent Director sooner it was vital that the process was both thorough and transparent.

This selection process has succeeded in producing the best candidate for the job, Max-Peter Ratzel, who has the full support of Member States. This is in Europol's and Member States' long-term interests.

*Committee's view: Despite the proliferation of EU committees Member States retain primary responsibility for counter-terrorism policy and operations, and we believe that they should continue to do so. Protecting a nation's security is arguably the primary responsibility of a government. Co-operating with other Member States, and indeed with governments across the world, is essential in countering terrorism but, if individual countries see a need for a deeper level of cooperation with particular countries with a common interest they should not be debarred from doing so. Nor is there any reason why such co-operation should prejudice work that it is necessary to undertake at EU level with the additional legislative and institutional support that is available there, provided that the Member States concerned follow appropriate procedures to keep other Member States fully informed. (Rec 113)*

Countering terrorism is a vital issue of national security which, in the new EU Constitutional Treaty, is defined as an essential state function to be respected by the Union. The role of the EU is thus one of support. This is particularly important as there is a wide variation in the capacities of Member States to gather and analyse intelligence, and the terrorist threat is not confined by national borders. The EU can only be as strong as its weakest link.

The UK is at the forefront of supporting and influencing change. We operate with two main principles in mind: that Council bodies exist to support Member States; and, that there must be added value derived from their contribution. These efforts in no-way prejudice our many other multilateral and bilateral arrangements.

*Committee's view: It is clear that many Member States are not notifying relevant information to the Interpol database of lost and stolen passports and probably not consulting it on a regular basis. This is unacceptable. Every effort must be made to ensure that the Interpol database is as comprehensive as possible. (Rec 114)*

Much progress has been made on this subject in the last year. The UK has initiated a connection between UK Passports Agency and regular downloads from our database are made to Interpol.

At the same time the UK has led in rolling out "I 24/7", the Interpol search engine, to Law Enforcement Agencies (LEAs) beyond the NCB. Many UK agencies are now connected directly to "I 24/7" and able to search directly on the Interpol stolen passport database including Metropolitan Police, Immigration Service (IS) Terminal 3 at Heathrow, IS E-Borders Heathrow, Greater Manchester Police, Kent Police and eight other Forces. Remaining UK LEAs will be connected in the current fiscal year.

*Committee's view: There is much to be gained from closer co-operation between the EU, particularly Europol, and Interpol. High priority should be given to enhancing this co-operation and, subject to observing data protection requirements, sharing data more extensively. (Rec 115)*

At the last Interpol European Regional Conference the newly appointed Director of Europol made a commitment to work closely with the Secretary-General of Interpol on developing closer working relations and cooperative measures.

The incoming UK Presidency chair of the Europol Management Board has already highlighted the importance of Europol external relations, particularly those with Interpol as a key area for development during the UK tenure.

*Committee's view: It is essential that the EU has a common approach, with high standards, for the transfer of data to third countries. (Rec 116)*

We agree that a high level of uniformity of practice and shared common standards across the EU are essential for the transfer of data to third countries.

This is one of the areas the Commission is consulting Member States on as it prepares to produce a draft legal instrument on data protection in the third pillar.

*Committee's view: Any decision on arrangements or transfer data to third countries should be subject to full parliamentary scrutiny. (Rec 117)*

It is likely that any new arrangements in the area of transfer of third pillar data to third countries will be part of a larger package on data processing in the third pillar that will, if adopted, be subject to scrutiny.

*Committee's view: We support efforts to attack terrorists by targeting their finances, but the difficulties—the small amounts of money involved, the fact that it may come from legitimate sources, and the difficulty of penetrating informal money transmission networks—are formidable. It would be unrealistic to expect action of this kind to make a major contribution to identifying terrorists and frustrating their operations. Consequently we urge caution, on grounds of both effectiveness and proportionality, in adopting measures that would give financial information units direct access to financial databases. (Rec 118)*

We agree that the challenges of tackling terrorist financing are significant. But the Government believes that work on terrorist financing can play a significant role in identifying networks, disrupting their operations and assisting investigations. Alone it will not prevent terrorism, but it can play a value part in the wider effort. Measures against terrorist financing are also important to ensure to maintain confidence in the financial sector.

In taking action to counter the terrorist threat, the Government carefully considers whether measures are proportionate to the threat, their likely effectiveness and their cost—both to the Government and the private sector. We have worked hard to build a partnership in which Government, financial institutions and law enforcement work together to exchange new ideas on new trends in and possible responses to terrorist financing. We will continue to do so.

*Committee's view: We welcome the intention contained in the Hague Programme to develop a long-term strategy to address the factors which contribute to "radicalisation" and recruitment for terrorist activities and recommend that this work should include further studies on the intellectual linkages with its ideological foundations. (Rec 119)*

We agree that it is important to examine the sociological and ideological issues around radicalisation and recruitment to extremist organisations.

Such work will need to involve local communities, including faith based communities, their leaders and young people. We must work together towards the common aim of preventing terrorists recruiting our vulnerable young people.

The UK is committed to producing a strategy by the end of our 2005 Presidency to aid out understanding of these issues and plan the path forward.

#### **Letter from Rt Hon Baroness Scotland of Asthal QC to the Chairman**

You will remember that on Monday 20 June we spent the afternoon debating counter-terrorism issues, in particular those prompted by your committee's excellent report entitled "After Madrid: the EU's response to terrorism". In my response I said that the Government appreciated the full and thorough consideration given to this important subject area. It was a mark of the quality and substance of the report that it generated such a high level of discussion and standard of debate.

However, I regret that there was not sufficient time to cover all the issues raised in detail. I am now writing to give you a fuller response to these questions, which you will find in the Annex to this letter.

Since our debate, on 7 July and 21 July, we have seen more terrible evidence of the indiscriminate and ruthless nature of international terrorism. These events have underlined once again the vital importance of doing everything that we can, both bilaterally and multilaterally, to combat this very real threat. Counter-terrorism

was a priority for our Presidency of the EU before the London attacks—it is now even more so. The Emergency JHA Council of 13 July reflected the sense of purpose shared by all Member States in reinforcing and accelerating our response. I understand that you have received a copy of the Council's Declaration with an Explanatory Memorandum.

*19 August 2005*

## Annex

*Lord Hannay of Chiswick asked how the incoming British EU Presidency intended to carry matters forward over the next six months following the decisions of the European Council.*

Even before the events of 7 July, we intended counter-terrorism to be an important part of our EU Presidency. The Emergency JHA Council on 13 July has put added momentum behind implementing existing commitments. We will use Coreper to ensure this happens, and are also seeking to raise understanding of the strategic issues in Brussels through a series of thematic and focused sessions. Indeed, a substantive and useful discussion on operational cooperation between security services took place in Coreper on 21 July, highlighting areas where the EU can add value. We also hope to conclude our Presidency by setting out new focus and priorities to the EU's future CT work by introducing an over-arching strategy, together with a revised Action Plan. At the JHA Informal Council in Newcastle on 7 September, Ministers will have the opportunity to discuss these proposals. Mr De Vries and the Commission will also be invited to speak.

*Lord Hannay also outlined the five elements of the UN comprehensive strategy against terrorism, and asked how the UK intends to deploy the EU's considerable influence in the period between now and the September UN summit.*

The EU considers terrorism to be a high priority for the Summit, and strongly supports the Secretary-General in his efforts to ensure the most effective possible UN response to terrorism. Pursuing the Secretary-General's strategy will be a long-term effort in which the EU is already engaged, notably taking part in several of the Counter-Terrorism Executive Directorate's early country visits. The Summit can provide valuable momentum to this. The EU has called for strong endorsement in the Summit text, and we will ensure that this is pursued during our Presidency.

We are also working for Summit language clearly condemning terrorism, and for that to be followed up by agreement on the draft Comprehensive Convention. The former is part of ongoing negotiations here, in common with many other aspects of the Summit agenda, the EU is arguing with one voice. As the Summit negotiations proceed, we will look to see how we can use this as a launch pad for a successful conclusion of the draft Comprehensive Convention. We will work with partners to develop a plan for extensive EU outreach over the summer on the key aspects of the summit, including terrorism.

*Lord Dubs stated that there is a need to understand better what motivates a terrorist.*

We agree that it is important to work together with our European partners, our allies and our domestic communities on this difficult issue. We are undertaking specific work domestically, bilaterally and multilaterally, to understand better the problems and possible answers. The protection of our young people from the threat of recruitment by violent extremists is key to our strategy to reduce the threat from international terrorism. In the EU, the UK Presidency is building on the work of previous Presidencies to produce a draft strategy to tackle radicalisation and recruitment. It will be discussed further, including at a EuroMed summit in September, with a view to agreement at the December summit.

*Lord McNally asked whether there is sufficient EU-US cooperation on terrorism.*

The framework for EU-US co-operation on terrorism was set out in the "Dromoland Declaration", during the Irish Presidency of the EU. Operational exchanges will rarely be suitable for such multilateral fora, but there is important work to be done in ensuring our approaches are complementary and in agreeing common standards, for example with the use of biometrics in identity documents. This co-operation is already well developed, but should continue to develop further. The UK Presidency will seek to use the Troika to full effect and bring movement on this—on 11 and 12 July EU and US delegations met in London to discuss JHA matters, which included some substantive sessions on terrorism.

*Lord McNally also asked what priority the Hague Programme will be given during our Presidency.*

The UK is committed to delivering the Hague Programme during its Presidency of the EU, and is already making good progress on important issues such as the European Evidence Warrant and information exchange, both of which were given added impetus in the July 123 Declaration.

We will continue to support subsequent Austrian and Finnish Presidencies in ensuring that this comprehensive framework for EU action succeeds in bringing real practical benefits to EU citizens.

*Baroness Rawlings noted that many states do not notify Interpol of lost or stolen passports, and wished to know if the Government plans to remedy this.*

The EU adopted the Common position on Exchanging Data with Interpol on 24 January 2005. This commits Member States to setting up the necessary infrastructures for sharing data on lost and stolen passports with Interpol by December 2005. It also states that the Commission shall review the extent to which Member States are complying with the Common Position by December 2005, and take the appropriate action.

Furthermore, as part of the work on development of SIS II, the Commission will look at the feasibility of establishing a direct technical link between Interpol and SIS II.

*Lord Corbett hoped that there will be careful and regular reviews of the organisations listed as "terrorist" in our legislation.*

The list of Terrorist Organisations in Schedule 2 is kept under regular review. Decisions to add groups to or remove them from the list are only taken after the most careful scrutiny of the available evidence and intelligence about a group's activities.

*Baroness Gibson of Market Rasen and Baroness Rawlings asked about EU data protection and whether there needs to be a framework for the third pillar.*

We are of the opinion that there should be a framework, and as such we were pleased that, in the Declaration of July 13, the Commission agreed to bring forward its proposals for a framework decision by October 2005. Information exchange should take place within a common set of rules and standards. We welcome any extra certainty the Commission's proposals could bring.

## **6th REPORT: THE FUTURE FINANCING OF THE EUROPEAN UNION**

### **Letter from Ivan Lewis MP, Economic Secretary, HM Treasury to the Chairman**

I would like to thank you for a copy of the Committee's report into the Future Financing of the European Union. It is both valuable and timely, representing a significant contribution to the current debate on the next Financial Perspective.

Rt Hon Douglas Alexander MP and Stephen Timms MP were grateful to have had the opportunity to appear before the Committee during the course of its enquiry to discuss the Government's position.

I now enclose the Government's response to the report's conclusions.

24 May 2005

### **HM Treasury's Response**

#### **THE EC BUDGET DEBATE IN CONTEXT**

131. We support the conclusions of the Sapir Report and we hope that the Member States, in their negotiations, will draw on the arguments of that report when making their decisions. We welcome the clarity of the arguments, the logic with which those arguments are underscored, and in particular, the focus on meeting criteria for added value and subsidiarity for money spent at the European level. (paragraph 16)

*Response: The Government fully supports the focus on EU value added and subsidiarity in the Sapir Report.*

132. We believe that the current and proposed allocation of resources to agricultural policies is disproportionate. We also consider the agreement endorsed by the European Council in October 2002 to fix agricultural support payments from 2007 to 2013 to be highly regrettable. We recommend that the Council should never again seek to pre-empt negotiations on the Financial Perspective in this way. (paragraph 19)

*Response: The Government has been, and continues to be, a leading advocate of further reform of the CAP. The Government notes the Committee's recommendation about not pre-empting Financial Perspective negotiations in the future.*

133. We believe that proposals to continue funding regional development after 2006 in all of the current recipient Member States (with the exception of Portugal and Greece) are inappropriate in the face of greater need in the new Member States, as well as inconsistent with the principle of subsidiarity. (paragraph 24)

*Response: The Government welcomes this conclusion. Following enlargement, it is essential that the EU's Structural and Cohesion Funds be focused on the poorer Member States, which are most in need of assistance and where EU intervention is likely to have the greatest added value. In keeping with the principle of subsidiarity, EC Funds should in future be focused on areas where Community intervention is likely to be more effective than purely*

*national measures. Richer Member States have sufficient resources to finance regional development programmes from their domestic budgets. There is no evidence to suggest that the recycling of Structural Funds receipts between net contributors to the EC budget is likely to be more effective than what these countries could have achieved through domestic measures.*

134. While some headlines, and political debates, have focused on the size of the budget, our evidence suggests that it is the structure—and more fundamentally the purpose of the budget—which urgently needs to be reviewed. That is why in our view the Commission proposals represent a missed opportunity. (paragraph 28)

138. The Commission's proposals are too conservative and based on the continuation of past policies; they fail to move the discussion beyond the haggling between 1 per cent and 1.14 per cent of EU GNI, and towards a broader review of the objectives and the instruments of the budget. (paragraph 44)

139. It seems to us that as an outgoing Commission it had the opportunity—and the responsibility—to address the bigger issues facing the European Union following enlargement. Instead, tough policy decisions have been deferred onto the next Financial Package, and a future Commission. It would be unfortunate if the possible future accession of Turkey was assessed against these spending proposals, whose fundamental premise and structure is inappropriate for an EU of 25, 27 or 29. (paragraph 45)

*Response: The Government agrees that the Commission's proposals for the structure and aims of the EC budget in the next Financial Perspective have failed to respond adequately to the Union's new priorities, including Lisbon and enlargement. It will therefore continue to push for policy reform. At a time of fiscal consolidation in many Member States the Government also believes that the Commission's proposals for a significant real terms increase in the budget are unrealistic. With growth and reprioritisation, a budget of no more than 1 per cent of EU GNI (€815 billion (£544 billion)<sup>2</sup> in commitments) over the Financial Perspective is more than adequate to fund the Union's key priorities.*

135. The Commission needs to adapt to a world where the resources available to it as a percentage of GDP are in decline. No budgetary items must be sacrosanct or above scrutiny. It would be wise to insert into the cycle of budgetary negotiations a process of review, preferably conducted by an outside body, assessing the value added, cost-effectiveness and relevance to political priorities of every budget line. This review should seek to replicate, to some extent, the role of national Finance Ministries in querying the utility and effectiveness of existing spending. We believe that money spent at EU level should be able to demonstrate value added, and that expenditure should be subject to the same test of subsidiarity as legislation. (paragraph 33)

*Response: The Government has been a leading advocate of Activity Based Budgeting, which is now being applied to the EC budget. Its aim is to ensure that spending adds value, is cost effective and reflects the priorities of the Union. To the extent that all spending must be based in legislation, spending is already subject to the subsidiary test. The Constitutional Treaty would give legal recognition to the Financial Perspective itself.*

140. We recommend that once the current Financial Perspective is agreed, a high level independent panel is charged by the Council to review the budget, assessing evidence for added value of EU level expenditure; the correct balance between Member States and EU financing; and ways of combating fraud, maladministration and inadequate accounting systems. It is essential that the agreement of the next Financial Perspective, for the period after 2013, is approached with a better understanding of the role of the budget, and the added value of each spending proposal. (paragraph 46)

*Response: The Government agrees that it would be timely to examine the structure of the EC budget beyond 2013 sooner rather than later. The Government agrees this is an issue for after agreement on the Financial Perspective.*

136. We support the idea that in future the period of the Financial Perspective should be tied to the period of each Commission and each Parliament, lending a greater degree of democratic accountability to the institutions which are responsible for the agreement and implementation of the Financial Package. We would support not more than five years for each Financial Package, which could be allied to the institutional cycles. In practice some degree of overlap between an existing financial package and a new Commission and Parliament would be necessary. But we would recommend avoiding the current situation where a Commission can hold office for five years and be bound by a previously agreed financing package for all of those five years. (paragraph 41)

*Response: The Government believes that the final decision on the length of the Financial Perspective starting in 2014 should be made at the time it is negotiated.*

<sup>2</sup> Using an exchange rate of €1 = £0.66750 as on 29 April 2005.

137. We do not believe that these negotiations should be rushed. We agree with the Financial Secretary's view that "if it is going to take a little longer to get it right then that is what we have to do" (Q 384). (paragraph 43)

*Response: The Government welcomes this conclusion.*

#### THE COMMON AGRICULTURAL POLICY

141. The figures in the October 2002 deal, and in the Financial Perspective, should be treated as ceilings, not as firm spending proposals. (paragraph 52)

*Response: The Government welcomes this conclusion and is advocating this approach.*

142. As we recommended in our report on the Doha Round, it is vital that the EU continues and expands these reforms to the CAP. The October 2002 agreement must not become an obstacle to change. Saying this does not mean that we think all support for agriculture is necessarily backward-looking or that it should be scrapped. Rather, it should be linked directly to wider objectives for rural areas and the environment. (paragraph 56)

*Response: Following the October 2002 agreement the Government led calls for further CAP reform. Major reforms were agreed in 2003 and 2004 which moved the CAP towards a model aimed at paying farmers directly for providing certain public benefits. But there is still a long way to go and the Government remains a leading advocate of further reform, with the next stage likely to be reform of the sugar regime. The Government is also a prominent advocate of transferring funds from direct subsidy towards targeted environmental measures under "Pillar 2" of the CAP, and is pressing for further transfers in the current negotiations.*

143. A move towards national financing of the direct subsidies under CAP would also do much to eliminate budgetary imbalances between Member States, since it is the uneven distribution of CAP receipts that causes them. Those that are arguing against retaining the special abatement for the United Kingdom should be willing to accept that the need for such an arrangement would be considerably reduced by a decision to finance, or at least cofinance, the CAP at the national level. (paragraph 61)

*Response: The Government view remains that, given the continuing inefficiencies and inequalities on the expenditure side, the abatement is fully justified and not up for negotiation. The Government also believes that a budget of €815 billion (£544 billion) is feasible without co-financing or national financing of the CAP. But if co-financing were to be introduced it should not increase the fiscal burden—it should be fiscally neutral compared to the cost of a budget €815 billion (£544 billion) without CAP co-financing. Also, any move towards co-financing should not be at the expense of further reform to tackle the economic ills of the CAP or its overall cost to consumers and taxpayers.*

#### STRUCTURAL AND COHESION FUNDS

144. We believe the Commission has failed to focus the objectives of the EU regional budget on encouraging growth and competitiveness in those areas where it can best add value. (paragraph 68)

*Response: The Government agrees that the Commission's proposals have failed to focus sufficiently on either the key drivers of growth and competitiveness or those Member States most in need of assistance.*

145. The Commission has failed to recognise that in an enlarged EU the balance between expenditure programmes and coordination programmes must shift. The next Financial Perspective must prepare the way for possible future enlargement by focusing expenditure where it is most effective. The Commission has instead taken a conservative approach to EU regional funding that is both economically and politically unsustainable. (paragraph 70)

146. We agree with the Government that Structural Funds should be concentrated on the 10 new Member States, as well as the two applicant countries Romania and Bulgaria. EU regional funds for the wealthiest 13 Member States should be phased out over the period of the next Financial Perspective. Greece and Portugal are the only "old" Member States whose average GDP *per capita* is still substantially below the EU 25 average. For this reason, these Member States should continue to benefit from EU regional development spending. (paragraph 71)

150. Using the same logic which argues for shifting the burden of financing the Common Agricultural Policy back towards the Member States, we believe there is a strong case under the principle of subsidiarity for national governments to fund and manage their own regional policy. There is no collective benefit of EU-funded income transfers between richer Member States—which could and should be funded nationally—whereas there are tremendous gains to be made from enabling the new Member States to catch up towards the average level of wealth in the Union. (paragraph 80)

*Response: The Government welcomes these conclusions. It has argued for an EU Framework for regional policy where all Member States would agree to high level objectives in support of the Lisbon agenda. But EC funding would be focused on the poorest Member States, where it would have greatest effect. The Government recognises that there could be transitional support in richer Member States, any such arrangements must be limited in both size and duration. The Government also believes that there is a case for EC funds to be used to support the cross-border and trans-national cooperation programmes in all Member States, where there is significant EU value added.*

147. The Commission's proposed reforms of state aid rules must balance the need to ensure the proper functioning of the internal market with Member States' ability to pursue domestic regional development policies. (paragraph 74)

*Response: The Government agrees with this conclusion. In order to minimise distortions to competition in the Single Market, the Government has encouraged the Commission to ensure that the maximum level of regional aid permitted in under-performing regions is limited to the lowest level necessary. The Government is also seeking to ensure that Member States have the scope to target regional aid at the areas of greatest need within their territory.*

148. We believe EU regional expenditure should focus on those economic and social areas where it is best able to make a contribution to growth and solidarity in Europe. In the period from 2007 to 2013 the potential for adding most value will lie in the new Member States. However, even in the new Member States, EU cohesion spending should remain transitional, time limited and geographically focused to assist with economic convergence, restructuring or diversification. The support should be tapered and it should not become a permanent policy instrument used by the EU to prop up regions on a continuing basis. (paragraph 75)

*Response: The Government agrees that the aim of the Structural and Cohesion funds must be to support the rapid development of the poorer Member States of the EU through economic convergence, restructuring or diversification. Member States should ensure that the funds are sufficiently targeted to achieve this aim, thereby ensuring that they remain transitional and time limited.*

149. We are not persuaded by the view of the Commission that they are better placed than Member State governments to lead regional development projects. (paragraph 79)

*Response: The Government agrees with this conclusion. It has argued that Member States should be given substantial flexibility to design and implement their own regional policy within an overall framework in support of the Lisbon Agenda.*

## THE LISBON AGENDA

151. The Lisbon Agenda is mainly a Member State initiative, and achieving its goals of growth and competitiveness relies heavily on economic reforms which remain the responsibility of individual Member States. Most policies that are needed to achieve Lisbon do not require public expenditure at EU level or indeed public spending at all. (paragraph 85)

*Response: The Government agrees. As stated below, one area where the EU can advance economic reform without additional public spending is in fully realising the Internal Market; in particular extending the Single Market to the hugely important services sector.*

152. However, while achieving the Lisbon agenda depends largely on structural changes to Member State economies, there is a place for collective EU investment in ensuring that Europe has a dynamic economy—because that depends on the EU as a whole improving capacity and therefore investment in innovation and human capital. As long as the principle of subsidiarity is respected, we believe there is a place for collective EU investment in Research and Development (R&D), education and infrastructure programmes, but this investment can only reach its potential in a fully realised Internal Market. (paragraph 86)

*Response: See answers below.*

153. Research and Development is an area where a concerted EU approach could reap economies of scale. (paragraph 89)

*Response: The Government believes that there is an a priori case for increasing EC expenditure on Research and Development provided this is consistent with budget discipline, EU value added and the ability to manage and absorb such funds.*

154. Realising the full potential of EU research network relies on education systems that prepare people to achieve their full research capacity. (paragraph 90)

155. It is our view that there is a role for the EU to encourage projects of educational and vocational co-operation between Member States, as long as the principle of subsidiarity continues to be fully respected. (paragraph 91)

*Response: The Government agrees on the importance of education and has therefore made it a funding priority. It also agrees that there is a potential role for the EU in supporting educational and co-operation, but such projects must add value at the EU level and respect the principle of subsidiarity, Education including vocational education is a national competence.*

156. Infrastructure is the third area for which we believe there is a place for EU collective investment. (paragraph 92)

*Response: The Government agrees that the EU can play a role in infrastructure investment. However, the Union's role should be limited to pump priming investment by countries in projects with significant benefits across Member States. The Government therefore supports the rigorous evaluation of all proposals, and opposes the Commission's suggestion for a further increase in intervention rates.*

157. As with the other policy areas where we believe EU collective investment is justified, infrastructure expenditure should be focused on those regions where most value can be added. In the period up to 2013 the main challenge will be to provide the necessary infrastructure to allow the 10 new Member States full access to the Internal Market. (paragraph 94)

*Response: The Government believes that infrastructure expenditure in support of the Lisbon agenda should be spent on those projects that will provide the greatest economic return, wherever they may be. Preallocated funding for particular regions should come from the Structural and Cohesion Funds.*

158. The Lisbon process needs to be reinvigorated by Member State governments, and supported by EU co-operation projects in the fields of research, education and infrastructure where their added value is clear. (paragraph 95)

*Response: The Government agrees that the Lisbon process needs to be reinvigorated by Member State governments. EC spending should be restricted to those programmes with significant EU value added, within a budget of no more than 1 per cent of EU GNI.*

#### OTHER SPENDING CATEGORIES

159. We agree that expenditure on programmes which aim to secure the borders of the European Union, in order to maintain internal security and to allow Member States to pursue asylum and immigration policies, is in the interests of all Member States. However, the doubling of spending under this overall heading over the period of the Financial Perspective partly reflects the general wishes of the Member States for the European Union to play a more significant role in other aspects of policing and justice systems across Europe. These additional areas clearly need to be subject to national agreement on EU jurisdiction, and properly justified against the criteria of EU value added. (paragraph 97)

*Response: The Government agrees that freedom, security and justice is a high priority policy area. The Government strongly believes that EC spending in this areas should be based on a full assessment of the appropriate action the EU might take in the area. All action must be based on the principle of EU value added and subsidiarity. In that respect the Government believes that cooperation and coordination between national bodies can be more useful than cumbersome new structures at the EU level, and that common rules and sharing of best practice is likely to be more fruitful in many instances than significant EC expenditure.*

160. We recognise that there are benefits to the EU taking a common approach to policies affecting neighbouring countries. The recent events in the Ukraine demonstrate the role the EU can play. We also acknowledge that there may be economies of scale to be reaped when the European Union acts jointly in the wider development arena, provided that programmes funded at EU level genuinely add value. (paragraph 101)

*Response: The Government fully recognises the potential added value of EU external action over the individual development spending of Member States. The external actions budget has the potential to deliver economies of scale, avoid duplication, improve coherence and deliver the scale of resources which might significantly improve the impact of development spending. However, the Government remains concerned about the effectiveness and efficiency of EC development spending. Until improvements are demonstrated, especially in the focus of resources on the Millennium Development Goals, the Government does not want to increase the EC budget at the expense of more effective bilateral development spending.*

#### OWN RESOURCES AND A EUROPEAN UNION TAX

161. The present system of Own Resources, while complex and not particularly logical, is in our view perfectly sustainable into the foreseeable future. We were not persuaded by any of the arguments presented to us in favour of changing the system to give the EU a new tax of its own. (paragraph 108)

*Response: The Government agrees with this conclusion.*

162. We believe that raising the EU's money through contributions based on GNI is as fair and equitable a financing method as any other that has been suggested. (paragraph 109)

*Response: The Government agrees that gross contributions to the EC budget primarily based on GNI are fair.*

163. For all these reasons, we recommend that any idea of a special European Union tax, whether based on corporate income, energy, VAT or any other revenue source, should be dropped. (paragraph 111)

*Response: The Government agrees that an EU tax would be unacceptable. Taxation is a matter for individual member states.*

#### THE UNITED KINGDOM ABATEMENT AND A GENERALISED CORRECTION MECHANISM

164. The Commission's own proposal seems to us flawed in several major respects. (paragraph 128)

*Response: The Government agrees with this conclusion. The Commission's proposal for a Generalised Correction Mechanism (GCM) is deeply flawed and totally unacceptable. According to Commission figures, the proposed GCM, rather than correct excessive net balances, would widen disparities between net contributors.*

165. On all these grounds, we recommend that the Commission's proposal for a Generalised Corrective Mechanism should be rejected. We also think that, so long as the predominant weight of the CAP in the budget continues, the United Kingdom abatement is justified. Only when the CAP has been further reformed would it be sensible to consider a Generalised Corrective Mechanism. (paragraph 129)

*Response: The Government agrees that the Commission's proposal for a Generalised Correction Mechanism should be rejected, and notes that it has received little support from other member states.*

166. We believe the Government's insistence on the rebate is entirely legitimate in the context of an inadequately reformed CAP. We urge the Government to persuade other Member States of the logic of this position: if reform of the expenditure side of the budget was achieved, the need for a rebate would be far less pressing. Under current expenditure proposals the rebate must be non-negotiable; but if real reform of the budget was offered, the Government should be prepared to negotiate. (paragraph 130)

*Response: The Government believes that the continuing inefficiencies and inequalities on the expenditure side of the EC budget mean that the abatement is fully justified and not up for negotiation. Policy reform, particularly of the CAP and Structural and Cohesion Funds, is important in its own right and the Government is, and will continue to be, a leading proponent of such reform.*

#### Letter from the Chairman to Ivan Lewis MP

Thank you for your letter of 24 May 2005 enclosing the Government's response to the Committee's Report on the future financing of the European Union. Sub-Committee A considered this document at its meeting on 7 June.

The Committee would like to seek further clarification of your response to paragraph 143. You assert that, "if co-financing were to be introduced it should not increase the fiscal burden—it should be fiscally neutral compared to the cost of a budget €815 billion (£544 billion) without CAP co-financing". Does the Government agree with the Committee that under co-financing, the fiscal burden should be reduced?

13 June 2005

#### 9th REPORT: THE EUROPEAN DEFENCE AGENCY

##### Ministry of Defence's Response

1. This memorandum constitutes the Government's response to the House of Lords European Union Committee's report, European Defence Agency (9th Report of Session 2004–05, HL Paper 76, published on 16 March 2005). The Government welcomes the Committee's report as a valuable contribution to the development of European security and defence policy. This memorandum sets out the Government's response to the report's conclusions.

*[Para 78] We recognise the instrumental role the Government has played in the establishment of the EDA. In order for the Agency to be successful, the Government must now ensure that all relevant parties understand its role.*

2. The Government welcomes the Committee's recognition of the key role the UK has played in establishing and shaping the EDA. Originally a joint UK-French initiative, we have been instrumental in influencing the course of its development and ensuring that it has been given a firm, capabilities-based, foundation from which to take forward work on improving Europe's defence performance. The Government will continue to support the EDA's efforts towards the development of Europe's defence capabilities. As the Committee points out, having helped shape the Agency, it is important that we continue to influence its development and ensure that there is a common understanding amongst the relevant parties regarding its role.

*[Para 79] We note that the ratification, or otherwise, of the Constitutional Treaty by all Member States has no immediate effect on the legal base of the European Defence Agency.*

3. The Committee is right to conclude that the Constitutional Treaty has no immediate effect on the legal base of the EDA.

*[Para 80] We are concerned that procedures for Parliamentary scrutiny of the ESDP in general are inadequate. The Government should therefore explain how it will ensure adequate Parliamentary scrutiny of Council and Steering Board decisions relating to the EDA. The Government should agree with Parliament the types of documents that will be deposited for Parliamentary scrutiny.*

*[And Para 82] We will return to the issue of the EDA's funding at the time the Council is due to determine the three year budgetary framework for the Agency. We recommend that the Government deposits in Parliament for scrutiny a detailed analysis of the EDA's programme and resource needs at that time.*

4. The Government recognises the importance Parliament attaches to its scrutiny role and will continue to work with the Committee to ensure appropriate arrangements are in place for the effective scrutiny of EDA business. It understands the Committee will be looking into scrutiny arrangements for the Common Foreign and Security Policy, within which ESDP falls, later this year and looks forward to assisting the Committee in its deliberations.

5. In general, meetings of the GAERC which include discussion of EDA business will be covered by the existing arrangements established for the scrutiny of Council deliberations. However, the Government now proposes that the following documents specified in Council Joint Action 2004/551/CFSP of 12 July 2004, together with any Government observations on them, should be deposited for scrutiny:

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

6. In addition to these documents, the Government see scope for further improving the transparency of Ministerial Steering Board meetings. It proposes that Ministers should write to the Committee Chairmen before each Ministerial Steering Board, setting out the issues on the agenda and the Government's position on them, to be followed by a summary of the meeting shortly afterwards. The Government recognises the need to ensure the Committees are provided with these documents in good time, but highlights that the timescales under which the EDA operates may mean that this is not always possible.

7. Against this background, the Government suggests that an informal working group is established, with officials from the Committee, the House of Commons European Scrutiny Committee, the Ministry of Defence, FCO and other relevant parties, to take forward work on this important area and agree arrangements for the Parliamentary scrutiny of EDA business. We suggest that any such arrangements may need to evolve as the EDA itself develops.

*[Para 81] The Council has set the EDA highly ambitious tasks. We are concerned that the EDA should not be burdened with expectations which it has not been given the resources to fulfil. We urge the EDA to be very transparent in reporting on its activities and spending.*

8. The Government fully supports the importance the Committee attaches to the EDA being transparent in reporting its activities and spending. The proposals we have made for Parliamentary scrutiny of Council and Steering Board decisions will promote that transparency.

9. The Government is committed to ensuring that the EDA is established and develops in a manner which will enable it to fulfil its role of supporting efforts to improve the EU's defence capabilities in the field of crisis management.

However, it also considers it is important to ensure that the EDA's primary function is to support Member States, which is why the operational budget for 2005 (some €3 million) is relatively low.

(In point of clarification, the figures quoted at paragraph 25 of the report should be in Pounds Sterling. To be more precise, the UK contributed 17.28 per cent of the EDA's budget for 2004 (based on assessments of Member States' gross national income). This covered the period from its formal establishment in July 2004 to the end of that year and equated to €308,775.51. For the calendar year 2005, the UK contribution is 18.07 per cent, equating to €3,596,803. This includes non-recurring costs associated with the initial set-up of the Agency.)

*[Para 83] Consideration should be given to a rationalisation of the different bodies and, if the EDA is proving to be successful, the possibility for mergers should be encouraged.*

10. The Government agrees that there should be some rationalisation of the various bodies involved in European defence cooperation where it is sensible and practical to do so. At the very least, their activities should be coordinated.

11. The Government therefore welcomed the decision made by Defence Ministers in November 2004 to close the Western European Armaments Group (WEAG) by no later than the end of June 2005, following the transfer of its activities to the EDA. In the intervening period WEAG and the EDA have been working cooperatively to manage the necessary transitional arrangements. The Government also believes that it may be beneficial for the Western European Armaments Organisation (WEAO) Research Cell to be incorporated into the European Defence Agency. Discussions are under way to enable this to take place by the first quarter of 2006.

12. The Government agrees that the activities of the Agency and the Organisation for Joint Armaments Cooperation (OCCAR) complement one another. Clearly, both organisations need to develop quickly, effective working relationships that recognise their key areas of competence. This work is also under way.

13. Finally, the six nation Letter of Intent (LOI) Framework Agreement is a separate treaty that aims to facilitate cross-border industrial restructuring between signatory nations. It is the Government's aim that, wherever practicable, the outputs from the implementation of the Framework Agreement should be woven into the procurement procedures of as many EU Member States as possible. Initial work to facilitate this is under way between the EDA and the LOI member states.

*[Para 84] The improvement of European military capabilities depends on the willingness of the Member States to take action. Nonetheless, we have concluded that the EDA is well placed to help in this process. The EDA's strength is the Steering Board. The Agency might make a difference by:*

- facilitating co-operation between Member States;
- suggesting workable solutions; and
- identifying problems, including naming and shaming Member States.

14. The Government welcomes the Committee's conclusion and agrees that the EDA's structure will help it succeed. As the Committee points out, the EDA will play an important role, not only in facilitating cooperation and suggesting workable solutions, but also in attaining and maintaining standards.

*[Para 85] We accept that the EDA may in this instance have some advantages over the NATO framework. The EU framework may prove more effective in mobilizing political commitment and providing impetus for action. Communication and co-operation with NATO will still be paramount to avoid duplication of effort. We urge the Government to press this point in Council.*

15. The Government is fully committed to ensuring that ESDP develops in a manner coherent with NATO and agrees that communication and cooperation between the EDA and NATO will be important in avoiding unnecessary duplication. In this respect, the Joint Action establishing the EDA explains that "reciprocal transparency and coherent development" between NATO and the EDA will be ensured through the existing framework for capability development (the Capability Development Mechanism). The Joint Action also envisages the development of Administrative Arrangements for EDA—NATO cooperation. These arrangements will be developed in due course, complementing the EDA—NATO staff-to-staff contact that already takes place routinely.

*[Para 86] We strongly believe that the EDA needs to concentrate, initially, on a few achievable tasks. The EDA will gain Member States' confidence by enabling an ESDP mission to operate more effectively. Once trust in the Agency's capacity to deliver has been built up, more strategic issues such as relative defence spending or specialisation of forces can be approached.*

16. The Government welcomes the Committee's thoughts and agrees that the EDA will build up Member States' confidence by narrowing the focus of its efforts on specific areas where it can demonstrate its worth. The EDA's work programme for 2005 targets four flagship projects: Command, Control and Communications (Capability Directorate), Armoured Fighting Vehicles (Armaments Directorate), Uninhabited Air Vehicles (Research and Technology Directorate) and the European Defence Equipment Market (Industry and Markets Directorate). Whilst much of this year has necessarily been consumed with recruiting staff and other administrative tasks, the EDA has begun to examine these areas of work and will present a progress report to Defence Ministers at the Steering Board meeting on 23 May.

*[Para 87] We believe that the United Kingdom currently has the most open defence procurement market in Europe. We are broadly in favour of the voluntary code of conduct approach suggested by the Government to achieve greater transparency across the Union. However, we recognise that this approach has disadvantages as there is a great deal of uncertainty whether other Member States will open their defence markets. Rigorous monitoring and peer pressure will be key to this approach. If the voluntary approach is not successful the Commission's proposals will have to receive further consideration.*

17. The voluntary Code of Conduct approach has many of the potential benefits of a regulated market. For example, it will improve transparency and has the potential to increase competition and create more efficient defence equipment markets. Such an approach should also enable implementation in the near-term, and avoids the introduction of a further regulatory burden on Member States and industry. Nevertheless, the Government recognises the potential challenges associated with a voluntary mechanism, in particular the risk of non-compliance. For this reason, the Government has stressed the need to handle carefully the introduction of a Code of Conduct and to ensure that it enjoys the robust support of Member States.

*[Para 88] We are of the opinion that the EDA's priority should be the EDEM: an area in which the EDA may come to play a prominent part. We ask the Government to deposit in Parliament the EDA's 2 March 2005 report to the Steering Board on how the EDA can best be involved in the EDEM.*

18. On 2 March the Steering Board of the European Defence Agency met in the formation of National Armaments Directors (NADs). NADs discussed the EDA's report on the creation of a European Defence Equipment Market, and reached decisions on the EDA's input to the European Commission's Green Paper on Defence Procurement and a programme of work for the EDA on the European Defence Equipment Market issue. A copy of the report and the Steering Board decisions is at Annex A, (not printed).

*[Para 89] We accept that in some cases the distinction between research for civilian and military security purposes may be artificial. The security research concept will need to be handled carefully to ensure that opportunities for useful research are not lost because of institutional jealousies and arguments about competence. Mr Witney offered a possible solution whereby the Commission could allocate money for the EDA to manage, even though the projects would have clear defence as well as civilian implications. We hope that this pragmatic solution will be found acceptable.*

19. The Government sees the benefits of cooperation on certain aspects of security research. However, it continues to have strong reservations about the scope of the proposed European Security Research Programme (ESRP). The Government set out its position in a non-paper of 23 March, a copy of which is at Annex B, (not printed).

20. It is imperative that there are effective safeguards in place to ensure the ESRP has a clear focus on civil security research. Whilst it is recognised that there are areas of "dual-use" technology, relevant to both civilian and military applications, a suitable framework will be needed to manage and scrutinise such dual-use proposals. Member States must be able to monitor the work and so the Government has proposed the establishment of a Regulatory Committee to ensure there is adequate oversight of the Commission's implementation of the ESRP.

21. Furthermore, the Government has proposed:

- (i) to use COREPER (the Committee consisting of the Member States' Permanent Representatives to the EU) as the only cross pillar body and ensure it refers up (to the General Affairs and External Relations Council) or down (to Common Foreign and Security Policy (CFSP) structures) issues with defence implication; or
- (ii) to use language similar to the Galileo safeguard to the effect that any decision on ESRP which had defence implications would be for decision by the Regulatory Committee or the Council in accordance with Articles 17 and 23 TEU, which make clear that all decisions under CFSP with military implications shall be taken by the Council acting unanimously. The European Defence Agency—at Member States' request—could provide expert opinion on projects referred to Pillar II structures.

22. In either case, close co-ordination with the European Defence Agency will be paramount. Indeed, the Government will consider with an open mind any EDA proposal that fulfils the criteria set out in the non-paper. The key issue is the need for ESRP to ensure a clear focus on civil security research. Subject to analysing any proposals in detail, including for compatibility with wider UK policy on the EU's Research and Development activities, it may be acceptable for civil security research, with a defence dual-use, to be funded by ESRP and managed by EDA. However it would not be acceptable for a primarily defence technology (such as Uninhabited Air Vehicles, Chemical Biological Radiological Nuclear defence, Network Enabled Capability technologies etc), with a civil dual use, to be funded by ESRP (whether managed by EDA or not).

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

Thank you for your response to our Report: "The European Defence Agency" (HL, European Union Committee 9th Report of Session 2004–05) dated 23 May 2005 which was considered by Sub-Committee C at its meeting on 9 June.

The response was warmly welcomed by the Sub-Committee who were grateful for your agreement to submit a number of documents relating to the EDA for scrutiny by Parliament. We would ask that you also submit the EDA's annual November report in which the Agency will outline its suggested budget and draft work programme for the following year (Article 4.2b of the Joint Action). This document would inform the Council's guidelines (Article 4.3 of the Joint Action) which is one of the documents which you propose to submit for scrutiny. In our Report we recommended that the EDA be "very transparent in reporting its activities and spending" (para 81). It would therefore be helpful to have the EDA's own proposals made public by being deposited for scrutiny. This would facilitate scrutiny of the Council's guidelines by allowing for a comparison of the two documents.

*22 June 2005*

**Letter from Rt Hon John Reid MP to the Chairman**

Thank you for your letter dated 22 June 2005 concerning the deposition of an additional European Defence Agency (EDA) document for scrutiny by the House of Lords Select Committee on the European Union.

I am very pleased to hear that the Government response to your Committee's report on the EDA was warmly received. The Committee's report was welcomed by the Government and is a valuable contribution to the development of European Security and Defence Policy.

As you know the Government has undertaken to deposit, for scrutiny, a number of documents related to the EDA, which are specified in the Council Joint Action 2004/551/CFSP of 12 July 2004. In addition to this the Government is happy to deposit the EDA's annual November report (Article 4.2b of the Joint Action) as requested. I hope that this will be helpful to the Committee and will assist in improving transparency of EDA activities.

*28 June 2005*

**Letter from the Chairman to Rt Hon Dr John Reid MP**

Thank you for your letter dated 28 June 2005 in which you undertake to deposit the EDA's annual November report (Article 4.2b of the Joint Action). We are grateful for this undertaking and look forward to receiving the report in November.

*7 July 2005*

**10th REPORT: THE HAGUE PROGRAMME: A FIVE YEAR AGENDA FOR EU JUSTICE AND HOME AFFAIRS**

**Letter from Rt Hon Charles Clarke MP, Home Secretary, Home Office to the Chairman**

I am writing in response to the European Union Committee's 10th Report of Session 2004–05 on "The Hague Programme: a five year agenda for EU justice and home affairs".

The Government welcomes this report, which provides a full and detailed evaluation of the Hague Programme. We believe that the Hague Programme is a helpful step in the development of an area of Freedom, Security and Justice. We note the recent publication of the Hague Programme Action Plan, which proposes initiatives to be taken forward on the basis of the programme. The Action Plan has been deposited for Parliamentary Scrutiny and an Explanatory Memorandum is being submitted.

The Government's detailed response to the European Union Committee's report can be found at Annex A.

7 June 2005

## Annex A

### Government Response

#### SCRUTINY

71. *We regret that the Government saw fit to withhold from scrutiny the drafts of the Hague Programme prior to its adoption by the European Council. It is unacceptable that Parliament was denied the opportunity to examine and comment on proposals of such importance until it was too late to influence their content.*

72. *We make our recommendations in this Report so that they can be taken into account in the negotiations and drafting of the Commission's five-year Action Plan.*

The Parliamentary Scrutiny Committees were given an opportunity to consider the European Commission's Communication of the future Justice and Home Affairs work programme, on which negotiations on the work programme were based. It is unfortunate that the European Union Committee's letter of 16 September, responding to the Commission Communication, was not received by the Government until 20 October and was therefore not replied to until shortly after that date. It is important to note that the House of Commons was able to hold a debate on the Floor of that House to consider the issues raised by the Commission's Communication on 14 October 2005.

The document that the Committee believes the Government saw fit to withhold from scrutiny was an internal EU Council working document. The Government does not normally deposit these documents for Parliamentary Scrutiny as they are considered to be restricted and not for public consideration. Substantial scrutiny of the work programme would also have been impractical given the timetable involved (the Presidency provided a first draft in early October with the aim for agreement at the European Council on 4th November). However, the Government has made a strong effort to rectify this by writing in detail to the Committee after the November European Council and in response to the Committee's Call for Evidence, as well as making representatives available to provide oral evidence to the committee.

The Commission's five-year Action Plan has been published and has been deposited for Parliamentary Scrutiny. An Explanatory Memorandum is being submitted.

#### GENERAL PRINCIPLES

73. *We welcome the emphasis that the Hague Programme places on respect for the principles of subsidiarity and proportionality and for the legal traditions of Member States in developing legislation in Justice and Home Affairs. We expect the Government to be vigilant in ensuring full respect for these principles. (paragraph 9)*

The Government agrees that the principles of subsidiarity and proportionality, as well as the legal traditions of the Member States, should be fully respected, and will be vigilant in ensuring that this is the case.

#### FREEDOM AND SECURITY

74. *Criticism of the Hague Programme for placing undue emphasis on security considerations at the expense of respect for fundamental rights is justified. This emphasis on security may be explicable in the light of recent events, but it is important that measures to protect citizens' rights are not sidelined in the implementation of the Programme. We urge the Commission and Member States to give full weight to the need to protect fundamental rights when developing and implementing the five-year Action Plan for JHA. (paragraph 11)*

The Government agrees that the right balance between protecting people in the exercise of their fundamental rights and ensuring that they live in a secure and just Europe needs to be found, and believes that this has been achieved in the Hague Programme. Improving security is vital and without it freedom and justice could not flourish, but this should not be at the expense of fundamental rights and the rule of law.

Indeed, the Hague programme makes clear that Human Rights should be respected, and one of its main stated objectives is to "improve the capability of the Union and its Member States to guarantee fundamental rights, minimum procedural safeguards and access to justice".

It will establish a Human Rights Agency by extending the mandate of the European Centre on Racism and Xenophobia, and will also provide an opportunity to exploit a mutually beneficial relationship between human rights and anti-discrimination. Upon ratification of the Constitutional Treaty, the EU will formally recognise the Charter of Fundamental Rights, which will further enhance the respect of citizens' fundamental rights shown by the EU. At the same time the Hague Programme continues work on mutual recognition, rights for defendants in criminal procedural law, and on improving access to civil law procedures across borders, making it easier to work, study and live abroad.

#### THE FUNDAMENTAL RIGHTS AGENCY

75. *The establishment of a Fundamental Rights Agency could be beneficial for the respect and promotion of human rights by the EU institutions and by Member States when applying EU law. Careful consideration must be given, however, to the role and powers of the Fundamental Rights Agency, in order to avoid wasteful duplication of work between the EU and the Council of Europe. (paragraph 15)*

The Government agrees with the Committee's conclusion's and will work to ensure that the Agency's remit is an appropriate one, and that duplication of work, particularly with the Council of Europe, is avoided.

#### ASYLUM—MINIMUM STANDARDS

76. *We fully share our witnesses' concerns regarding some of the standards adopted in the first stage of EU asylum measures. The Committee has repeatedly highlighted the danger of Member States reaching agreement on the basis of the lowest common denominator, which would not provide an adequate level of protection for asylum seekers and could jeopardise existing levels of protection in those Member States currently observing higher standards than those required by the EU. (paragraph 18)*

77. *A detailed evaluation of the implementation of these instruments is essential to ensure that it is consistent with international human rights and refugee law standards. (paragraph 18)*

78. *The concept of a Common European Asylum System, which has been a central objective of JHA policy since Tampere, remains valid to ensure consistent standards across the EU and to prevent "asylum shopping". (paragraph 19)*

79. *Proper evaluation of the first stage of the CEAS is essential before embarking on consideration of second stage measures; the deadline of 2010 is probably too ambitious. Evaluation should be carried out by an independent body of experts, whose findings should be published. It is essential that any new EU standards on asylum should ensure a high level of protection in accordance with international human rights and refugee law. (paragraph 20)*

80. *Joint processing of asylum applications in the EU is not the right way forward. The key lies with improving the asylum process and decision-making in Member States. We welcome the UNHCR "Quality Initiative" and will monitor its progress during the United Kingdom Presidency of the EU. (paragraph 21)*

#### A EUROPEAN ASYLUM OFFICE

81. *A European Asylum Office could assist practical co-operation between national asylum authorities, through the exchange of information and best practice. In our Report on extra-territorial asylum processing, we recommended the establishment of an independent documentation centre managed on an EU basis. The European Asylum Office could take on this role in co-operation with the UNHCR. (paragraph 23)*

82. *We see less value in the Office taking the role of an auditing/evaluating body. This could cause unnecessary duplication with the work of other structures specifically established to evaluate the implementation of EU measures in the JHA field. Still less should the Office develop a centralised decision-making role. (paragraph 23)*

#### ASYLUM-EXTRATERRITORIAL PROCESSING

83. *We highlighted our concerns about extra-territorial asylum processing in our Report Handling EU Asylum Claims: New Approaches Examined. Studies on extra-territorial processing are a distraction from the central objective of improving asylum procedures in Member States. (paragraph 24)*

With regard to the Committee's points on asylum, the Government welcomes the Committee's recommendations on the development of a Common European Asylum System. It is our belief that a common international approach, coupled with domestic reform, is the best way to address these issues. We have been clear there should be co-operation at the European level to achieve an effective, fair and managed system of

asylum to stop asylum shopping, but that this must be balanced against the need to ensure that Member States can continue with the process of addressing the specific challenges their domestic asylum systems face.

Measures such as Dublin II and EURODAC are already having an effect in reducing “asylum shopping”. Other measures are beginning to come into effect and we cannot yet judge their impact. As we near completion of the package of minimum standards directives, we believe and the Programme makes clear that any further legislative action at the EU level should be based on an evaluation of the current instruments. We welcome the importance the Committee attaches to proper implementation and evaluation. We do not however believe that there is a need for an evaluation of their consistency with international law; nothing in a minimum standards measure can permit or require a Member State to breach its international obligations.

The Programme acknowledges the need to look into the difficulties behind joint processing before considering whether to take this any further. We believe that the Hague Programme provides for proper consideration of the issues before we take any further decision on joint processing.

We welcome the emphasis on practical co-operation between Member States. By sharing practical experience on the many common areas of Member States’ systems and processes, we can deliver benefits for all Member States.

Finally, we support the Committee’s view that there needs to be further consideration of the role of any support office. We believe that we need to see added value before we take a decision on this, and we welcome the Committee’s assessment that such a structure should not develop beyond assisting Member States’ national asylum authorities.

## MIGRATION

84. *Effective EU action to counter irregular migration is hard to achieve without common EU policies on legal migration and the admission of third country nationals for paid employment. We welcome the invitation by the European Council to the Commission to prepare a policy paper on legal migration, and urge Member States to examine the issue as a matter of priority. (paragraph 28)*

The European Commission’s own study into the link between legal and illegal migration found that while there is a link, the relationship is complex and not a direct one. Effective action on illegal immigration is not contingent on there being common EU rules on labour migration. Illegal immigration takes place for many different reasons, not simply limited opportunities to migrate legally or differences in criteria operated by different EU Member States.

85. *We urge Member States to revisit the issue of the rights of legally resident third country nationals. (paragraph 29)*

We are clear that legal migrant workers should be protected by law and indeed the UK provides all legal migrant workers with certain minimum rights. However, the extent to which Member States provide rights to certain categories of migrant should depend on national circumstances. Therefore, there is no necessary requirement for Third Country Nationals to receive parity of treatment with EU citizens.

## BORDER SECURITY

86. *When negotiating measures involving controls on third country nationals, Member States should take full account of their implications for privacy and data protection and give public opinion, and national parliaments, enough time for meaningful scrutiny and debate of them. (paragraph 30)*

We consider it important that any proposal considers carefully data protection issues in order to ensure that the fundamental rights and freedoms of individuals, such as the right to privacy, are adequately safeguarded. Through a combination of domestic Parliamentary Scrutiny, regular meetings with NGOs and the role of the European Parliament, the Government believes that it takes full account of these concerns.

## THE EUROPEAN BORDER AGENCY

87. *We remain of the view, expressed in our Report on Proposals for a European Border Guard that the case for a centrally managed, multi-national European Border Guard has not been made. (paragraph 34)*

The Government agrees that the case has not been made for a fully-fledged European Border Guard, which might replace national border services, and remains opposed to the concept. We are not alone in that view. Poland, Hungary, Finland, Ireland and many other Member States also oppose the idea, and those (eg Germany) who do support the idea, recognise that it could only be a long-term aim.

But the Government does support increased joint activity and co-operation between Member States at the EU external borders, where that activity is conducted on an operationally-focused, intelligence-led basis. Such action has the potential to enhance the security of the EU's external borders to the benefit of all Member States. For example we fully support the aims and objectives of the Border Agency which will co-ordinate Member States operational co-operation. We also support measures outlined in the Hague Programme, such as the proposed teams of national experts or rapid reaction task force—provided there is scope for us to be involved and have a say in how the work is taken forward. Joint activity must complement, not replace, the work of national border services—that is what these measures aim to do.

It is worth noting that what people think of as a “European Border Guard” is changing. For some, a system of Border Guards would simply be the combination of the various methods of co-operation mentioned above (which we support). But for others it remains a multi-national standing Border Guard Corps (which we continue to oppose).

#### POLICE CO-OPERATION AND THE ROLE OF EUROPOL

88. *It is important to improve co-ordination between Member States, and with international bodies such as Interpol, without necessarily creating yet more structures in the EU. (paragraph 37)*

Europol has a close working relationship with other International agencies. For example, Europol has an operational agreement with Interpol which enables personal data to be exchanged between the two bodies. Europol also has observer status on the Interpol European Committee and Interpol has a representative in the meeting of the Heads of Europol National Units (HENUs). Europol also has a liaison officer based at Interpol.

Interpol has recently agreed that Europol can have direct access to its information exchange system. This will be rolled out not only to Europol itself but also to the EU Member States liaison bureaux at Europol.

The UK National Central Bureau of Interpol and the UK's Europol National Unit are based at the National Criminal Intelligence Service. This helps ensure close working relationship across a full range of international co-operation matters to the UK's and Interpol's-Europol's mutual advantage.

89. *Europol has an important role to play but is still under-used by Member States. Before attempting to redefine its role, it is essential to convince Member States of the need to co-operate with Europol fully. (paragraph 37)*

The Government supports the important role Europol plays in the fight against serious, organised cross-border crime in the EU. For Europol to reach its full potential it requires a greater commitment from all Member States to contribute to and benefit from Europol's intelligence gathering and analysis capabilities. Member States cannot reasonably expect the kind of support they need from Europol if they are not themselves providing Europol with relevant material.

There is no intention to redefine Europol's role but we do wish to see Europol function more efficiently and effectively and thereby do better what it was set up to do, which is to support Member States' own operations. The UK has ratified all three protocols to the Europol Convention but not all Member States have yet done so. These allow, for example, for Europol to participate in a support capacity in Joint Investigation Teams (JITs). However, there is still a lot Europol can do within the existing Convention which will allow Europol to operate more effectively. Europol is already, for instance, compiling compendiums of Member States' laws on JITs and it can provide advice on JITs even if it cannot fully participate. We play a prominent role in encouraging such work, for instance by seeking advice from Europol in setting up JITs. Europol will also be involved in the implementation of the European Criminal Intelligence Model (ECIM), through the production of an Organised Crime Threat Assessment (OCTA) that replaces the Organised Crime Report.

90. *Any proposals to enhance the exchange of information must be accompanied by high standards of data protection. There is a clear need for specific EU data protection standards for the Third Pillar. (paragraph 37)*

It is essential that we improve exchange of law enforcement information to help catch criminals and deliver focused, intelligence-led policing. The Government fully agrees that such information exchange must be accompanied by high standards of protection. High standards do exist already, with the UK and most other Member States having implemented the Data Protection Directive in a way that covers law enforcement information exchange.

However, the Government agrees that further clarity on the data protection rules relating to the third pillar would make a contribution to increased data exchange, as part of a wider strategy looking at technical means and cultural attitudes towards information sharing, and would reassure EU citizens that their rights were being properly protected. Therefore we look forward to the Commission producing a proposal on data protection in the third pillar later this year.

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 CRIMINAL LAW—APPROXIMATION AND MUTUAL RECOGNITION

91. *Approximation of the criminal laws of Member States is likely to have a significant impact on Member States' legal cultures and traditions and on national sovereignty. We are pleased to see that the Hague Programme views such approximation as being necessary only if it facilitates mutual recognition. However, the more progress that is made on developing the mutual recognition programme, the greater the need will be for some sort of minimum standard across the EU of procedures in the legal processes for which mutual recognition will be claimed. (paragraph 40)*

The Government firmly believes that approximation is not a precondition for effective mutual recognition. The Hague programme is predicated upon the need to ensure that the enhancement of mutual recognition as the basis of judicial co-operation proceeds in manner that respects the individual culture and legal traditions of Member States. The Government agrees that some minimum standards in procedural law will be necessary in order to enhance mutual trust and confidence in the criminal justice systems of the EU states and thereby promote the development of the mutual recognition programme. But each proposal to establish such minimum standards must be closely scrutinised in order to ensure that it will materially improve the prospects for better judicial co-operation and a more effective European response to serious and organised crime.

92. *Such approximation is necessary not only to facilitate mutual trust and justify mutual recognition, but, more importantly, to protect the rights of the individuals affected. However, we would urge caution in the further development of harmonisation in sensitive areas such as the admissibility of evidence. Before any further expansion of harmonisation there needs to be a full examination of the implications of such a development for Member States. This is an area where the principle of subsidiarity will come into play and due observance of it will be necessary. (paragraph 40)*

The Government agrees that the protection of the rights of individuals subject to criminal proceedings is an important step in the establishment of the minimum standards necessary for the development of the mutual recognition programme. That is why the Government offers its cautious support to the draft Framework Decision on procedural rights currently under negotiation. The Government also agrees however that each initiative introduced as a measure to promote mutual recognition must be thoroughly scrutinised to ensure that it will have the desired effect and in manner that is consistent with the need to respect the diverse legal systems and cultures of the EU and the principle of subsidiarity.

## THE RIGHTS OF THE DEFENDANT

93. *We welcome the commitment towards the swift adoption of the Framework Decision on defence rights, but the need to reach agreement on its terms should not jeopardise the adoption of adequate standards of protection for suspects and defendants. Standards must not be lowered in order to obtain agreement. (paragraph 42)*

Many of the issues that are being, and will need to be, addressed in the negotiations were considered during the course of the Home Office evidence session before the European Union Committee on the draft Framework Decision on procedural rights. It is clear that there will need to be some accommodation of the diversity in legal systems and cultures across the EU if we are to reach agreement on these important minimum standards. The Government will continue to work, however, for a final document that provides added value in this area which has an obvious and important role in improving mutual confidence and trust and thereby increasing the prospects of enhanced mutual recognition.

94. *The Government's non-committal attitude to a forthcoming legislative initiative on bail is regrettable. Any legislative proposals on bail should be treated as a matter of priority during the United Kingdom Presidency.*

The Government has welcomed the Commission's Green Paper on the mutual recognition of pre-trial supervision measures. We recognise that it may help to promote the fair treatment of residents of other EU Member States facing criminal proceedings within the UK as well as the fair treatment of UK residents in a similar position in other EU Member States, and ensure that pre-trial custody is only used in appropriate cases.

The Commission has yet to table a legislative proposal, but we believe it would be a worthwhile initiative even though it may not be possible to treat it as a priority during the UK Presidency.

## EUROJUST AND THE EUROPEAN PUBLIC PROSECUTOR

95. *We welcome the deletion of the reference to the potential establishment of a European Public Prosecutor from the final version of the Hague Programme. Eurojust has a pivotal role to play in enhancing judicial co-operation in criminal matters in the EU, and we welcome the commitment of Member States to revisit its role in order to achieve greater efficiency. In developing Eurojust's role in dealing with multilateral cases, care must be taken that the rights of the individual are not jeopardised for the sake of "prosecutorial efficiency". (paragraph 45)*

The lack of a reference to the EPP in the Hague Programme is helpful. However we expect the Commission to continue to raise the issue whenever possible and it still has considerable support from some Member States. We are still of the view that a convincing case has not yet been made for a European Public Prosecutor and we have consistently expressed our opposition to the concept. It remains the case that, under the new EU Constitutional Treaty, any proposal to establish a European Public Prosecutor would be subject to unanimity.

## MUTUAL TRUST AND THE JUDICIARY

96. *We welcome the emphasis on bringing together prosecutors and judges from Member States in order to promote understanding of the different legal systems in the EU. Better understanding should lead to enhanced trust and consequently better implementation of mutual recognition measures. (paragraph 47)*

We support work to promote and enhance understanding of the different legal systems in operation throughout the EU. The UK strongly supports the principle of mutual recognition believing it to be the key component of judicial co-operation. The implementation of mutual recognition measures can only benefit from the improved trust and confidence that flow from improved understanding of each others' legal systems.

## EVALUATION

97. *It is very important that proper monitoring and evaluation procedures should be put in place. Evaluation must not be limited to the collection of statistical data, but must also be based on information coming from the practical experience of the individuals involved (such as suspects and defendants) and the legal profession. Assessment must be made by an independent body, reporting publicly. (paragraph 51)*

98. *There are a number of issues relating to evaluation that remain unresolved. They require careful, but urgent examination by Member States in order to establish a meaningful evaluation system. (paragraph 52)*

The Government broadly agrees with the Committee's conclusions. In particular, the need for a broad evidence base is clear. We strongly support the need for proper implementation and evaluation as set out in the Hague Programme. It is important that measures are properly implemented, their outcome evaluated and evidence of their impact assessed before new legislation is considered.

Beyond that, the Government does not yet have a firm view on how such a mechanism should operate. It is understood that the Commission intends to bring forward a communication on a suitable evaluation mechanism next year to be followed when the Constitution comes into force.

## JUDICIAL PROTECTION IN THE ECJ

99. *In view of the far-reaching effects that measures such as the European Arrest Warrant will in many cases have on the rights of individuals, it is essential that any disputes arising from the interpretation of these instruments are resolved as soon as possible. We welcome the commitment by the European Council to establish a mechanism to expedite proceedings in Luxembourg in JHA cases, and urge that priority be given to any relevant proposals tabled during the United Kingdom Presidency of the EU. (paragraph 54)*

Currently, in preliminary references where the ECJ agrees the need to move quickly, it is possible for appropriate arrangements to be put in place under Article 35 TEU. Any proposals to review the general procedure for expediting cases could only be achieved under Article III-369 of *The Treaty establishing a Constitution for Europe*. It is Article III-369 which introduces an express stipulation for the Court to act with minimum delay in custody cases. Any proposals needed to make specific provision for Article III-369 could only be brought forward and considered following entry into force of the Constitution.

#### CIVIL LAW—JUSTIFICATION, COMPETENCE AND SUBSIDIARITY

100. *Any EU action in the civil law field under Article 65 of the EC Treaty must respect the conditions set out in that Article. There must be a clearly identifiable and substantial cross-border dimension. The legislation must also be necessary to enable the proper functioning of the internal market. (paragraph 58)*

101. *There are some issues where EU action in civil matters may be beneficial to EU citizens. But it is essential that the benefit that EU action may confer is fully substantiated before any proposals in civil matters are tabled. National parliaments can be expected to examine closely the subsidiarity implications of proposals aiming to harmonise civil law. (paragraph 59)*

102. *EU action in civil law is acceptable only if it adds value and is absolutely necessary to improve the everyday life of EU residents in situations having a cross-border dimension (paragraph 63).*

The Government agrees that proposed measures under Article 65 of the Treaty must respect the conditions set out in that Article, including an identifiable and substantial cross-border dimension; we also agree that there should be clear evidence of the need for and the expected benefits of proposals in this field. The Government remains of the view, however, that there is a place for an appropriate level of harmonisation—for example, suitable confidence-building minimum standards—when these are clearly linked to the facilitation of mutual recognition in the civil law area.

#### FAMILY LAW

103. *This is even more so in the sensitive area of family law, where action at the EU level may challenge deeply-founded legal and social principles in Member States. We are not convinced that action in family law matters is required to the extent proposed by the Hague Programme. (paragraph 63)*

104. *Supplying the individuals concerned with more and better information on their rights under the laws of Member States may be a more effective way of addressing cross-border issues than EU legislation. We believe that such avenues should be explored before embarking on the very ambitious legislative agenda on family law set out in the Hague Programme. (paragraph 63)*

The Government does not favour legislation aimed at harmonising what the Committee rightly describes as deeply-founded legal and social principles, and the Hague Programme makes clear that this is not the intention. However we are of the view that there are areas where the EU can add value and benefit the everyday lives of citizens in cross-border situations, and we are prepared to consider appropriate proposals aimed at addressing these, preferably by enhancing mutual recognition. The fact that the Hague programme foresees extensive consultation, in the form of Green Papers is welcome. The Government would support better provision of information on citizens' rights under the laws of Member States

#### QUALITY OF LEGISLATION IN THE CIVIL LAW FIELD—A COMMON FRAME FOR CONTRACT

105. *Improving the quality of EU legislation is always welcome but the development of a common frame of reference for contract raises a number of issues. We will return to these in our Report on European Contract law. (paragraph 64)*

The Government will respond in detail in the context of the response to the Committee's report on contract law.

#### CIVIL LAW—RELATIONSHIP WITH INTERNATIONAL INSTRUMENTS

106. *While recognising that Community participation in discussions in international fora may be necessary to ensure consistency and coherence between EC law and international instruments in civil law, we remain concerned about the external competence implications and the potential limitations that Community involvement may place on United Kingdom negotiations in such fora. The point has become more acute as the proportion of common law countries in the EU has decreased as a result of enlargement. (paragraph 65)*

The Government takes the view that the paragraph in the Hague Programme concerning the need for coherence with the wider international legal order is generally to be welcomed. It is clearly important to avoid duplication and to ensure that any EU proposals add value to, rather than compete with, measures negotiated in other for such as the Hague Conference on Private International Law. Accession of the Community to the Hague Conference will not affect external competence; all EU Member States are bound by such competence and providing the Community with a seat at the table will only reflect the reality of the present situation.

## EXTERNAL RELATIONS—MIGRATION AND ASYLUM

107. *Co-operation between the EU and third countries is essential in developing an effective policy on immigration and asylum. Ways of providing protection for asylum seekers and refugees in regions of origin should be explored, but they must be a part of a general strategy of conflict prevention and resolution in refugee producing areas with the aim of achieving security and stability. Care must also be taken to ensure that the rights of asylum seekers, in particular protection against refoulement, are fully protected. (paragraph 68)*

We agree that co-operation between the EU and third countries in the field of immigration and asylum policy is paramount. To this end, we support the European Commission's Communication on "Improving Access to Durable Solutions", which is aimed at strengthening protection in regions of origin of refugee movements. In particular we welcome the Commission's intention to develop Regional Protection Programmes (RPPs). RPPs involve strengthening regional protection for the majority of the world's refugees who are unable to access asylum systems in the EU, in order to ensure accessible and effective protection for people fleeing persecution and conflict. We believe that the UK can claim much credit for stimulating the debate which lies behind the Commission's Communication and its subsequent Conclusions. We need to protect the vulnerable and seek to undermine those who exploit people genuinely in need of protection. The Home Office works with the FCO and DFID in developing the UK's approach to regional protection, which is a cross-Whitehall priority. We feel it is important that concepts such as RPPs are developed within the wider framework of EU Country and Regional Strategy Papers, with RPP's being updated in line with the mid-term reviews of these Strategy Papers. This allows for capacity building in regions of origin and transit.

## EXTERNAL RELATIONS—CRIMINAL LAW

108. *Concerted action is essential to address global problems, such as international crime and terrorism but this must not be at the expense of fundamental rights, including data protection. EU-US co-operation, but also global co-operation, is crucial. So is co-operation of Member States with global organisations like Interpol. We urge the Commission and the Secretary General/High Representative to give full weight to, and promote the protection of, fundamental rights when preparing the EU external action strategy for JHA. (paragraph 70)*

The Government supports the Committee's call for the Commission and Secretary General/High Representative to ensure that full weight is given to human rights in the EU's external relations strategy. The EU has the capacity to add real value to the efforts of the Member States when helping countries outside the EU to tackle the most serious crimes, better tackle illegal migration from and through their countries, provide protection to those in need of asylum and to ensure the safety of their citizens. In undertaking action in these fields the countries concerned, the EU and the Member States should ensure all that they uphold the human rights of their citizens.

### **13th REPORT: PREVENTING PROLIFERATION OF WEAPONS OF MASS DESTRUCTION: THE EU CONTRIBUTION**

#### **Government Response**

The Government welcomes the Committee's 13th report of session 2004–05 into the European Union's contribution to preventing the proliferation of weapons of mass destruction published on 5 April 2005 (HL Paper 96).

76. *The Union has a sound general strategy for contributing to global effort against WMD proliferation. Over the past decade and more it has taken valuable practical steps which deserve to be more widely recognised. There is however much more still to be done; and we are not confident that the Union has yet organised and resourced itself as well as it needs to for the full and coherent implementation of the Strategy.*

The Government agrees that the EU has adopted a sound Strategy against the proliferation of WMD and that it has achieved much without full recognition. The UK has worked for many years to ensure that the EU contributes to the global fight against this global threat. But the Government also agrees that more can be done. The Government is co-sponsoring a Pilot Project, run by UNIDIR and SIPRI, which will identify priorities for Community funding of counter-proliferation projects in the future.

More resources are also required. The Government welcomes the fact that the amount spent on non-proliferation projects from the CFSP budget increased by 50 per cent in 2004 (€9.331 million in 2003, €15.526 million in 2004). This is in addition to around €35 million spent by the Commission each year. The UK is currently working with partners on plans for the EU's next Financial Perspective (2007–13). The Government will be arguing for more resources for the global security agenda, within the constraints of an overall

EU budget of no more than 1 per cent of EU GNI. In addition, the Government strongly supports increasing the funding available under the CFSP budget. This will allow Member States to give effect to their CFSP priorities including counter-proliferation and small arms and light weapons projects in third countries.

*77. We agree with the high priority given to preventing the proliferation of weapons of mass destruction by the EU Strategy. (para 13)*

The Government agrees that the EU WMD Strategy correctly assigns a high priority to this global threat. Countering the proliferation of WMD remains one of the Government's highest foreign policy priorities. Work through the EU and in conjunction with Member States in other fora is an essential part of meeting this important objective.

*78. The technique of "peer review" should be exploited more widely in relation to other non-proliferation measures. In several such fields it would be essential to co-ordinate WMD-related work with that done by the European Union in counter-terrorism. (para 22)*

The Government agrees that the Peer Review to promote best practice in the implementation of the EU "Dual-Use Regulation" (Council Regulation 1334/2000, as amended) was a valuable exercise. The Review's recommendations, agreed last December, are aimed at strengthening the efficiency of the EU system for controlling exports of dual-use items and will continue to be taken forward during our forthcoming EU Presidency. We agree that this approach is potentially useful in other areas of the Strategy, although we consider that a peer review is likely to be more effective where there are at least informal common EU standards. We will consider the appropriateness of this approach for such areas, taking into account the need for complementarity with EU counter-terrorism and other work.

*79. In the medium to long term the value of the non-proliferation clauses will depend on the rigour with which the European Union applies them. The Union will need to establish arrangements for systematic monitoring of the observance of the clauses. There must be a willingness to suspend agreement if major transgressions occur. (para 24)*

The Government agrees with the Committee that the "non-proliferation clauses" in mixed third country agreements will only be valuable if the EU lives up to its commitment, as stated in the November 2003 decision, to act where the "essential element" part of the agreement has been breached. Such action will not always be involving suspension of the agreement but could lead to this if other remedial action, such as intensified dialogue and technical assistance if appropriate, does not deliver results.

As the essential parts of the clause involve meeting existing international commitments, the Government considers that the specific non-proliferation bodies—such as the IAEA—are best placed to monitor whether a third country is living up to its agreed commitments. In the Government's view, the non-proliferation working group (CONOP) should maintain oversight of the performance of countries to ensure that the Council can take a fully informed decision to act should it be necessary. To that end, the Government welcomes the increased assessments from the EU's situation centre in the field of non-proliferation. Agreement to act in response to a breach of the clause will need agreement by all Member States and so will require the political will to take tough decisions.

*80. Any priorities for the Strategy recommended by the European Union should be analysed by the Government and deposited for scrutiny by Parliament as soon as is practicable. (para 29)*

The Government was fully involved in the development of priorities for implementation of the WMD Strategy, working with the Council Secretariat, Commission and other Member States to ensure that these priorities were indeed the most urgent and important. During the UK Presidency, the Government will lead a review of both the WMD Strategy and the priorities for its implementation, and will deposit any revised documents for scrutiny by Parliament as soon as is practicable.

*81. We welcome the intention of the Government to seek during its forthcoming Presidency to focus the implementation of the Strategy on priority issues. The Government should specify what particular programmes it believes the European Union can and should carry out. (para 30)*

In line with our over-arching Presidency objectives, our focus will be on running an efficient Presidency and increasing the effectiveness of EU efforts to counter WMD proliferation. We will lead a review of the Strategy to examine progress over the two years since its adoption. We will continue to promote universal adherence to the major non-proliferation Treaties and implementation of UNSCR 1540 by all states. We will provide further financial support to strengthen the IAEA and the OPCW. We will initiate an internal debate to prepare for the Review Conference of the BTWC in 2006.

82. *The European Union should seize every opportunity to strengthen the global counter-proliferation regimes and instruments. (para 33)*

The Government agrees that every opportunity to strengthen the global counter-proliferation regimes and instruments should be seized. Whilst the EU is not a formal member of the treaties and regimes, the EU encourages full compliance and universalisation with them in its contacts with third countries. Furthermore, Member States co-ordinate their activities within the regimes. This process takes place between the experts who meet regularly in Brussels for the two working groups concerned with WMD, as well as through regular contact over the COREU network. The Government has supported the conclusion of more formal Common Positions ahead of major reviews of the treaties, such as the recent NPT Review Conference. We will work for a Common Position for the Biological and Toxins Weapons Convention Review Conference in 2006.

83. *The European Union should make special efforts to coordinate the most coherent and constructive approach possible, both among Member States and with the United States, before and during the forthcoming NPT review conference. (para 39)*

The European Union co-ordinated effectively before the NPT Review Conference, producing a good Common Position and Statements which were positively received by States Parties. The EU worked constructively with all Member States throughout the Review Conference to help achieve a consensus outcome and strengthen the Treaty.

84. *Negotiations to remove concerns about possible Iranian moves towards nuclear-weapon capability should be seen to have the continuing full attention and understanding—and the political and economic weight—of the whole Union. The European Union should continue to emphasise, in all its dealings with other countries, including Russia, its full support for the work of France, Germany and the United Kingdom. (para 45)*

The Government agrees that it is essential to maintain a firm international position if Iran is to be persuaded to allay international concerns over its nuclear programme by providing acceptable objective guarantees that its programme is exclusively for peaceful purposes. To that end, we ensure that key partners, including particularly EU partners, are kept informed of the progress of our discussions with Iran. EU institutions are actively involved in the working groups established under the 15 November Paris Agreement. Through these mechanisms we have secured continuing EU support. In the context of the Paris Agreement, the EU decided to hold further negotiations on a draft EU/Iran Trade & Co-operation Agreement and a parallel Political Dialogue Agreement.

85. *The European Union should continue its indirect involvement in the North Korean problem through support for the six nation process. (para 47)*

The Government agrees that it is essential to maintain a firm international position on the North Korean problem; we also agree that the European Union should continue its indirect involvement. However, it is entirely appropriate that discussions should be led by the US and DPRK's neighbours, the countries with the biggest stake in regional security. The Government continues actively to encourage North Korea to remain engaged in the process, and we keep in close contact with all parties. We have publicly highlighted our concerns about the DPRK's decision in February 2005 to suspend its participation in the 6 Party Talks, and in response to recent statements and unconfirmed reports about the DPRK's nuclear weapons programmes.

86. *The European Union should vigorously study and support ways of strengthening the BTWC, whether by verification arrangements, security assurances, improved standards of material safeguarding, or otherwise. (para 51)*

The EU is fully supportive of the BTWC and efforts to strengthen the Convention. The EU has already begun at working level to discuss its approach to the 2006 Review Conference at which we would expect these issues to be addressed. This work will intensify as the Conference approaches, and the UK will play a leading and active role, including during our Presidency.

87. *Special efforts should be made to ensure that EU financial pledges, especially those made at the G8 Kananaskis summit in 2002, are reflected more speedily in practical application. (para 57)*

The Government agrees that more resources should be made available to ensure that the EU meets the commitment it made at the G8 Kananaskis summit. We have been an active supporter in the EU of the increase in funding (by 50 per cent between 2003 and 2004) from the CFSP budget on non-proliferation projects. We are working with the Commission, European Parliament and partners on the Financial Perspective to ensure that there are sufficient funds for the global security agenda, within the constraints of an overall EU budget of no more than 1 per cent of EU GNI. This includes an increase in the CFSP budget as well as creating a Stability Instrument that can fund activities such as response to crisis and global and trans-regional security issues, within Community competence.

88. *If the EU could accept the High Level Panel recommendations in advance of the NPT Review Conference, this would be a valuable indicator of the readiness of the Nuclear Weapon States to take seriously their obligations under the Treaty; (para 61) and*

89. *Urgent attention should be given by the European Union, if necessary in advance of consideration of other sections, to a study of the WMD-relevant section of the report of the UN Secretary-General's High-Level Panel. The Government should deposit for scrutiny by Parliament its detailed reaction to each recommendation and the actions which it is planning to take. (para 62)*

The EU has welcomed the report of the UN Secretary-General's High-Level Panel. The UN Secretary-General has subsequently published his own report, *In Larger Freedom*. The EU referred to the WMD recommendations of both reports in the EU Statement to NPT Review Conference in New York on 2 May, saying that they were useful and merited close study. The Government's detailed reaction to the HLP Report WMD recommendations is attached.

90. *In all the matters reviewed above it is essential, as the Strategy recognises, that close contact and co-operation be maintained with the United States, which is a critically important actor in the campaign against WMD proliferation. This interface needs continuous attention to improve understanding, avoid duplication or incompatibility, and reinforce synergy. (para 63)*

As it set out in its response to this Committee's Report on the European Security Strategy, the Government agrees that a successful transatlantic relationship is key to an effective EU response to all global security threats identified in the European Security Strategy. The Government therefore welcomed the visit of President Bush to Europe so early in his second term. The visit reinforced the strong desire of both sides to work in partnership on all the key global issues. The Government believes that close contact and co-operation in responses to the threat of proliferation is particularly important, as the Committee suggests. The last EU-US Summit, held in Ireland in June 2004, agreed seven joint statements, one of which concentrated on non-proliferation of Weapons of Mass Destruction.

91. *The European Union should publicise more vigorously the substantial contribution it already makes in the campaign against WMD proliferation. (para 64)*

The Government agrees that the EU could and should promote its achievements in counter-proliferation. However, the Government recognises the difficulty in securing the attention of the media for successful counter-proliferation programmes, which are often technical in nature.

92. *Action should be taken forthwith to implement the 2003 decision of the Council for setting up a WMD centre to oversee and report on relevant work under both the Council and the Commission. It must be properly equipped and empowered to act. We do not believe that the role can be adequately filled by present arrangements such as working groups of officials not resident in Brussels. (para 6)*

The Government agrees that a WMD Centre could be a valuable addition to EU counter-proliferation work. However, the Centre should complement the existing arrangements, which the Government believes are effective. It is also important to ensure that an EU WMD Centre does not duplicate work that is better handled elsewhere. It would need to co-ordinate closely with the NATO WMD Centre.

The Government does not agree that the present arrangements are insufficient for the EU to contribute to the global effort of against WMD proliferation. The successes of the EU over the past decade, as recognised by the Committee, have resulted from these arrangements. An EU WMD Centre, properly designed and tasked, would not replace these, but complement them.

93. *The authorities of the European Union should not permit administrative divisions to obstruct the flow of WMD-relevant information, or the pursuit of action, either between the Council Secretariat and the Commission or within the Commission. (para 69)*

The Government agrees. The EU's central institutions each have much to offer the CP effort. Combining their expertise with that of Member States maximises the EU's contribution to meeting this global threat. We recognise that this approach demands new working methods, but believe that it results in a more effective overall output. Counter-proliferation is a comparatively new sphere for the EU. It takes time for roles to be established. Where a subject crosses several pillars, there are often tensions at the borders between respective competences. We believe a good working relationship now exists.

But there remains room for improvement in the organisational coherence of the Union in tackling security issues across the board. Developing more coherent, cross-pillar policies requires a fresh approach and a new way of working, both for member states and for EU institutions. This requires much more transparency and willingness to co-ordinate. The Constitutional Treaty would bring much greater coherence to the Union's external policies—including tackling WMD—through the post of the EU Foreign Minister and the supporting European External Action Service.

94. *The authorities of the European Union should take early action to strengthen staffing and financial support for those within the Council Secretariat and the Commission working primarily on WMD issues. (para 72)*

The appointment by the High Representative of a Personal Representative for WMD, Annalisa Giannella, is to be warmly welcomed—her role has helped maintain momentum in implementing the Strategy so far. The Government agrees that both Dr Giannella's office, and the WMD Unit in the Commission, should be considered as a high priority when the authorities of the EU consider the deployment of new human and financial resources, or the redeployment of existing ones.

95. *Open and ready dialogue at all levels between EU organs and staffs and their NATO counterparts with a shared interest in reducing WMD risks should be strongly encouraged. (para 74)*

The Committee rightly points to the importance of a strong EU-NATO relationship. The Government agrees and welcomes the broadening of the EU/NATO strategic relationship in 2004, to cover exploring opportunities for joint responses to the threat of terrorism and counter-proliferation in addition to the crisis management agenda. The Government believes that both NATO and the EU can contribute towards the shared objective of countering the proliferation of WMD.

As a military body, NATO has developed unique expertise in the area of countering Chemical, Biological, Radiological and Nuclear attacks, including through its own WMD centre and through NATO Civil Emergency Planning. NATO can also, through contacts between militaries, promote the objective of non-proliferation outside the Alliance.

But the EU is better placed for more general diplomatic work, and has the capacity to undertake non-proliferation projects in third countries, often in conjunction with the IAEA and Organisation for the Prohibition of Chemical Weapons.

The Government believes it is important that EU and NATO resources are used to enhance and complement each other, rather than to duplicate. We work to ensure this effective co-ordination between the two bodies, and welcome the existing co-operation NATO has in place with the EU.

96. *Action on the recommendations stated in this Chapter above should not wait upon any particular Presidency. If shortcomings remain unaddressed, however, remedying them should be made an important objective during the United Kingdom Presidency in the second half of 2005. (para 75)*

The Government is committed to using the UK Presidency to build upon the significant achievements of the EU in counter-proliferation. In addition to promoting new projects as set out above, the UK will lead a review of the WMD Strategy, and work to ensure that any shortcomings identified are addressed. The UK will also seek to secure additional funds for counter-proliferation work in the next Financial Perspective, in order that the EU might contribute further in this vital area.

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*Recommendation*

*UK response*

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*WMD proliferation*

21. Nuclear weapons states should:

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|--|--|
| (a) Honour commitments under Article VI of the NPT to move towards disarmament and be ready to undertake specific measures in fulfilment of these commitments. | (a) The UK is committed to working toward the goal of global nuclear disarmament through the agreed NPT review process, including the outcomes of the 1995 and 2000 Review Conferences   |
| (b) Reaffirm previous commitments not to use nuclear weapons against non-nuclear weapon states.  | (b) We confirm that our Negative Security Assurance (NSA) given in 1995 and codified in UNSCR 984 still stands, as well as the NSAs we have given through Protocols we have ratified to the NWFZ treaties which are in force. We do not believe that anything further is required. |

22. Commit to practical measures to reduce the risk of accidental nuclear war, including where appropriate a progressive schedule for de-alerting their strategic nuclear weapons.

Following the 1998 Strategic Defence Review the UK reduced the readiness of its nuclear forces. Only one submarine is on patrol at any one time and it is normally on several days' notice to fire with its missiles de-targeted. We therefore believe that the risk of accident war deriving from UK first use is negligible.

<i>Recommendation</i>	<i>UK response</i>
23. The Security Council should explicitly pledge to take collective action in response to a nuclear attack or the threat of such attack on a non-nuclear weapons state.	The UNSC mandate already allows for such action on a case-by-case basis. We do not believe that any further declaration on the part of the UNSC is necessary, particularly if it appeared to give a blanket commitment that undermined the ability of the UNSC to consider appropriate action case by case. In 1995 the UK and other NWS (Nuclear Weapon States) offered Negative Security Assurances (NSAs) to the NPT Non Nuclear Weapon States (NNWS). These assurances, which were codified in UNSCR 984, stated that in the event of a NNWS suffering an attack with nuclear weapons, the NWS would raise the matter in the Security Council and seek Council action “in accordance with the Charter”.
24. Negotiations to resolve regional conflict should include confidence-building measures and steps towards disarmament.	We fully agree. Disarmament measures need to come in the context of tackling underlying security concerns.
25. All <i>de facto</i> nuclear states should pledge a commitment to non-proliferation and disarmament, demonstrating this by ratifying the CTBT and supporting negotiations for a Fissile Material Cut-off Treaty.	We call on all States to ratify the CTBT and to support an early start to negotiations on an FMCT. Action should be to continue ongoing efforts—for FMCT in the Conference on Disarmament and for CTBT at the CTBT Entry into force Conference in September.
26. Peace efforts in the Middle East and South Asia should launch nuclear weapons disarmament talks that could lead to the establishment of nuclear weapons free zones in these regions.	The UK has consistently called for establishment of NWFZs and a WMD-Free Zone in the case of the Middle East. We support the EU’s plans to organise a discussion on WMD as part of the Barcelona Process.
27. All chemical weapons states should expedite the scheduled destruction of all existing chemical weapons stockpiles by their agreed target date of 2012.	Action already underway in the OPCW. The UK regularly urges possessor states to meet their CWC commitments. We are taking a leading role in supporting Russia’s destruction programme—two projects worth £9 million of which the UK has funded £7 million. We also support the Panel’s suggestion that attention be given to strengthening verification under the CWC.
28. BWC states parties should without delay return to negotiations of a credible verification protocol, inviting the active participation of the biotechnology industry.	Action is through the BTWC process. The UK supports verification and would support resumed return to negotiations on a protocol if the HLP support made it more feasible. But this appears unlikely at present. The UK will continue to strengthen BTWC by other means, eg, supporting the new inter-sessional process. The UK is chairing the BTWC’s meetings on codes of conduct for scientists in 2005; we will start preparations of an EU position for the 2006 Review Conference.
29. The IAEA Board of Governors should recognise the Additional Protocol as today’s standard for Agency safeguards, and the Security Council should be prepared to act in cases of serious concern over non-compliance with non-proliferation and safeguard standards.	The UK supports. We will need to continue further work on what we mean by “act” in this recommendation—but it will vary case by case.

<i>Recommendation</i>	<i>UK response</i>
30. Negotiation of a scheme, based on Articles III and IX of the IAEA Statute, which would enable the Agency to act as a guarantor for the supply of fissile material to civil nuclear users.	The UK is in favour. We await further discussion of the IAEA DG's group report.
31. States should, without surrendering the right under the NPT to construct such facilities, voluntarily institute a time-limited moratorium on the construction of any further enrichment or reprocessing facilities, with commitment to the moratorium matched by a guarantee of the supply of such services by the present suppliers at market rates.	This is an important proposal which merits careful consideration. We do not underestimate the difficulties in such a scheme but think we should consider it.
32. All states should be encouraged to join the Proliferation Security Initiative, on a voluntary basis.	The UK is a founder participant and already engaged in world-wide lobbying in support of PSI. We hope that all states which share the objectives of PSI and have something to offer will take part. Political support may be more useful than participation for some states.
33. Notice of withdrawal from the NPT should prompt immediate verification of the state in question's compliance with it, if necessary mandated by the Security Council. The IAEA Board of Governors should resolve that, in the event of violations, all IAEA provided assistance should be withdrawn.	Any such notice would obviously be a cause of concern for the international community. We would expect the UNSC to consider such cases as a matter of course, as well as the IAEA Board of Governors.
34. The proposed timeline for implementing the Global Threat Reduction Initiative should be halved from one decade to five years.	The UK supports GTRI initiative and would like to see it completed promptly and effectively. Action rests with the US and Russia.
35. States parties to the BWC should also negotiate a new bio-security protocol to classify dangerous biological agents and establish binding international standards for export of such agents.	We are ready to consider this idea positively although we would need to consider how it fits with Australia Group export controls. There is a good case for widening this recommendation to include not just export, but also national security standards for internal transfers and access to/work on such agents, as provided for in our own ATCSA. This would be fully consistent with the BTWC work in 2003, which sought to improve biosecurity and biosafety at national level. It would be relevant for dealing with both proliferation and terrorism. But the BTWC might not be the best forum for action.
36. The Conference on Disarmament should move without further delay to negotiate a verifiable Fissile Material Cut-off Treaty that, on a designated schedule, ends production of HEU for non-weapons as well as weapons purposes.	The UK has consistently called for the start at the CD of negotiations without preconditions on an FMCT that would ban the production of fissile material for nuclear weapons or nuclear explosive devices. We support verification in principle but believe that an early FMCT without verification would be better than no FMCT at all.

<i>Recommendation</i>	<i>UK response</i>
37. IAEA and OPCW Directors General should be invited by the Security Council to report to it twice-yearly on the status of safeguards and verification processes, as well as on any serious concerns they have which might fall short of an actual breach of the NPT and CWC.	We would support a deeper relationship between the UNSC and the OPCW/IAEA. It is important for Directors General to keep the UNSC informed of developments within the remit of their organisations.
38. The Security Council should consult with the WHO Director General to establish the necessary procedures for working together in the event of any suspicious or overwhelming outbreak of infectious disease.	This could be an interesting idea, provided we take account of known sensitivities. The 2004 Meeting of States Party to the BTWC agreed to: support the existing networks of relevant international organisations for the surveillance, detection, diagnosis and combating of infectious diseases and act to strengthen the WHO, FAO and OIE programmes, within their mandates, for the continued development and strengthening of, and research into, rapid, effective and reliable activities for the surveillance, detection, diagnosis and combating of infectious diseases, including in cases of emergencies of international concern. The UK has also suggested that the mechanism under which the UNSG can be asked to investigate suspicious outbreaks be reviewed and updated.

**Letter from the Chairman to Rt Hon Jack Straw MP, Foreign Secretary,  
Foreign and Commonwealth Office**

Thank you for your response to our Report: "Preventing Proliferation of Weapons of Mass Destruction: The EU Contribution" (HL, European Union Committee 13th Report of Session 2004–05) dated 3 June which was considered by Sub-Committee C at its meeting on 16 June.

We are pressing for an early debate on the response in the House in order that Members may share with the Government their views on this important topic. In addition, we would like to ask for further information on a number of points made in the response.

You note (paras 82 and 86 of the response) that the Government is working for a Common Position for the Biological and Toxins Weapons Convention Review Conference in 2006 and that discussions at working group level have already begun. We look forward to scrutinising the Common Position and ask that you keep us updated on the progress of these discussions.

You note (para 92 of the response) that a WMD Centre would be a valuable addition to EU counter-proliferation work. However, we remain uncertain from your response whether you will be pressing for the establishment of the Centre. What is the current position? Has any firm decision been made to establish the Centre and, if so, when is it due to become operational?

You argue (para 76 of the response) that more resources should be made available, within the constraints of an overall EU budget of no more than 1 per cent of EU GNI. The Sub-Committee has previously considered the general issue of the budget (letter from the Minister for Europe, dated 14 March, on the Future Financial Perspectives 2007–13) and does not wish to pursue it further here. We would, however, ask to be kept informed of amounts spent on non-proliferation projects and, in particular, be notified of any significant increases or reductions in the overall amounts allocated each year to non-proliferation work.

Other areas of concern or disagreement with the response will be raised during the debate on the Report.

20 June 2005

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**14th REPORT: STRENGTHENING NATIONAL PARLIAMENTARY SCRUTINY OF THE EU—THE CONSTITUTION'S SUBSIDIARITY EARLY WARNING MECHANISM****Letter from Rt Hon Jack Straw MP, Foreign Secretary, Foreign and Commonwealth Office  
to the Chairman**

I attach the Government response to your Committee's Report on the subsidiarity early warning mechanism.

My officials and I have read this report in detail and found it a very interesting and useful document. As you know, strengthening the role of National Parliaments is something which the Government, and I, take particularly seriously.

The circumstances surrounding the EU Constitutional Treaty have of course changed significantly since the report was published. However, we have attempted to answer the questions posed in the report as fully as possible in the circumstances.

*19 July 2005*

**Government Response****INTRODUCTION**

1. The Government welcomes the Committee's Report "Strengthening National Parliamentary Scrutiny of the EU—the Constitution's subsidiarity early warning mechanism". The Government believes that the thorough investigation and research that has gone into the report will prove valuable, whether or not the Treaty comes into force. The Government has always pushed for the role of National Parliaments to be strengthened in the EU legislative process and was pleased with the final result agreed by the Inter Governmental Conference.

2. As the Committee will fully appreciate, the circumstances surrounding the Treaty have significantly changed since the Committee's Report was first published. The recent referendums in France and the Netherlands resulted in majority votes against ratification of the Treaty. Austria, Cyprus, Germany, Greece, Hungary, Italy, Latvia, Lithuania, Malta, Slovakia, Slovenia, Spain and Luxembourg have already approved the Treaty, but for it to come into force, all Member States must ratify it. In the UK, this will involve approval first by Parliament (through the EU Bill) and then by a nation-wide referendum. However, the Foreign Secretary announced on 6 June that until the consequences of the French and Dutch votes were clarified, the Government did not intend to proceed with the Bill's parliamentary process.

3. At the European Council on 16–17 June, Heads of State and Government recognised the need for a period of reflection to consider the outcomes of the referendums in France and the Netherlands. They said that they would come back to the matter in the first half of 2006 to agree on how to proceed. However as the Prime Minister said to the House of Commons on 20 June, under the current circumstances, the Treaty cannot proceed.

4. In other Member States, Belgium and Estonia are proceeding with parliamentary ratification of the Treaty. The Czech Republic intends to proceed with their ratification process by referendum, although the requisite enabling legislation has yet to be passed and the government has announced that any ratification is unlikely before mid-2006. The Irish Government have announced that they will not set a date for their referendum. Poland has not decided how, if at all, to proceed with ratification and the Polish President has said that a referendum in 2005 looks "unrealistic". The Swedish Government has announced that it will seek to postpone its parliamentary ratification process and the Finnish Government has postponed parliamentary ratification. The Danish and Portuguese Governments have postponed their referendums.

5. Irrespective of whether the Constitutional Treaty comes into force, the Government believes that strengthening the role of National Parliaments in the making of EU legislation should continue to be pursued. The Foreign Secretary made this clear in a statement made to the House of Commons on 6 June: "The issue of subsidiarity—of decisions being made at the lowest level possible—has been a long-standing concern of the Government and is one that we shall pursue". The Government has therefore attempted to answer the questions posed by the Committee as fully as possible. It is also giving active consideration to whether it would be possible, by agreement in the European Council and Commission, to implement the spirit of the Subsidiarity Protocol.

## RESPONSES TO COMMITTEE RECOMMENDATIONS AND QUESTIONS

6. The passages in italics are the Committee's own.

*In view of the political significance of the exercise of a vote under the early warning mechanism, we recommend that the House itself should cast the vote (subject to our conclusion in paragraph 99). (para 95)*

*We recommend that in this House the trigger for a debate and decision on whether to cast a vote under the early warning mechanism should be a report from our Committee. (para 96)*

7. These are matters for the House. We would observe only that if the Committee were unanimous and no party disagreed with them, the motion to exercise the vote might go through "on the nod".

*The House could agree that the exercise of its vote on any legislative proposal would be delegated to the EU Select Committee in the event of a six week period expiring during a recess, unless the House had already come to a decision on the proposal in question. (para 99)*

8. This is a matter for the House to decide but it is important, as the Committee recognises, that alternative arrangements are made for the long recesses.

*We recommend to the House that the operation of the early warning mechanism should be kept separate from the House's current Scrutiny Reserve under which we currently operate. (para 100)*

9. This is a matter for the House.

*We recommend that the Government should not support a proposal in Council which has been the subject of a subsidiarity yellow card in either House of Parliament without first further explaining to Parliament its reasons for doing so. (para 101)*

10. The Government values the contribution of Parliament on EU questions and takes seriously its responsibility to keep Parliament informed. Therefore, the Government agrees in principle with the Committee's recommendation, that the Government should not agree to proposals which have been the subject of a yellow card in either House without first explaining to Parliament its reasons for doing so. The Government would aim to do this at the earliest possible point at which such a decision was taken. This approach would be consistent with the Government's undertakings embodied in the House's Scrutiny Reserve Resolution of 6 December 1999. However, given the often fast moving pace of negotiations, and periods of parliamentary recess, it may not be possible for the Committee to consider the Government's position further before decisions are reached in the Council of Ministers. The Government is of course ready to work with the Committee to ensure that appropriate procedures are put in place to respond to such instances if they arise.

*We disagree with the suggestion that the two Houses must co-ordinate their response in individual cases. However, we recognise that although each chamber has its own vote it will be desirable for the House to work with the Commons on subsidiarity issues and, where possible, for the two Houses to support each other when submitting reasoned opinions. In spite of this, it is important to note that if the two Houses do reach a different view on whether a yellow card should be raised in a particular case their votes would not cancel each other out—it will just be that the threshold is not one step closer to being reached. (paras 107–108)*

11. The Government welcomes the commitment to work with the Commons on subsidiarity issues, although we acknowledge the right of the two Houses to exercise their votes independently.

*The Treaty stresses that "Before proposing European legislative acts, the Commission shall consult widely". We recommend that the Commission should inform national parliaments when consultation on a legislative act is launched. (para 115)*

12. We support the Committee's recommendation that the Commission should inform National Parliaments as soon as consultation on a legislative Act is launched. We would also encourage the Committee to continue its practice of keeping up to date with future Commission activity through the Commission's Annual Legislative Programme and Five Year Strategic Objectives.

*We welcome this commitment by the Government to assist Parliament during the six week period. We expect the Government to assist Parliament as early as possible in the six week period and to provide a detailed analysis in each case of the application of the subsidiarity principle. Such an analysis should take the form of the quantitative and qualitative analysis the Commission would be required to produce by Article 5 of the Protocol. (para 134)*

13. As the Government set out in its Memorandum by the Minister for Europe in February this year, the EU Bill includes a provision to impose a duty on the relevant Minister of the Crown to lay a statement before Parliament about whether, in his or her opinion, the draft legislative act complies with the principle of subsidiarity. In cases where the Government believes that subsidiarity is an issue, such a statement would be sufficiently detailed and thorough to aid the Committee in their consideration of the proposal in question.

*We conclude that the Treaty does not clearly provide whether or not the early warning mechanism applies again in the case of a legislative proposal amended during negotiations in the Council and the Parliament, and we would welcome clarification from the Government on this point. (para 141)*

14. The Government agrees with the Committee's view that the Treaty does not offer clarity on this point. The Government's interpretation of the Protocol however is that that national parliaments will only be able to express a reasoned opinion on subsidiarity in the six weeks following the publication of the legislative proposal. The Government notes the Committee's concerns that National Parliaments will not be able to comment on amended proposals, and recognises that proposals may be amended to the extent that a National Parliament may wish to subsequently submit a reasoned opinion. However, it also recognises that it would be impractical for National Parliaments to be able to express opinions after every stage of the legislative process.

*Subsidiarity checks by the Government, and the assessments promised under Clause 3 of the European Union Bill, should be rigorous and detailed whether or not the Protocol comes into force. The Government's subsidiarity assessment should, as now, be part of the Explanatory Memoranda furnished by the government on each legislative proposal. (para 180)*

*We expect, given the short time frame allowed, that these documents should not be presented by the Government any later than two weeks after submission of the draft legislative proposal. This is the timetable to which the Government currently works. In the event of a delay in preparation of an Explanatory Memorandum, the subsidiarity analysis should if necessary be presented separately to avoid delay. (para 181)*

15. As acknowledged by the Committee, the Government already provides subsidiarity assessments on legislative proposals in the form of Explanatory Memoranda. This will continue to be the case whether or not Protocol comes into force. Although the EU Bill stipulates that the statement should be laid "Before the end of six weeks from the date of transmission" in practice the Government would endeavour to lay the statement as early as possible.

*The reference to the national "legal order" seems intended to go primarily to the relationship between the National Parliaments and the executive within Member States. This, as we will explain below, raises a number of questions. We first, however, ask the Government to clarify whether Article III-365 would apply to an action notified under Article 8 by a Member State on behalf of a National Parliament (or a chamber thereof). (para 227)*

*We do not accept that it is in accordance with the letter and the spirit of Article 8 that "careful consideration" by the executive of a request from our Parliament (or a chamber of our Parliament) would suffice. We are also not clear what the legal or political justification of the Government's interpretation is. (para 234)*

*We accordingly ask the Government to clarify first what the position would be in the United Kingdom. Given our national "legal order" would the executive be required to act if either House of our Parliament resolved that a challenge be notified under Article 8? If not why not and is this interpretation in accordance with the provisions of Article 8? (para 235)*

*We also ask the Government to set out in full to Parliament how other Member States interpret the effect of this provision. (para 236)*

*In particular we ask the Government what their interpretation is of the changes recently made to the French Constitution. A new Article 88-5 provides that each chamber can bring an action in the ECJ against a European legislative act on the grounds of subsidiarity. It appears that the French Government would be obliged to notify the action to the ECJ: "Chaque assemblée peut former un recours devant la Cour de justice de l'Union européenne contre un acte législatif européen pour violation du principe de subsidiarité. Ce recours est transmis à la Cour de justice de l'Union européenne par le Gouvernement". (para 237)*

*We accordingly ask the Government to confirm that the National Parliament (or chamber) should remain in control of any application. It would clearly not be acceptable if the executive could, for example, discontinue the proceedings without the consent of the National Parliament or chamber, as the case may be. (para 239)*

*As noted above, Article 8 only comes in to play when a European legislative act has been adopted. As a consequence, the circumstances in which a National Parliament (or a chamber of a National Parliament) is likely to raise an objection would seem to us to be:*

- *if that National Parliament does not agree with their Member State's government's decision to support a proposal in Council and maintains a subsidiarity objection;*
- *if that National Parliament wishes to raise a subsidiarity objection, the Member State's government having been outvoted in the Council;*
- *if a European legislative act as adopted is in a form different from that examined by a National Parliament at an earlier stage, a new issue of subsidiarity arising as a result of changes made during the passage of the legislative act. (para 246)*

*Given these factors, it is our preliminary conclusion that the number of occasions on which National Parliaments would be likely to make use of the recourse to the Court under Article 8 would be very few. We recommend that the Government make it their practice, if the Constitutional Treaty comes into force, to keep Parliament fully informed of any changes to a European legislative act during its passage that might give rise to a subsidiarity objection after adoption. (para 248)*

#### GOVERNMENT'S GENERAL COMMENT ON ARTICLE 8

16. Article 8 as drafted is, as the Committee have pointed out, imprecise in certain respects. In broad terms, Article 8 is intended to provide a mechanism by which National Parliament can present their views on subsidiarity to the ECJ. The precise legal process for achieving that aim is not fully set out in the Article and will therefore require to be elaborated in further discussion among the Member States and the Institutions (including of course the Court of Justice itself).

17. Informal consultations earlier this year suggested that the preliminary views of other Member States were generally consistent with the UK's initial thinking. Had the process of ratification of the Treaty continued as originally expected, the Government would have engaged in more in depth discussions with partners (and the relevant institutions) to try to work out exactly how to give practical effect to Article 8. In the current circumstances, there are no immediate plans to continue that discussion and given the current uncertainty over the future of the Constitutional Treaty, it is unlikely that other Member States will set out their positions in more detail at this stage.

#### OTHER

18. For information, we note that paragraph 3 of the Committee's report states that "The threshold to trigger a review is one third of the votes allocated or one quarter in cases of proposals in the field of justice and home affairs; that is 13 and 10 votes respectively." We believe that since there are a total of 50 votes awarded to Member States National Parliaments, the actual numbers of votes needed to trigger a review would be 17, and 13 in respect of Justice and Home Affairs issues.

*July 2005*

### **17th REPORT: PROPOSED EUROPEAN UNION INTEGRATED ACTION PROGRAMME FOR LIFE-LONG LEARNING**

#### **Letter from Bill Rammell MP, Minister of State for Life-long Learning, Further and Higher Education, Department for Education and Skills to the Chairman**

I am writing to you with regard to the Lords Committee Inquiry into the Proposed EU Integrated Action Programme for Life-long Learning. I enclose a copy of the Government Response to the report produced by the inquiry, (Annex A).

I would like to congratulate your Committee on running a thorough inquiry and producing an excellent report. I certainly think the report will do much to help design and implement an EU Life-long Learning Programme which can bring increased benefits to participants. We have considered and will continue to consider carefully the Committee's recommendations and push for them to be taken forward where we think it is appropriate. The Government Response comments on all recommendations in the report and lays out how we plan to take forward a number of the recommendations.

We will look closely at how to address important issues emphasised in the Committee's report such as simplifying programme bureaucracy and administration, increasing Erasmus participation and using the opportunity presented by the new programme to develop a more coherent strategy that supports and adds value to national policies.

While I agree with the Committee that successful policy towards language learning is essential for the success of the new programme, I cannot agree with the necessity for an appraisal of language policy. The government's national languages strategy for England was published in December 2002. This strategy recognises the need to transform the nation's capability in languages and promotes the learning of languages for all pupils throughout key stage 2 in the belief that if pupils start learning languages earlier more of them will be enthused

and want to continue learning languages beyond the age of 14 and into adulthood. I believe that this policy on language learning, given sufficient time to bed in, will improve UK participation in the programme as well as bringing broader benefits.

I look forward to continuing the excellent cooperation with the Committee which I know my predecessors have established.

6 June 2005

**Annex A**

### **Government Response**

#### **COMPETENCE AND SUBSIDIARITY**

1. *We conclude that the Commission's role in relation to these programmes is an appropriate one, and carried out with due respect for national competence. Nevertheless, we recommend that the Member States in Council should continue to ensure that the Commission's plans and actions in developing this Proposal are appropriate, proportionate and fully consistent with the principle of subsidiarity.*

The Government agrees with the Committee's views. The Government will of course continue to work to ensure the programme is consistent with the principle of subsidiarity both at Member State and Devolved Administration level.

2. *We recommend that the Programme should be seen as a long-term investment in building European capacity to prepare future generations for the challenges of globalisation and to enable the present working generation to improve and extend their skills.*

The Government agrees with this recommendation.

#### **ERASMUS**

3. *We conclude that the priority given in the Proposal to the Erasmus programme is understandable and valid in principle. But we share the doubts expressed in evidence that the target to increase Erasmus student mobility to 3 million by 2011 is attainable. We therefore recommend that the Commission should reassess that target and give serious consideration not only to the effect that the concentration on Erasmus may have on other programmes, but also on the need to ensure that students and institutions taking part in Erasmus are adequately funded and supported.*

The three million figure is a cumulative target since the start of the programme and will build on the total of one million which was achieved in 2002. Nevertheless, the proposed overall target for Erasmus in the new programme is very ambitious and the target clearly represents a significant challenge for the UK. It should however be seen in the context of growth in the overall numbers of UK students in higher education. The Government recognises the need to engage with all stakeholders in working towards such targets but does think that, if the current targets remain, they will be challenging for all involved. It is important to recognise that an unachievable or unrealistic target will have the effect of diverting resources from other areas of the programme where there is an established but unsatisfied demand such as Grundtvig. This is a point that we have made and will continue to make in negotiations.

4. *In doing so, we also recommend that the Commission should pay particular attention to the adequacy of the provision for the costs borne by institutions in organising Erasmus mobility.*

The Government would endorse the Committee's recommendation. Evidence from the sector suggests that the funding for institutions under the programme is limited and does not reflect the resource needed to manage the initiative effectively. The Government will raise this issue with the Commission through the Socrates sub-committee for higher education.

5. *We further recommend that the Commission should examine whether the present Erasmus programme is sufficiently inclusive and whether more ought to be done through extra funding or more flexible rules to provide for more short-term mobility and to tailor programmes in other ways more closely to the reasonable needs of older and part-time students and those with work or family responsibilities.*

The Government is committed to ensuring the fullest access to all forms of educational experience. It recognises that every effort must be made to ensure social inclusion in the programme. It notes that special provision is already made for students with severe disabilities, that there is no age barrier to participation to Erasmus and indeed that a number of older students have participated. It notes that intensive programmes

which are part of the Erasmus action give an opportunity for short study periods and that Grundtvig offers lifelong learning opportunities for those not in full time higher education. It will continue to press for the programme to be flexible and open, but recognises at the same time the importance of ensuring effective study periods for students in higher education, which can lead to the award of credits and full academic recognition.

The Government also believes that simplified and more flexible procedures, better dissemination and possibly the use of ICT and distance learning could contribute to greater inclusivity in the new programme by enabling participation of a wider range of learning partners.

6. *We note that the present funding arrangements for Erasmus are based on an apparent assumption that roughly equivalent numbers of students would be exchanged between participating countries, which is clearly disadvantageous to the United Kingdom and some other participating countries. We recommend that the Commission should reconsider the theoretical assumptions which have led to this practice and bring forward proposals for a more equitable basis for funding.*

There are three major elements of Erasmus funding:

- for student mobility;
- for teacher mobility; and
- for the organisation of mobility.

Allocations to member states for the first two categories are based on a formula which relates to the number of students in higher education and numbers in the age range and for teachers, to the number of teachers. Therefore these two elements are not based on the number of outgoing or incoming students. The organisation of mobility funding is allocated on the basis of delivered mobility. The actual exchange of students is a matter determined by the higher education institutions through their bilateral agreements with partners and the general principle on which institutions seek to work is one of reciprocity.

7. *We note the concern that has been raised with us that inconsistencies in the present European Credit Transfer System (ECTS) tend to put students at a disadvantage when carrying out Erasmus-funded study periods in other participating countries and to deter students from taking part in Erasmus. We recommend that the Commission should investigate these claims and report to Council on whether they are well-founded and, if so, what should be done about it.*

The recognition of time spent on Erasmus study periods is an important factor in encouraging students to participate in the programme. The European Credit Transfer Scheme (ECTS) has the potential to assist with this. The Government recognises that the ECTS is continuing to evolve as it is being adopted as the basic credit system in a number of countries, in conjunction with national qualifications frameworks. At the same time, the UK has stressed the importance in a credit based system of an emphasis on learning outcomes in relation to workload. It is persuaded that this is increasingly recognised as a key component of ECTS as manifested in documents for the project Tuning Educational Structures in Europe and the Framework for Qualifications of the European Higher Education Area adopted at the Bergen meeting of Ministers.

In England work is currently being taken forward by the HE sector, specifically the Quality Assurance Agency, on the development of national credit arrangements to underpin the HE qualifications framework.

As the ECTS is more consistently applied by universities there should be increasing transparency in terms of curriculum content, level and workload which should assist students and academic staff in participating in the Erasmus programme.

#### LEONARDO DA VINCI

8. *We recommend that the Commission should examine the rules for the Leonardo programme to ensure that they are sufficiently flexible to meet the needs of part-time and older students and those with family responsibilities, as well as disadvantaged groups and those living in remoter areas.*

The Government agrees that the Leonardo programme should be as inclusive as possible and that the needs of the groups mentioned are important. When reviewing the procedures the Commission should take this into consideration. Currently additional funding is available for those with most need, such as for disabled participants in the Leonardo programme and funding can also be given for carers and helpers where support is needed for disabled participants. It is important that potential participants are made aware of possible additional support.

9. *The Commission should also examine whether the funding levels for the administration of Leonardo projects are adequate, especially for smaller colleges and non-profit organisations, and consider what else might be done to support such organisations and make their task easier.*

The level of funding for management does make it difficult for smaller organisations which are less able to absorb the costs, so an amount which covers the actual expenditure would be welcome. One of the issues currently under discussion is the level of staff costs; for example costs are calculated from a table of average costs rather than actual costs which would be more realistic. The administration requirements since the new Financial Regulations were introduced have added to the burden. This adds to the costs of running a project, especially for smaller organisations that are at most need of funding. We will study the Commission's revised version of the Financial Regulations carefully.

10. *We also recommend that more consideration should be given by the Commission to improving ways of disseminating good practice and spreading awareness of the positive benefits, especially for employers, of taking part in the Leonardo programme.*

A new joint network has been set up from the current Leonardo and Socrates programmes which will look at how to make the results better known and implemented across Europe. The group will be known as the Information, Communication and Valorisation Network; the results from this should help to improve dissemination for both the current programme and the new programme. The new programme places greater emphasis on dissemination and utilisation of results from projects. The Transversal sub-programme will also focus on the dissemination and exploitation of results of actions supported under the programme and previous related programmes, and exchange of good practice.

The Welsh Assembly Government will be holding a Presidency event in November on the dissemination and exploitation of the results of Commission-funded projects, particularly in the fields of education, training and lifelong learning.

The Government would also couple this recommendation with the need to engage employers generally with the new Lifelong Learning programme and with the Erasmus and Grundtvig actions. It is generally concerned that the social partners should be more actively involved in the programme and commends the UK Socrates-Erasmus Council in having invited the CBI and the TUC to nominate members to the Council. At the same time, it hopes that representatives on such bodies will ensure dissemination of information within their organisations.

11. *We further recommend that the Commission should examine the suggestion made to us that the match funding requirements of this programme place an unfair burden on smaller tightly-funded organisations, and especially voluntary bodies, and that they ought to be changed.*

Guidance on match funding is provided in the Administrative and Financial Handbook which is agreed and sent out at Commission level. As a general principle, EU funding is awarded on the basis that beneficiaries provide a contribution to match the funding available through the EU programme. How this works depends on the individual programme, for example: for the Comenius Programme it is deemed to be the cost of staff time; for Leonardo da Vinci where the community support is less than 100 per cent the promoter needs to arrange co-financing which must be covered from other non-Community sources; for the Erasmus programme match funding is not used.

In some areas we agree that funding levels could be made more realistic in particular for the amounts provided for linguistic and cultural preparation and for staff time to manage the project. In many cases, the budget allows for 50 per cent of a staff unit when in real terms the project would require 100 per cent of the staff time. We will continue to look into this as part of the implementation of the new programme.

#### GRUNDTVIG

12. *We recommend that the Commission should give more consideration to demographic trends in Europe, as well as the inclusiveness and life-long learning aims of the overall programme. These factors suggest to us that more than the proposed 3 per cent of the programme budget should be allocated to Grundtvig and we recommend that the Commission should re-examine the rationale for that allocation.*

The Government regards adult education as a key priority and agrees that the Grundtvig programme should be used as a means of addressing the demographic challenges facing Europe. The Government is in agreement with the Committee that the proposed 3 per cent minimum allocation for Grundtvig is not sufficient and should be increased and also believes that there should be more flexibility in the different types of mobility that are permitted for adult learners in order to increase potential beneficiaries.

13. *In framing the new packages for both Leonardo and Grundtvig we also recommend that the Commission should consider whether more innovative use of ICT and suitable distance-learning packages might help to overcome obstacles to participation, as well as encouraging improved computer capability for older participants.*

The UK Government views innovative use of ICT and distance learning packages as key priorities and agrees with the Committee's recommendation in this area.

The Government believes that the introduction of the Transversal Programme could help with this issue. The Transversal Programme will have a strong emphasis on innovative approaches to ICT. It covers learners' needs at all stages of life—not just school or higher education—as the other sub-programmes cover; it will allow a lifelong approach and a vehicle for the development of innovative ICT-based content in a more integrated way.

The Government has also pursued a number of new initiatives in line with this recommendation. MyGuide, which will be introduced shortly in England, aims to develop and market a search and interaction facility that will help people to overcome the barriers they face in using online services due to disabilities, lack of confidence, skills or motivation. MyGuide tools will also help to reduce the barriers faced by older people and help with inclusion in the internet society at a time when a majority of services, including Government services, are going online. A further initiative, UK online centres, has been established since March 1999, with the aim of bridging the gap between those in society who have access to ICT and the internet and those who do not. There are now 6,000 UK online centres in England, diverse in their size and type but typically rooted in communities, with over 2,000 strategically placed in the most deprived wards.

#### COMENIUS

14. *We recommend that the Commission should look more closely at what needs to be done to encourage greater awareness and participation in Comenius and to remove unnecessary bureaucratic obstacles which impede effective participation and place unfair burdens on the dedicated organisers of these programmes, especially in smaller schools.*

The UK Government is committed to reducing bureaucracy; it wants to ensure access to EU programmes whilst also ensuring financial propriety.

Currently, EU Financial Regulations impose standard processes on applicants and institutions even where the level of funding is comparatively small. The Government will carefully review the revised version of the regulations.

#### VALUE OF THE PRESENT PROGRAMMES

15. *We recommend that the Commission should consult with Member States and interested parties about the best way of devising a more systematic qualitative as well as quantitative analysis of the benefits and shortcomings of all the programmes for both the individuals and the institutions taking part, as well as for the wider benefits for the EU and other participating countries.*

The proposals for the Integrated Programme will continue to be considered within the Education Council working group attended by representatives of all Member States. Considering the more than three fold increase in expenditure on the proposed programme the Government agrees that there is a need for the new programme to be objectives-focussed and for there to be a strong evaluation structure in place. It does not believe that the current objectives and indicators proposed by the Commission would give a full enough picture of the programme. The Government's negotiating line has been that the management committee of the programme should formulate a table of specific measurable objectives which the programme would be evaluated against.

The Government believes that to assess the programme's wider impact, evaluators should have full regard to the Lisbon indicator framework which an expert working group has developed under the auspices of the Open Method of Co-ordination. The evaluation could test the added value of mobility in achieving a range of concrete benefits, such as better educational attainment, as defined by the indicators working group. The evaluation would not start from an assumption that publicly-funded international mobility is good in itself.

16. *We further recommend that this analysis should be designed to inform future national strategies, as well as contributing to more effective dialogue between the Commission and participating countries about possible improvements whenever the programme is reviewed. But we believe it is essential that it should not add unduly to the bureaucratic burden on participants, especially from small organisations.*

The Government is concerned to ensure that there is no increase in what can at times already be a heavy compliance and reporting burden on institutions and National Agencies.

The Government agrees that the proposed new programme is an opportunity to enhance and build on current work on the Department's International Strategy: this work will support and add value to national policies. The Government believes this will help raise the profile of the EU programmes and provide a basis for discussions when reviewing the new programme once implemented.

The Government has already learned some lessons from the interim evaluation of the programmes and more evidence is likely to emerge from the evaluation to be carried out in 2007. This will form a useful base for more detailed analysis and discussion about the form of the programme, and the Government will press the Commission to make more active use of this information in its future implementation plans.

The Government will also continue to use the current mechanisms in place to inform national strategies. This is achieved at the national level by key players sitting on adjudication panels and advisory groups, feedback from projects to government and National Agencies on good practice and subsequent celebrating of success via websites and also International Education Week and International School Awards. Similar arrangements are also in place at the local level to promote good practice to policy makers.

*17. We also recommend that, having devised this system, the Commission should make sure that the results are widely disseminated in an easily-understandable format to Member State Governments, national agencies and both actual and potential participants in the programmes.*

The Government is committed to providing full, open and clear information to the public institutions, students and all participants in the programmes. It will work with the Devolved Administrations in Scotland and Wales and with the National Agencies to facilitate the widest dissemination of the information.

#### INTEGRATION

*18. We conclude that the proposals to transfer vocational training at the higher education level from the Leonardo to the Erasmus programme and to set up a single programme committee to oversee the whole programme should contribute positively to the overall coherence of the programmes and the harmonisation and simplification of the procedures. We recommend, however, that the Commission should explain in greater detail how these changes are intended to work.*

The Government agrees that the new proposals will increase the integration of the sub-programmes and welcomes this. The new programme proposals incorporate several existing programmes and initiatives which cover a wide range of different age groups and profiles. This better reflects the links between the areas and the progressive nature of lifelong learning. It provides a comprehensive programme across an individual's life cycle for accessing and benefiting from skills training across Europe; in particular it addresses the retraining needs of adults and older workers in the labour market.

The proposal should increase coherence and synergies between the sub-programmes. Consultation with UK stakeholders on the new Integrated Lifelong Learning Programme in 2003 and late last year indicated a strong preference for an increased level of integration.

A single programme committee would increase cohesion on process, selection criteria and budget. As well as adding to the coherence of the new structure, the government hopes that a single approach would speed up administrative decisions.

The new Transversal Programme will ensure best practice is spread effectively and data is properly disseminated between the sub-programmes. It will provide policy makers and programme participants with a vehicle to share innovative ideas and expertise more widely. The sub-programmes will provide appropriate material on current educational practices.

Transferring the higher education level of Leonardo to Erasmus makes sense and will drive a stronger focus on skills into higher education application of the programme. Care must be taken to ensure that this skills element retains a significant profile within Erasmus. Having a single programme committee will make delivery of the Lisbon targets and outcomes more likely as it will bring together a strategic forum of all the key players across the lifelong learning spectrum and should build in better accountability in relation to national skills strategies. Definitions and analysis of innovation and best practice will be better bedded into the evaluation of programmes than at present.

*19. We also recommend that these changes should be subjected to a stringent mid-term review in which the views of all relevant stakeholders are consulted and full taken into account.*

The Government agrees that this would be essential and is pushing this in negotiations.

#### TRANSVERSAL PROGRAMME

20. *Here again, therefore, we recommend that the Commission should provide a more detailed explanation than we have seen so far of how this programme is intended to work in practice which should be subjected to careful examination by the Member States in Council.*

The Government has welcomed the introduction of the Transversal Programme. It is an important addition to the current programmes and provides a necessary means of overseeing the sub-programmes. If the new programme is to be truly integrated then it is vital to have something which enables a critical mass of activity to develop on essential issues like ICT and dissemination. We agree that more information should be provided by the Commission on how this programme will work in practice.

21. *We further recommend that the Commission should study and make recommendations to Council on how the Transversal programme might incorporate and disseminate the experience gained by successful distance-learning providers, such as the Open University in the United Kingdom, in designing innovative learning packages that would help to make the benefits of the programme more widely available to those with limited or no mobility.*

The Government believes that the use of ICT and e-learning is essential for distance learning, and is well provided for in the new Lifelong Learning programme. The Transversal Programme has a strong emphasis on ICT, and proposes four key activities—including the operational objective for the development of innovative ICT-based content, services, pedagogies and practice for lifelong learning. Making use of the experience gained by successful distance-learning providers would be helpful and relevant.

22. *Here too, we also recommend that the programme should be subjected to a stringent mid-term review in which the views of all relevant stakeholders are consulted and fully taken into account.*

The Government agrees with this approach.

#### SIMPLIFICATION

23. *We recommend that every effort should be made by the Commission to apply the principle of proportionality to all funding applications and other administrative and financial procedures under this programme, especially to enable small scale grass-roots projects to flourish and to encourage smaller organisations to believe that they have a realistic chance of taking part in these programmes.*

The Commission Explanatory Memorandum for the Lifelong Learning programme acknowledges that more does need to be done to achieve simplification and proportionality. Simplification of the procedures and increased application of the principle of proportionality for the new programme is a key priority of the Government.

24. *We also recommend that more adequate funding should be earmarked to cover the staff costs for organising, managing and supporting mobility projects, and the additional travel costs of those in remoter areas. The Commission should also investigate other ways of making the funding rules more flexible and better-tailored to the circumstances of potential participants without eroding proper accountability.*

The Government recognises that different requirements apply to the different chapters of the programme. In relation to Erasmus, there is a category of funding known as Organisation of Mobility Funding, which is designed to contribute to the costs of organising, managing and supporting mobility. The Erasmus student mobility grants have been allocated in a way which is designed to simplify administration in the institution. The Government would be concerned to ensure that any changes to the allocation of the student mobility funding should not complicate the process within institutions and should not incur additional costs for the National Agency. It is however prepared to explore different options with the Agencies concerned and the Commission.

The UK Government supports this recommendation and recognises that the lack of funding for staff costs is the main disincentive for UK schools to participate in Comenius. This is one of the areas to be considered by the UK Steering Group described under Recommendation 29.

Under Mobility in Leonardo, beneficiaries are able to claim the full travel costs of participating in the programme.

25. *We further recommend that the Commission, working with national agencies, should strive to ease the burden on smaller participating organisations by introducing more user-friendly software, help lines, training seminars and arrangements for sharing advice from experienced participants.*

The Government agrees that more could be done to ease the burden on smaller participating organisations. Agencies like LEAs and the Learning and Skills Councils which work with the voluntary and community sector and include independent training providers could have a role to play in this.

The implementation of the Commission's new IT system, "Symmetry", has been delayed at least until the introduction of the new programme but following its introduction it is expected to improve the application process and management of projects.

The Commission has recently set up Stakeholder Consultation Groups with representatives from programme Committees, National Agencies, European Associations, Social Partners and experts. The aim will be to assist in the arrangements for implementation of the new Lifelong Learning Programme. Tasks will include looking at the coverage, priorities and implementation details for the new programme. The UK has nominated a range of people covering all of the groups.

The Government also agrees that the levels of funding should be reviewed for the new programme with the objective of increasing simplicity and transparency. There should be equal treatment for all participants across the programme.

#### FUNDING

26. *We recommend that these factors (the proposed threefold increase in budget and the ambitious targets from the Commission) should be borne carefully in mind as the proposed budget comes to be examined and we fully support the Government's intention to probe these estimates for value for money.*

Proposals for the new programme are for a budget of 13.6 billion euros over the seven year period 2007–13. This represents an increase of some 3.5 times current expenditure. This includes the following minimum allocations for the sub-programmes: Erasmus: 40 per cent; Leonardo: 25 per cent; Comenius: 10 per cent; Grundtvig: 3 per cent.

There has not yet been any discussion in the Education Council of the budget proposed for the new programme and it will not be discussed until the overall EU budget negotiations for 2007–13 are completed.

The line which the Government has taken in negotiations and publicly to date is that all negotiations on the size of the programme must be seen in the context of the Government's overall priority of a budget for the next Financial Perspective stabilised at no more than 1 per cent EU GNI, other UK priorities and reforms, and the principles of sound financial management. Negotiations on the programme budget will take place once the overall EU budget has been agreed. The Government agrees that it is important that reform is demonstrated.

27. *We also recommend that the Commission should consider whether, in an understandable desire to increase participation, the proposed funds may be spread too thinly and fail to improve some of the funding deficiencies which have prevented the present programmes from being fully effective and reaching more disadvantaged people.*

The Government agrees that the Commission should consider this further and undertake an analysis of funding levels across the programme.

#### ROLE OF THE BRITISH GOVERNMENT

28. *We recommend that the United Kingdom Government should consider carefully the preceding recommendations and urge the Commission in negotiations during the coming months to amend or clarify the existing Proposal to give effect to those recommendations. We regard the United Kingdom Government as having a special responsibility to take the lead in supporting those recommendations and ensuring a satisfactory outcome during the forthcoming United Kingdom Presidency of the EU.*

The Government will consider all the recommendations made by the Committee during the ongoing negotiations on the proposals for the new programme.

29. *We recommend that the Government should publish as soon as possible a clear statement of the priority which they attach to EU education and training programmes and outline in more detail their current thinking about the new programme.*

The Department published its international strategy "Putting the World into World-Class Education—An international strategy for education, skills and children's services" in November 2004. It identifies three broad areas for action: equipping our children, young people and adults for life in a global society and work in a global economy; engaging with our international partners, in particular Africa, to achieve their goals and ours; maximising the contribution of the education and training sector and university research to overseas trade and outward investment.

Key actions to support the strategy and help with the implementation of the EU programmes include *Global Gateway*; which is a one-stop website funded by the DfES and administered by the British Council enabling those involved in education across the world to engage in creative partnerships; and *International Education*

*Week (IEW)*, which is an annual DfES event celebrating the benefits of an international dimension at all levels of education.

The Government is considering actively how best to take forward the link between the International Strategy and the importance it attaches to the EU programmes, as well as the proposed new programme. The overarching advisory group which has been set up to advise on the implementation of the International Strategy will play a key role in this.

The DfES has set up a UK Steering Group on the new programmes (including Youth) which will examine all the issues raised by this Report. The Steering Group will advise on the marketing and implementation of the programme and how to maximise UK take up. The group will include external stakeholders representing the different sectors of education in the country and will advise on a range of issues such as national bottlenecks and how to overcome barriers to participation. This group is separate to the steering groups and committees for Socrates, Erasmus and Leonardo da Vinci which are involved in advising on these points in the current generation of programmes.

The new programme will for instance be one important means of providing UK students with opportunities that ensure an international dimension becomes a significant and real part of their learning experience and so that they are better prepared for work in the global economy.

Once the negotiations on the new programme have been completed, the Government will provide a statement on how it will contribute to the implementation of the DfES international strategy.

In Scotland various strategy documents also refer to the importance of international education—starting with “An International Outlook—Educating Young Scots About the World” (2001), the Scottish Executive European Strategy and International Strategies (2004) and the International Development Strategy (2005).

The Partnership Agreement for A Better Scotland—the programme of government agreed following the 2003 Scottish election makes the following commitment:

“We will work with our excellent academic institutions to promote research links, education and student exchanges to raise Scotland’s profile and increase opportunities for our young people and build global networks with Scottish institutions at their heart.”

30. *We further recommend that the Government should then embark on an urgent consultation with representatives of all sectors of education in this country, as well as with Local Education Authorities, the Learning Skills Councils and the Regional Development Agencies and other interested bodies, with a view to drawing up a clear public strategy for maximising the opportunities presented by the new programme, eliminating unnecessary barriers and identifying how those consulted might best contribute to that strategy.*

The Government has carried out various consultations on the new programme proposals. The Government invited comments from a wide range of organisations in the UK on the Commission’s Consultation document and the UK Government’s response to the document was sent to the Commission in February 2003.

The response indicated that the programmes should focus more clearly on the achievement of the Lisbon priorities, promote social inclusion and operate on a flexible decentralised basis. The Commission’s subsequent proposals for new programme have largely taken this on board.

In addition, the Government organised a meeting in December 2004 to consult and inform the main organisations that would be involved in the new programme.

The Devolved Administrations have also been consulted regularly by DfES about the Commission’s proposals.

These consultations were about the content of the new programme but the Government agrees that it needs to involve all sectors of education in developing a strategy for making best use of the opportunities the programme will now offer. As noted above (Recommendation 25) the Government has nominated UK representatives to the Stakeholder Groups the Commission proposes to set up. As described in Recommendation 29 the DfES has also set up its own UK Steering Group which will advise on these issues.

#### BARRIERS TO UNITED KINGDOM INVOLVEMENT

31. *We recommend that the Government should carry out a systematic investigation, in consultation with educational institutions and other relevant bodies, into the reasons why United Kingdom participation in some of the present programmes, notably Erasmus, is decreasing and why the United Kingdom is no longer the first choice of destination for incoming Erasmus students from other participating countries.*

## PARTICIPATION IN ERASMUS

One of the objectives of the DfES's International Strategy is to ensure UK students are better informed about and equipped to take advantage of opportunities available to them to prepare them for work in the global economy. Participation in outward mobility programmes is a key part of this.

The Higher Education Funding Council for England published a study on behalf of a number of sponsoring organisations which investigated UK outward international mobility including participation in Erasmus and other programmes. The main conclusions of the study were that the main reasons for the decline in Erasmus participation were language barriers and financial issues. The Government is committed to working with the National Agency, the Devolved Administrations and other institutions in seeking to increase UK outward student mobility.

It considers that a key reason for the decline of the number of incoming Erasmus students relates to the relatively low number of outgoing students in so much as institutions will seek to bring their exchanges more into balance. The Government's main objective therefore is to increase the number of UK students going out.

Measures taken recently have included allowing students going abroad for a full year not to have to pay any tuition fees for that year; wider circulation of the annual "European Choice" booklet which advertises Erasmus; and increased promotional activity following the launch of the new Socrates programme. The Government have also amended the student support regulations to allow Erasmus students a higher rate of student loan.

However, the Government recognises that we need to do more to encourage higher participation. The Government will engage with all relevant stakeholders to devise strategies to improve the mobility of UK students.

## INCOMING ERASMUS STUDENTS

While it is true that the UK is now in third place for incoming Erasmus students, the UK does continue to remain the first choice for many EU students—16,688 students from partner states came to the UK through Erasmus in 2002–03, but there was a total of 90,580 EU students overall in the UK in that year—and the flow of international students to the UK continues to increase. Indeed, the UK continues to remain a popular destination for foreign students in what is a growing and more diverse market.

For instance, the number of non-EU students studying full-time in the UK in 2002–03 rose by 23 per cent on the previous academic year. Around 43,000 non-EU international students have applied to UK colleges and universities for 2004 entry.

The Government recognises that it is important that universities recognise that, as more institutions in other countries run courses in English, this may increase competition and UK institutions will need to adapt accordingly. In a rapidly growing global market, UK institutions will need to look at the quality of what they are offering.

*32. We also recommend that the Government should investigate, in consultation with educational institutions and other relevant bodies, why United Kingdom under-spends on some of the current EU education and training programmes are more than those of other participating countries.*

The UK underspends in decentralised Comenius and Leonardo are above the European average. However, schools have a tendency to underspend on grants if less mobility has taken place during the project year than originally planned. The British Council has increased the subsistence allowance to 100 per cent on the 2004 contract to encourage schools to support teacher mobility. As noted elsewhere a contribution towards supply costs would have an immediate impact on participation in Comenius.

Grundtvig is currently oversubscribed in the UK which reflects the key UK priority of improving our performance in adult basic skills.

There was a 10 per cent increase in the number of UK schools participating in Comenius in 2004 and a 16 per cent increase in 2005. Following enlargement, the former pre-accession countries now benefit from bigger budgets. Consequently far fewer European partnerships are lost through European matching.

Language projects include pupil exchanges and therefore absorb the highest proportion of the Comenius budget. While this project category has increased in popularity in other Member States, numbers in the UK have shown a steady decline in recent years. Concerns around child protection legislation and the need for risk assessments have proved to be a disincentive to schools to organise pupil mobility.

In many other Member States, Socrates provides the only source of funding for international activity in education. UK institutions can access a variety of nationally funded programmes with less bureaucratic procedures and often customised to suit local priorities (such as Teachers International Professional Development Programme) and the take up of EU funded programmes has to be seen in this context.

33. *We further recommend that this investigation should pay particular attention to claims we have had in evidence that the current funding provision by the Commission is inadequate. The Government should establish to what extent that is due to institutional factors in the United Kingdom education system, as distinct from the rules and levels of funding set by the Commission.*

The Government agrees that the Commission should pay particular attention to the adequacy of the provision for the costs borne by institutions in organising Erasmus mobility.

In the case of both the Leonardo da Vinci and Comenius programmes the problems of funding supply cover have already been noted in several other places. In FE colleges the difficulty is that LSC funding cannot be used to cross subsidise non LSC funded work. This is not an issue about inadequate funding from the EC but about rules on the use of LSC funding. It links to the point below.

The mechanism for investigating these bottlenecks and suggesting remedial action is the UK Steering Group described in Recommendation 29.

34. *The Government should also pay particular attention to the lack of supply cover for British teachers wishing to take part in Comenius programmes and any other factors peculiar to the United Kingdom which tend to discourage overall participation or exclude certain groups of potential beneficiaries.*

The Government is aware of the difficulty relating to supply cover, and as noted earlier (Recommendation 29) it has set up a UK Steering Group which is responsible for advising on the implementation of the programme, and the question of maximising take up is one of the questions with which it will deal.

The UK is not the only country to suffer from the difficulty of financing supply cover, and UK members of the programme committees will continue to press the Commission for a change in its own rules to allow sufficient flexibility to take into account differing national situations.

35. *We welcome the Government's assurances that they are committed to overcome the dead-weight of bureaucracy as a significant deterrent to participation in these programmes and to ensure that the programmes are genuinely inclusive. But it is clear to us from the evidence that the success of these programmes in the United Kingdom depends far too much on the dedication, hard work and resourcefulness of beleaguered individual enthusiasts. We recommend that the Government should ensure that they are given much more encouragement and support and demonstrate how they intend to do so.*

In relation to the Erasmus programme the Government recognises that Higher Education Institutions are autonomous. We will, nevertheless, encourage institutions to recognise the important role of European/International Offices and the Academic Programme Coordinators. Ministers will discuss this with Vice-chancellors and through UUK. At the same time, the Government will continue to give full and effective support to the National Agencies in their work of supporting institutions, promoting the programme and encouraging participation.

The Government recognises the hard work and commitment of many individuals in making participation in the EU programmes a reality. In advancing the Department's International Strategy it has set up an overarching advisory group, and the question of how such effort can best be rewarded and recognised will be one of the questions it addresses.

In addition, if the EU Financial Regulations are simplified, promoters should find the administration less bureaucratic and this should mean that the burden will fall less on those committed individuals.

## LANGUAGES

36. *We conclude that the United Kingdom is already falling badly behind in language-learning capability. This will seriously limit British ability to take part fully in and benefit from the new EU programmes, especially Erasmus. But it has far wider implications for the employability and cultural awareness of the coming generation and will severely hamper the country's ability to protect and promote our interests abroad and to compete successfully in the Single Market and elsewhere.*

37. *We believe the problem will worsen as the new programme targets increasing proportions of the younger population. The United Kingdom will not be able to get anything like full value from the expanded EU programme proposed. While more funding for preparatory language training is a possible short-term solution, it will not address the more strategic deep-seated British linguistic deficiency which requires long-term commitment and investment to sustain improvement.*

38. *While we welcome the Government's intention to give more emphasis to early language-training in schools it will clearly be many years, stretching beyond the termination of the proposed new EU programme, before that has any effect on the capacity of young British adults to take advantage of EU-funded education and training schemes. It is also likely to lead to a shortfall in the number of language teachers needed to provide early language-teaching in schools and, in our view, the reduction in compulsory language learning at secondary level will only make matters worse.*

39. *We recommend that the Government should carry out an urgent reappraisal of language teaching policy, not only for the implications it will have for United Kingdom participation in the new EU programme but much more widely.*

Through the publication of its National Languages Strategy for England, "Languages for All: Languages for Life" in December 2002, the English Government sets out how it plans to transform the nation's capability in languages. To oversee the implementation of the strategy, the Department has appointed the first ever post of National Director for Languages. The Department believes that given sufficient time to bed in, this strategy will improve participation in the programme as well as bringing broader benefits.

One of the strategy's three overarching objectives is to improve the teaching and learning of languages, which includes the introduction of a primary entitlement to learn languages. By 2010, every child throughout Key Stage 2 should have the opportunity to study a foreign language and develop their interest in the culture of other nations. In providing the entitlement, the Government recognises that pupils should have access to high quality teaching and learning opportunities, making use of native speakers and e-learning. By age 11 they should also have the opportunity to reach a recognised level of competence on the Common European Framework and for that achievement to be recognised through a national scheme.

To deliver the primary entitlement the Department is building a trained workforce. Currently the focus is on providing language training for new primary teachers, existing teachers and teaching assistants. In addition, primary schools are encouraged to work with fellow primary and secondary schools, and where they exist, language colleges to support their programmes, share expertise and resources.

To track the extent to which languages are being taught in primary schools, research was carried out in 2002–03 and reported that 44 per cent of all primary schools were delivering some form of language teaching. This was an increase on earlier research conducted in 2001 which reported that one in five primary schools were delivering language programmes.

In September 2005, the Government will publish a Key Stage 2 MFL Framework to support the planning and teaching of languages. It will also cover transition issues between Key Stage 2 and 3.

Language learning continues to be compulsory at Key Stage 3. The Secondary Strategy's MFL programme for Key Stage 3, implemented since 2003, was designed to contribute to the raising of standards in MFL. The programme consists of a Framework of objectives for teaching modern foreign languages, and training and guidance materials. The programme was designed not just to improve the teaching of languages but also to help create confident language learners, and provide a sound basis for pupils to continue their language learning at KS4. The programme encourages teachers to draw on existing good practice and work together to become more effective so that pupils improve in what and how they learn. Ofsted have noted that the use of the Strategy's MFL Framework has helped teaching and the approach it encourages is having a positive effect on the attitudes of pupils, particularly boys. More recent feedback from Ofsted to the Secondary Strategy about its impact in schools suggests that pupils' attainment is improving in schools that make full use of the Framework for teaching MFL.

Through its Green Paper "14–19: Extending opportunities, raising standards", the Government consulted extensively on its proposals to create more choice and flexibility at Key Stage 4. The response to the consultation confirmed the Government's view that schools should no longer be required to teach modern foreign languages to all pupils but that all schools should be required to ensure that any pupil wishing to study a modern foreign language should be able to do so. The changes to the way the National Curriculum is organised at Key Stage 4 enables 14–16 year olds to study a curriculum which better meets their needs and aspirations and future employability. Whilst the compulsion to learn languages has been replaced by a statutory entitlement to learn languages at Key Stage 4 from September 2004, schools are still required to offer language learning programmes to all pupils who want to study them.

Secondary schools are now able to consider vocational language qualifications as alternatives to GCSE as vocationally-related qualifications listed for use pre-16 in the National Qualifications Framework as they now attract achievement and attainment points for performance tables.

The Department has funded CILT, the National Centre for Languages to develop "Languages Work", a website and materials which offer advice and information for young people on the true value of languages in the workplace, enabling them to make informed choices.

The National Languages Strategy is consistent with Government's policy of choice and personalised learning. If pupils start learning languages at an early age, the Government believes that more people will be enthused and want to continue learning languages beyond the age of 14 and into adulthood.

DfES officials are working closely with the LSC and HEFCE to increase opportunities for language learning post-school. Although the number of specialist language degree students has fallen in recent years there has been significant growth of language learning, either as part of another degree or as an additional course at University.

To fulfil another of the strategy's overarching objectives, the Department is also introducing a national, voluntary recognition scheme—the Languages Ladder. The scheme will complement existing qualification frameworks and the Common European Framework and give people of all ages credit for their language skills. It was launched in May 2005 and will be available in eight languages from autumn 2005.

The Department's international strategy for education, skills and children's services, "Putting the World into World-Class Education", published in 2004, re-emphasised the messages outlined in its National Languages Strategy. Goal 1 of the international strategy—"Equipping our children, young people and adults for life in a global society and work in a global economy"—incorporated the need "to transform our capability to speak and use other languages". The international strategy details progress to date in achievement of this goal.

In Scotland, language learning and teaching is based on the 2001 Ministerial Action Group report, *Citizens of a Multilingual World*. The current programme for Government guarantees the opportunity to learn a modern European language, starting in primary school, and a recent survey shows that over 95 per cent of upper primary pupils were studying a modern language. Current support for languages in Scotland includes developing an on-line Modern Foreign Languages Environment (MFLE). This will support modern language teachers, providing on-line professional development, examples of good practice, and resources. Also, in the Partnership Agreement for a Better Scotland, the Scottish Executive has made a commitment to introduce a national language strategy to guide the development and support of Scotland's languages, including British Sign Language and ethnic community languages. Local authorities and other public bodies will be responsible for drawing up a languages plan which reflects the communities they serve.

The Government recognises the need to encourage students in all subject areas to participate in Erasmus and particularly those without a language background. It will explore with the National Agency ways of further developing participation in the programme for non-language students.

The higher education element of the DfES's modern foreign languages strategy is about increasing the numbers of students in higher education who are taking an active part in learning modern languages. A number of actions are in train. For example we are working with key partners such as CILT and the Subject Centre on considering the options for action to support our aim of increasing both the supply and demand for foreign languages in HE.

#### UNITED KINGDOM BUSINESS ENGAGEMENT

40. *We recommend that the Government should encourage the United Kingdom business sector to pay more attention to the new Programme and the opportunities it may offer for British business and to become more actively engaged in helping the Government to develop their strategy towards the Programme, especially for the Leonardo and Grundtvig programmes.*

The Government recognises the importance of business participation in the programmes. While there is always scope for improvement, the European Commission has confirmed that the UK is out-performing other comparable Member States when it comes to industry involvement in Leonardo. It is difficult to be precise about business involvement in the current programmes as statistics show information about lead organisations rather than the full range of partners. However, the Government knows that in the case of the Leonardo programme, some 20 per cent of 2004 projects were led by businesses and many more included active business partners. With the exception of trainer exchanges, most Leonardo projects involve a work placement in a business environment. All projects will therefore have at least one business partner.

Grundtvig should not be seen as a vocational training programme like Leonardo. With a focus on active citizenship and social inclusion, Grundtvig has aims that are both broader and more ambitious than promoting the employability of adults. Nevertheless, in terms of progression to further employment, 59 per cent of projects in 2003–04 believed that the adult learners involved had derived significant benefit.

Some 11 per cent of projects were looking at methods for providing credit for competencies acquired outside of formal education, whilst 44 per cent were looking at guidance, counselling and other support services. Basic Skills was the main thematic area for 42 per cent of projects. The link between involvement with learning partnerships and increased employability is clear.

As with the Leonardo programme the statistics may disguise the involvement of partner, as opposed to lead, organisations.

British businesses have also taken an active interest in the Lingua and Minerva actions of Socrates and have been directly involved in a number of projects (approximately 20 per cent).

Comenius has been a powerful tool for increasing the interest of local businesses in school communities such as Cardonald College, Glasgow and Peebles High School, Scottish Borders.

The Government has been keen also to encourage the participation of employer representatives in shaping the Leonardo programme, with the CBI and the TUC having seats on the EU Leonardo Programme Committee. Representatives from CBI and TUC also sit on the Management Board of CEDEFOP (European Centre for the Development of Vocational Training).

The steering group advising on the implementation of the new programme (see recommendation 30) offers a mechanism for actively pursuing these possibilities and offering practical advice and assistance.

41. *At local level, we recommend that the Government should encourage businesses to liaise with the Regional Development Agencies and sector skills councils, as well as with individual local education institutions, in developing projects under this programme that are relevant to British business needs and will be of benefit to individual businesses and their employees.*

The Government believes that more can and is being done through the Regional Development Agencies in England and corresponding arrangements in Scotland and Wales, and through the Sector Skills Councils which link to businesses on a regional basis and have developed sector specific strategies. The Sector Skills Development Agency (SSDA) is now looking at its remit in the context of the International Strategy and what role it could play.

The SSDA is now looking at how to engage employers more closely with the European programmes and the Lisbon agenda.

42. *We also recommend that the Government take more active steps to promote the potential benefits of the programme, and especially the new Leonardo and Grundtvig programmes to British business, not only for the training and motivation of individual employees, but also more widely through the corporate relationships and improved understanding of European processes and market opportunities which active involvement in these programmes should bring.*

There is a need to further convince employers and employers' organisations of the benefits of the programmes in preparing potential employees for their working life. The Government—in conjunction with the devolved administrations—is conducting an active programme of promotion of the programmes through our National Agencies so that British business can be aware of the benefits to employers and employees alike in participating in European programmes.

#### UNITED KINGDOM NATIONAL AGENCY ARRANGEMENTS

43. *We recommend that the present agency arrangements for administering the programmes in the United Kingdom should be retained, but that consideration should be given to forming a single over-arching advisory council, on the lines of the present separate United Kingdom Socrates-Erasmus and Leonardo Advisory Councils, designed so that interested bodies can contribute effectively to the formation of a comprehensive national strategy and review progress while leaving programme administration in the hands of the relevant agencies.*

The current arrangements are designed to maximise the effectiveness of UK participation in the current programmes whilst also balancing costs and efficiency. Having appropriate National Agencies enables links between NAs and specific end-user groups to be optimised. We believe that an overarching UK structure will be necessary to consider the strategic overview and bigger picture for an integrated programme. However, the Government also feels that each specialist area will need to bring together the key stakeholders to consider specific issues relating to their areas and to take account of differences in policies and priorities applying in different parts of the UK.