



HOUSE OF LORDS

European Union Committee

34th Report of Session 2007-08

**Government and
Commission
Responses
Session 2006-07**

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The European Union Committee

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

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

Our Membership

The Members of the European Union Committee at present are:

| | |
|-------------------------------|---------------------------------|
| Lord Blackwell | Lord Mance |
| Baroness Cohen of Pimlico | Lord Plumb |
| Lord Dykes | Lord Powell of Bayswater |
| Lord Freeman | Lord Roper |
| Lord Grenfell (Chairman) | Lord Sewel |
| Lord Harrison | Baroness Symons of Vernham Dean |
| Baroness Howarth of Breckland | Lord Tomlinson |
| Lord Jopling | Lord Wade |
| Lord Kerr of Kinlochard | Lord Wright of Richmond |
| Lord Maclennan of Rogart | |

In addition, the following were Members during Session 2006-2007:

| | |
|-----------------------------------|-------------------------------|
| Lord Bowness | Lord Marlesford |
| Lord Brown of Eaton-under-Heywood | Baroness Thomas of Walliswood |
| Lord Geddes | |

Information about the Committee

The reports and evidence of the Committee are published by and available from The Stationery Office. For information freely available on the web, our homepage is:

http://www.parliament.uk/parliamentary_committees/lords_eu_select_committee.cfm

There you will find many of our publications, along with press notices, details of membership and forthcoming meetings, and other information about the ongoing work of the Committee and its Sub-Committees, each of which has its own homepage.

General Information

General information about the House of Lords and its Committees, including guidance to witnesses, details of current inquiries and forthcoming meetings is on the internet at

http://www.parliament.uk/about_lords/about_lords.cfm

Contacts for the European Union Committee

Contact details for individual Sub-Committees are given on the website.

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GOVERNMENT AND COMMISSION RESPONSES FOR SESSION 2006-07

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 European Commission is invited to respond in writing to selected reports from the Committee.
3. The Committee makes all Government responses available to the House and publishes them as required. We recently decided to publish Commission responses in the same way.
4. This report accordingly makes available, for the information of the House, Government and Commission responses received to date to our reports for Session 2006-07. A complete list of reports and responses is annexed to this report.

**LIST OF EUROPEAN UNION SELECT COMMITTEE REPORTS
SESSION 2006-07 SHOWING GOVERNMENT AND COMMISSION
RESPONSES**

| Reports | Where the Responses to these Reports can be found |
|--|---|
| | |
| 1st Report: Current Developments in European Defence Policy | No Response Required |
| 2nd Report: Breaking the deadlock: what future for EU procedural rights? | Government response due 16 March 2007 - awaited |
| 3rd Report: Television Without Frontiers ? | Both Government and Commission response printed in this Report |
| 4th Report: Evidence from the Minister for Europe on the Outcome of the December European Council | No Response Required |
| 5th Report: After Heiligendamm: doors ajar at Stratford-upon-Avon | Government Response printed in this Report |
| 6th Report: Government Responses: Session 2004-05 | No Response Required |
| 7th Report: The Commission's 2007 Legislative and Work Programme | Government Response printed in this Report |
| 8th Report: Cross Border Health Services in the European Union | No Response Required |
| 9th Report: Schengen Information System II (SIS II) | Both Government and Commission response printed in this Report |
| 10th Report: Evidence from the Ambassador of the Federal Republic of Germany on the German Presidency | No Response Required |
| 11th Report: The Criminal Law Competence of the EC: follow-up Report | No Response Required |
| 12th Report: Funding the European Union | Government Response printed in this Report |
| 13th Report: Proposal to Establish the European Institute of Technology: interim report | Commission response printed in this report |
| 14th Report: "Improving the mental health of the population": can the European Union help? | Both Government and Commission response printed in this Report |
| 15th Report: An EU Competition Court | Government Response printed in this Report |
| 16th Report: Current Development in European Foreign Policy | No Response Required |
| 17th Report: Mobile Phone Charges in the EU: curbing the excesses | Both Government and Commission response printed in this Report |
| 18th Report: Prüm: an effective weapon against terrorism and crime? | Both Government and Commission response printed in this Report |

| Reports | Where the Responses to these Reports can be found |
|---|---|
| 19th Report: Financial Management and Fraud in the European Union: responses to the report | No Response required |
| 20th Report: Stopping the Carousel: Missing Trader Fraud in the EU | Government Response printed in this Report |
| 21st Report: The EU/US Passenger Name Record (PNR) Agreement | Government Response printed in this Report |
| 22nd Report: Modernising European Union Labour Law: has the UK anything to gain? | Both Government and Commission response printed in this Report |
| 23rd Report: The Commission's Annual Policy Strategy for 2008 | Both Government and Commission response printed in this Report |
| 24th Report: Further Enlargement of the EU: follow-up report | No Response Required |
| 25th Report: Proposal to Establish the European Institute of Technology | Both Government and Commission response printed in this Report |
| 26th Report: The EU and the Middle East Peace Process | Government Response printed in this Report |
| 27th Report: Water Framework Directive: making it work | Government response due 19 September 2007 - awaited |
| 28th Report: Evidence from the Minister for European on the June European Council and the 2007 Inter-Governmental Conference | No Response Required |
| 29th Report: Evidence from the Ambassador of Portugal on the Priorities of the Portuguese Presidency | No Response Required |
| 30th Report: European Wine: a better deal for all | Response to 39th Report - see below |
| 31st Report: European Supervision Order | Both Government and Commission response printed in this Report |
| 32nd Report: Current Developments in European Foreign Policy: Kosovo | No Response Required |
| 33rd Report: The 2008 EC Budget | Government Response printed in this Report |
| 34th Report: Current Developments in European Defence Policy | No Response Required |
| 35th Report: EU Reform Treaty: work in progress | Government Response printed in this Report |
| 36th Report: Annual Report 2007 | Government Response printed in this Report |
| 37th Report: Remaining Government Responses Session 2004-05, Government Responses Session 2005-06 | No Response Required |
| 38th Report: Current Developments in European Foreign Policy | No Response Required |
| 39th Report: European Wine: a better deal for all: final report | Both Government and Commission response printed in this Report |

| Reports | | Where the Responses to these Reports can be found |
|--|--|--|
| 40th Report: Correspondence with Ministers - January – September 2006 | | No Response Required |

Part I: Government Responses

3RD REPORT: TELEVISION WITHOUT FRONTIERS

Letter from Shaun Woodward MP, Minister for Creative Industries and Tourism, Department for Culture, Media and Sport to the Chairman

I am pleased to enclose the Government's response to the EU Select Committee's report on the Commission's proposal to amend the EU's *Television Without Frontiers* Directive.

I was very pleased to have the opportunity to explain to members of the Committee, in both written and oral evidence, the Government's thinking on the proposal; and I am delighted to see that the Committee and the Government are substantially in agreement on the issues arising from it.

I and my officials stand ready to assist the Committee in its further consideration of this important issue.

29 March 2007

GOVERNMENT RESPONSE

The Government welcomes the Committee's report. In view of the importance of the Directive and the issues it raises, and the discussions currently in progress in the Council, the report is a timely contribution to the debate about the future of regulation in the broadcasting and new media sectors.

Our responses to the specific conclusions and recommendations of the Committee are set out below. We particularly welcome the Committee's support for the reduced scope of the revised proposal, and its strong support for the Government's stance on the Country of Origin principle.

We stand ready to provide such further information as the Committee and the House require to proceed with their scrutiny of the proposal.

THE CONCLUSIONS AND RECOMMENDATIONS OF THE COMMITTEE

The scope of the proposal

We recognise that changes have taken place in the sector, and are continuing to take place, and we accept, as do all those that gave evidence, that reform of the regime is needed. The witnesses also generally supported the view that now is a good time to be reassessing the existing regulation. (Para 53)

The Government agrees that the existing Directive requires revision in order to reflect developments and progress in the broadcasting sector.

We share the concern of witnesses about the proliferation of multiple and overlapping regulatory schemes. We call upon the Commission to work to make the regulatory boundaries as clear as possible for business and to enhance legal certainty. (Para 58)

The Government shares the concern of the Committee and other witnesses about the number of different regulatory schemes which could potentially apply to some audiovisual media services. We are working to ensure that the regulatory framework is as clear and straightforward as possible.

We agree that the original scope of the proposal was too broad and ill-defined to operate without risk of great harm to new media businesses. We welcome the reduction in scope in the revised proposal. (Para 69)

The Government welcomes the Committee's support for the reduction in scope from the Commission's original proposal. This change resulted from a proposal by the United Kingdom. While the Government would prefer not to extend the scope of the Directive beyond television broadcasting (as in the existing Directive), we recognise that most other Member States support at least a limited extension to on-line services which provide content similar to television broadcasting. We believe that the proposal as it now stands (as outlined in paragraphs 70–74 of the report) represents an acceptable way forward.

We welcome the apparent intention to exclude entirely electronic versions of newspapers and magazines but believe that in a rapidly changing communications world, the above distinction may well prove difficult to make in practice. (Para 75)

The implementation and enforcement of this Directive, particularly when many of the services covered are “a moving target”, may be fraught with difficulties in the absence of sufficient legal certainty over its exact scope as the range of new media services continues to develop and expand. (Para 76)

The Government recognises that there may be some difficulties in determining whether certain services fall within the scope of the Directive, and that the continuing development of new media services is likely to raise questions about its implementation and enforcement. This was an important consideration in our case against extending the scope of the Directive. We are working to ensure that the definitions in the Directive are as clear as possible so as to provide as much certainty as possible about whether or not any particular service is within the scope of the Directive.

It would seem more sensible to seek to liberalise the provisions on advertising for established broadcasters, as discussed below, than to seek to extend similar provisions to the new media services. (Para 80)

The Government agrees that EU rules on television advertising should be liberalised. We consider that it would be impractical to attempt to extend similar provisions to new three media services, and neither the Commission, nor the European Parliament nor the Council of Ministers has proposed doing so.

In our view, it is neither the role of regulation nor the role of any regulator to protect those with established market positions from threats by new market entrants operating under different business models. (para 81)

The Government agrees with this view.

We are concerned that the identification of some media services as “television-like” may lead some to conclude that eventually “like-services” should be regulated in a “likemanner”, ie a perfectly “level playing field” (Para 82).

If these services are to be included at all we agree that they must be regulated differently, but the wording and definitions in the latest versions of the text may encourage the idea that they can and should be regulated in the same way as television. We would consider such a move now or in the future to be a grave error. (Para 83)

The Government believes that a lesser degree of regulation is appropriate for on-demand services, where people can exercise greater choice and control over the content they view. We recognise the risk of greater regulation of such services to bring them more into line with the regulation of television broadcasting. We will continue to argue against such a move.

Given the practical difficulties in defining, regulating and enforcing a Directive based on “television-like” services, we believe that any further incursion into the internet and other new media services will be fraught with even greater difficulties and is unnecessary in order to secure a single internal market. (Para 85)

The Government believes that existing EU legislation on the internet and other new media services delivers adequate regulation at the European level. As noted above, we would have preferred not to extend the scope of this Directive beyond the current television broadcasting. We can accept the proposed extension to cover new media services which provide content similar to television broadcasting, but we do not believe that any further regulation is either necessary or desirable.

The Country of Origin principle

We share the considerable concern of the majority of our witnesses over the apparent dilution of the Country of Origin principle. We understand that the opposition to the principle has gained momentum in many quarters of the European Union, but view this as an obstacle to the consolidation of the internal market. (Para 108)

We hope that the proposed monitoring system will work effectively to prevent Member States from obstructing audiovisual media service providers for any grounds other than those strict public interest grounds set out. (Para 109)

The Government welcomes the Committee’s strong support for the Country of Origin principle. We have made it clear to our EU counterparts that we cannot agree to any proposals which would undermine the principle. The current proposals, (outlined in paragraphs 98–103 of the report) which introduce new procedures for Member States who are concerned about the content of television broadcasts received from other Member States, are at the limit of what we can accept.

Quantitative rules on advertising

We are unconvinced by the case made for any of the proposed quantitative rules on advertising. We believe that in an increasingly competitive environment, consumers will be able to influence for themselves the volume of advertising which they find acceptable. (Para 125)

The Government believes that the quantitative rules on advertising should be liberalised, and agrees with the Committee that consumers themselves are the best regulators in this matter. We therefore support the Commission's proposal to remove the daily limit on the amount of advertising a television channel is allowed to carry and attempts to simplify and rationalise the rules governing the insertion of advertising within and between programmes.

We are concerned about the likely implications for free to air programming, particularly children's programming, of the proposed 30-minute rule. (Para 126)

The Government shares the Committee's concern.

Content rules

There was general acceptance that current qualitative advertising rules were satisfactory and did not require reform. We agree with this view. (Para 130)

The Government agrees that the qualitative advertising rules in the *Television Without Frontiers* Directive do not need reform and welcomes the fact that only minor modifications are currently proposed to them.

As there was little appetite for quotas to be imposed, we are pleased that the revised text leaves it to Member States to define where action is needed to promote European and independent works, and where such action is practical. (Para 132)

We also support the "lighter touch" on quotas for on-demand services, where the imposition of quotas would have placed unreasonable burdens on operators. (Para 133)

The Government agrees that decisions on when and how to promote European and independent works are best left to Member States. We also agree that imposing quotas on on-demand services would be both impractical and unreasonable.

We believe that concerns over harmful and illegal content, particularly as they relate to children, remain valid and paramount. (Para 135)

The Government agrees that protecting people, particularly children, from harmful and illegal content is of the utmost importance. However, we believe that effective self-regulation, such as the successful Internet Watch Foundation, combined with access controls, such as pin numbers and passwords, and improved media literacy are the best way to protect people from such content.

We are persuaded that the rules on harmful and illegal content will not pose a significant threat to freedom of speech in the United Kingdom, particularly in light of the reduced scope of the Directive. (Para 141)

The Government agrees that the rules set out in the current proposals from the Council and the European Parliament do not pose a threat to freedom of speech in the United Kingdom.

Product placement

We fully understand that were product placement to be permitted, there would be concerns about the danger of it interfering with editorial content. (Para 156)

The Government recognises this risk and fully supports proposed provisions in the revised Directive which would prohibit product placement in situations where it could be perceived as influencing the editorial content.

At the moment, product placement is only a very small part of advertising revenue. The figures appear to show that television advertising is currently stable, thus product placement cannot be considered necessary to the viability of television companies. If this were to change in the future, we believe the issue of product placement must be revisited. (Para 157)

The Government agrees that it will be important to keep product placement under review, in terms both of its possible contribution to the revenues of programme-makers and media service providers, and of the way in which the provisions regulating product placement in the revised Directive will operate.

Self-regulation

We strongly welcome the inclusion of co- and self-regulation in the body of the revised text, and hope that it will allow such regimes to continue to flourish in the United Kingdom and other Member States where they already operate. (Para 168)

We are persuaded that self-regulation is the best means of operation in principle, especially for rapidly developing technological markets such as broadcasting. (Para 169)

The Government welcomes the Committee's strong support for co-and self-regulation and agrees that self-regulation is to be preferred as a means of regulating the broadcasting and new media sectors. The Government's objective in negotiating the text of the revised Directive is to ensure that co- and self-regulation can be used to implement and enforce the Directive and that, wherever possible, existing co- and self-regulatory regimes are able to continue.

Impact Assessment

We accept the Commission's argument that there are practical difficulties in quantifying how many companies will be affected by this Directive, partly because the proposal is designed to regulate according to the type of service, rather than the type of provider. (Para 177)

We do however believe that it is possible to obtain cost estimates in respect of specific provisions within the proposal. As an example, the quantitative rules governing the timing of advertising slots, the so-called "35- (now 30-) minute rule", has direct measurable consequences in terms of a reduction in the amount of revenue that can be expected to be obtained by broadcasters. (Para 178)

Many of our witnesses, particularly those representing new media service providers, felt that the Commission's impact assessment failed to give appropriate weight to the impact of regulation on a rapidly evolving and expanding media services sector with fundamentally different business models from traditional television broadcasters. We recommend to the Commission that they discuss this difference of opinion with new media service providers as soon as is practicable. (Para 179)

It is a matter of some concern to us that no impact assessment will be carried out on the revised proposals. Currently neither the Council nor the European Parliament have either the obligation or the resources to carry out an impact assessment, nor does the Commission after its initial proposal. With the scope and regulatory burden for non-linear services very significantly altered from the original proposal, we call for a further impact assessment to be made.

The Government agrees that a more detailed impact assessment at EU level would be desirable, in view of the significant changes to the proposal which the Council and the European Parliament have proposed. The Government has kept in close contact with stakeholders in the United Kingdom in order to try to assess the impact of the proposals on UK businesses, and has encouraged stakeholders to speak directly to the Commission, where appropriate, and to work with their counterparts in other Member States to ensure that their views are heard in the EU institutions. The Government will produce a full impact assessment of its eventual proposals to implement the revised Directive in the United Kingdom.

5TH REPORT: AFTER HEILIGENDAMM: DOORS AJAR AT STRATFORD-UPON-AVON**Letter from Meg Hillier MP, Parliamentary Under Secretary of State, Home Office to the Chairman**

I am writing in response to your report *After Heiligendamm: doors ajar at Stratford-upon-Avon* and your letter dated 7 June 2007 on the Ministerial meeting of the G6 held in Venice on 11-12 May. I apologise for the delay in responding to the issues raised.

The attached paper offers the Government's response to the conclusions and recommendations in the Committee's report. I understand that the Committee also remains concerned about the fact that the previous Home Secretary did not give evidence to the Committee following the meeting in Stratford, as he had previously undertaken to do.

I believe the previous Home Secretary set out his reasons for being unable to attend the Committee in person in some detail. As he underlined in his letter of 20 December 2006, it was thought that Ministerial attendance before the Committee (by Joan Ryan on 28 June 2006), coupled with the further information provided in his letter, would be sufficient in answering any further queries you may have had.

You wrote to us more recently on 7 June 2007 setting out some further concerns regarding the G6 meeting held in Venice and the way in which that meeting was reported. In light of this, I agree that we will in future report each Ministerial meeting of the G6 with a Ministerial statement to Parliament, starting with a report of the meeting planned for 17-18 October in Poland.

As you may be aware, Poland has now taken over the Presidency of the G6 and at its meeting next week has invited G6 members to discuss the following topics:

- *Migration*: where the Government has welcomed the chance to discuss the challenges that the growth in migration presents for the G6 countries and the need to cooperate on migration with third countries.
- *Future of the Area of Freedom, Justice and Security including communication with Parliaments*: where the Government has stressed to the Presidency the need to focus on practical cooperation between the G6 countries and to avoid discussions of institutional issues which are best left to EU Member States in the JHA Council.
- *Combating terrorism and Cooperation within the framework of the EU civil mission in Afghanistan*: The Government has welcomed the chance to continue discussions with G6 partners on the use of deportation in relation to terrorists/terrorist suspects as a means of protecting people from foreign nationals believed to pose a threat to national security, while adhering to international human rights obligations. On the EU police mission, the Government has made clear that supporting police reform is a crucial plank of our strategy in Afghanistan; the EU policing mission is a key element of that reform.
- *External dimension of JHA area*: The Government has suggested a focus on the building of bilateral relationships and encouraging partners to increase capacity in the judiciary and law enforcement agencies to help tackle drug production/trafficking, financial, immigration and other organised crime, whilst again stressing the need to avoid duplication of effort by other international partners.

16 October 2007

GOVERNMENT RESPONSE

29. We believe that there has been some improvement in the readiness of the Home Office to publicise the conclusions of G6 meetings, and we hope that they will do better in future. We look forward to seeing the conclusions of the next meeting to be held under Italian chairmanship. But we do not regard the publication of the conclusions of the meeting on a website, even if complete, as an adequate substitute for a written ministerial statement.

The Government accepts the Committee's recommendation and undertakes to provide a written Ministerial statement reporting the outcome of each Ministerial meeting of the G6 to Parliament. The Government will also continue with its practice of publishing the conclusions of each meeting, as it did following the most recent G6 meeting in Venice.

30. Where G6 ministers have agreed policies which they would like to see adopted, they should adhere to the rule which, according to the Conclusions, they already follow: they should inform other Member States and the Commission of their discussions fully and in good time for them to be carefully considered, before making formal proposals for negotiation by all Member States in the appropriate EU fora. We expect United Kingdom ministers to urge this on their G6 colleagues at future meetings.

The main purpose of the G6 is to allow the six countries involved to discuss, in an informal environment, how they can work together to tackle at a practical level issues of common concern. However, there are occasions when these discussions inevitably involve issues of wider concern to EU Member States or touch on matters also under consideration in the JHA Council. We therefore ensure that other EU Member States and the Commission are fully informed of the discussions that take place in this forum. Indeed, Franco Frattini, Commission Vice-President, attended part of the meeting in Venice in May and the conclusions were made available to other Member States as they have been before. The Government will continue to apply these approach and ask other G6 members to do the same.

As the Committee will be aware, the G6 cannot agree anything binding on other Member States and any initiative to emerge from the G6 in which we would want other Member States to be involved would in all likelihood require a formal proposal with all that would subsequently entail in terms of negotiations in the Council and scrutiny by the European and national parliaments.

31. We have expressed the hope that negotiations on the Data Protection Framework Decision will achieve an overarching third pillar instrument providing strong safeguards for the protection of personal data used for law enforcement purposes. We are concerned that recent negotiations have lessened that protection. We look forward to hearing from ministers what the Government propose to do to reverse this.

The Committee will wish to note the progress made at the JHA Council in September on the draft Data Protection Framework Decision. The Portuguese Presidency is making strenuous efforts to secure a final agreement on the text before the end of the year. The Portuguese Presidency is working in close liaison with officials from the Ministry of Justice. At the September JHA Council Ministers agreed Presidency proposals on two key elements of the Data Protection Framework Decision, limiting its application to cross-border transfers and setting the conditions for data transfer to third countries. The Ministry of Justice will be writing to you shortly to update you on the progress of negotiations.

Letter from the Chairman to Meg Hillier MP

Thank you for your letter of 16 October 2007 with which you enclosed the Government's response to this report. It was considered by Sub-Committee F (Home Affairs) of the Select Committee on the European Union at a meeting on 14 November 2007.

The first point we note is that the response was received almost eight months after the report was published. Cabinet Office guidelines require responses to reports to be provided within two months of publication. This was a brief report, and we cannot understand the reason for the delay. A response which should have reached us before the G6 meeting in Venice in May was sent the day before the meeting in Sopot in October, and reached us after that meeting.

As you know, in reports and correspondence over the last 18 months we have been recommending greater transparency for meetings of the interior ministers of the G6. We were therefore very glad to receive your undertaking that future such meetings would, as we had asked, be the subject of written ministerial statements. We were pleased to see on 30 October a statement about the meeting held in Sopot on 17-18 October, and likewise pleased that the Conclusions of that meeting were deposited in the Library of the House. We are grateful for your assurances that this will also be done for future G6 meetings.

This report, and the earlier report on the Heiligendamm meeting in March 2006, were both critical of the conclusions reached on the draft Data Protection Framework Decision, and the apparent lessening of data protection in third pillar matters. You state that the Portuguese Presidency is making strenuous efforts to agree a final text before the end of the year. You will be aware that a general approach to a Framework Decision was in fact adopted by the Council on 12 November before a final text could be deposited for the Sub-Committee to consider. We are in touch with the Ministry of Justice about this scrutiny override.

There remains the issue of the failure by the former Home Secretary to give oral evidence to the Sub-Committee about the Stratford-upon-Avon meeting, as he had undertaken to do, an undertaking which Joan Ryan MP repeated both orally and in writing.

We do not agree with you when you say: "I believe that the previous Home Secretary set out the reasons for his being unable to attend the Committee in some detail." The only reason he gave in his letter of 20 December 2006 (printed in appendix 4 of the report) is that his diary commitments were already onerous. This of course we had anticipated; we offered him a number of dates over a space of six weeks.

You then say: "it was thought that Ministerial attendance before the Committee (by Joan Ryan on 28 June 2006), coupled with the further information provided in his letter, would be sufficient in answering any further queries you may have had." We have already explained in paragraph 12 of the report that neither Joan Ryan nor anyone else could give oral evidence to us in June 2006 about a meeting which only took place four months later. Such information as the then Home Secretary gave in his subsequent letter was no substitute for oral evidence.

We do not wish to labour the point. It is now over a year since the Stratford-upon-Avon meeting, and neither Dr Reid nor Joan Ryan now holds ministerial office at the Home Office. We simply remain perplexed at the reasons you continue to give for this failure.

16 November 2007

7TH REPORT: THE COMMISSION'S 2007 LEGISLATIVE AND WORK PROGRAMME

Letter from Jim Murphy MP, Minister for Europe, Foreign and Commonwealth Office to the Chairman

Thank you for the copy of your report on the European Commission's 2007 Legislative and Work Programme (CLWP). I regret that this response is delayed well beyond the Government commitment to respond to reports within two months. Unusually, no government department gave evidence for this inquiry, and no department was specifically alerted to the requirement for a response until recently.

The Government welcomes the quality of analysis and expertise, reflected in this report, that the Committee contributes on European issues. I read your report with interest and welcome your conclusions.

I note that you welcome the sections in the CLWP that relate to Better Regulation. For its part, the Government also welcomes the Commission's ongoing work on Better Regulation.

I note too that you have identified potential subsidiarity concerns. I welcome your undertaking to pay careful attention to the balance between these concerns and any advantages of EU action. You are correct to identify in your conclusions that any such subsidiarity concerns can only be properly examined when full legislative proposals are published.

15 January 2008

9TH REPORT: SCHENGEN INFORMATION SYSTEM II (SIS II)

Letter from Joan Ryan MP, Parliamentary Under Secretary of State, Home Office to the Chairman

I am writing in response to the European Union Committee's 9th Report of Session 2006–07, entitled *Schengen Information System II (SIS II)*.

The Government welcomes this report and is pleased that the Committee broadly shares our view of the importance of the SIS II and of the benefits it will bring to the UK's law enforcement agencies in their fight against crossborder crime.

The attached response details the Government's reactions to the recommendations made by the Committee on a point-by-point basis. I feel it is also appropriate to raise here an issue which has recently emerged in relation to the implementation of SIS II in the UK. In giving evidence to the Committee on 29 November last year I was asked if the government had a firm view as to whether or not legislation would be required to implement SIS II in the UK. I stated that my officials had consulted widely during negotiations and that we were satisfied that no further legislation was required.

As part of our ongoing process of consultation with other government departments and stakeholders, further work has revealed that we may in fact require legislation in order to implement SIS II. Officials engaged in this work are exploring possible legislative requirements as a matter of priority. I will provide further information to the Committee in due course.

26 April 2007

GOVERNMENT RESPONSE

152. The United Kingdom is not a Schengen State and will not become one in the foreseeable future. But the Schengen Information System, and its development into a second generation system, are matters of the highest relevance to this country.

153. We believe this is well understood by the police, the prosecuting authorities, and all those involved in the combating of serious cross-border crime. They appreciate the benefits to be derived from this country's participation in the information system - benefits not just for this country, but for all the States with which we can share our information.

154. We are less sure that this is fully understood by the Government. They are content not to participate in the current SIS, and likewise content that the United Kingdom should be one of the last countries to participate in SIS II. We find this hard to reconcile with their stated commitment to fighting crossborder crime.

The Government is fully committed to fighting cross-border crime and to delivering the UK's SIS II connection as soon as possible. The Government is equally committed to managing good projects. In light of the lessons from SIS I we are proceeding with a robust and carefully planned Programme, which will deliver a system to give maximum benefits to all law enforcement agencies.

Background-the development of the Schengen database

155. Ministers should put more resources into the development of the national connection to SIS II. Whenever the central system is ready, the United Kingdom should be ready and able to participate as early and as fully as possible. (paragraph 30)

The Government agrees that a national connection to SIS II should be developed to enable full connection as early as possible, and we welcome the Committee's acknowledgement of the importance of the SIS II programme. The Government will provide the necessary resources to deliver connection to SIS II and to ensure that our law enforcement and criminal justice agencies are properly prepared to make full use of the system when it is implemented.

156. A project of this importance and magnitude needs to be developed openly and publicly. It potentially affects not just EU citizens, but also hundreds of thousands of non-EU citizens who may wish to travel to or reside in the EU. Information must be readily available, not just to EU institutions and national experts, but to all those affected. (paragraph 38)

The Government agrees that it is important that all those who will be affected by SIS II should be able to access information about the system. We therefore welcome the requirement in the SIS II legal instruments which obliges the Commission, working together with the national supervisory authorities and the European Data Protection Supervisor, to conduct an information campaign about SIS II when it is launched. Member states are also required to ensure that their citizens are properly informed about SIS II.

157. It is unacceptable for a project with such cost and resource implications to be developed without a prior full impact assessment, and a full legislative explanatory memorandum. (paragraph 39)

The Government would agree that proposals for new projects should be accompanied by a full impact assessment. As the Committee notes, impact assessments will be carried out prior to the implementation of any new SIS II functions of considerable importance, such as the setting up of a Management Authority, and we welcome this progress. The Commission report which will be produced ahead of the introduction of the use of fingerprints for identification purposes should also be seen as a step towards greater transparency.

158. The Government should press for greater transparency in the future development of the project, including the award of contracts. (paragraph 40)

The Government welcomes this recommendation, and has pressed the Commission to be more open in its development of this project.

159. The lack of transparency in Council proceedings, and in co-decision negotiations between the Council and the European Parliament, is an issue relevant to all areas of EU policy-making, and has been particularly noticeable in the negotiations on the SIS II legislation. The Government should press the EU institutions to ensure greater openness and transparency of their proceedings, and in particular to codify the procedures for co-decision negotiations. All drafts of legislation should as a general rule be published immediately. (paragraph 49)

The UK supports greater transparency in the EU as our Presidency demonstrated—agreeing to open up the Council much more than ever before. Member States also agreed in December 2005 to “assess the functioning of these measures” during the Austrian and Finnish Presidencies.

The June 2006 European Council agreed an “overall policy on transparency”, the main effect of which was to open up to the public all deliberations on co-decided legislation. After we raised our concerns about moving too far, too fast we secured agreement to a review of these measures after six months, to assess the “impact on the effectiveness of the Council’s work”.

The Finnish Presidency conducted the review (in December 2006) in a serious way and made real efforts to meet our concerns. Their report pointed out that the new arrangements had only been in place five months (including in August) and that therefore it was difficult to lay down definitive conclusions about how the rules are working. For this reason, the Finns have agreed with the Portuguese that there will be a further review in December 2007.

160. To facilitate public debate on SIS II and to ensure effective Parliamentary scrutiny of United Kingdom participation in the project, the Government should undertake to publish regular reports on our preparation for SIS II, and on the planned and actual impact on the United Kingdom. (paragraph 52)

The Government does not believe it is appropriate to provide regular updates on our preparation for SIS II, as sufficient channels already exist for interested parties to seek updates on progress. The effort of producing a regular update would mean that resources would have to be diverted from work on delivering the programme successfully. However, the Government will produce a report prior to the UK connection to SIS II, explaining the preparations that have been made to support a successful implementation.

How the system works in practice

161. The SIS II legislation permits the use of one-to-many searches only once the Commission reports that the relevant technology is available and ready. The Government must press for:

- The Commission report to be drawn up on the basis of the opinion of independent experts;
- The certification by the Commission that the technology is ready, sufficiently accurate and reliable;
- The report to be adopted by unanimous vote of the Council after consultation with the European Parliament.

The Government must deposit the Commission report for scrutiny, and the views of Parliament must be taken into account. (paragraph 61)

The Committee is correct to note that identification using fingerprints will only be possible once the Commission has produced its report. The use of one-to-many searching for other categories of data (except photographs) will be possible as soon as the system is introduced.

We will take a keen interest in the production of the Commission's report and will offer UK expertise and assistance where this is possible. The legislation clearly states that the European Parliament shall be consulted on the report. We will inform the UK Parliament when the report is published and will seek to ensure that their views are taken into account.

162. Full and clear statistics must be published at regular intervals, and should include:

- The number and type of alerts per Member State;
- The number and type of hits per Member State;
- The use of the SIRENE system for each type of supplementary information exchanged by each Member State; and
- Actions taken following a hit for each type of hit and for each Member State. (paragraph 68)

Article 66(3) of the SIS II Decision and Article 50(3) of the Regulation require that the Management Authority shall publish the following statistics on a yearly basis, in total and for each Member State:

- Number of records per category of alert;
- The number of hits per category of alert; and
- How many times SIS II was accessed.

The SIS II legislation does not require the collection of data on actions taken following a hit. The Government considers that the reporting burden created by a requirement to gather statistics on action taken following every hit would be considerable, and as such we do not agree that there is a need to change the requirement.

With regard to the monitoring of the exchange of supplementary information, the Management Authority will be required to produce, two years after SIS II is brought into operation and every two years thereafter, a report on the technical functioning of C SIS and the Communication Infrastructure. This report is required to cover the bilateral and multilateral exchange of supplementary information between Member States. The report shall be transmitted to the European Parliament and the Council.

In addition, the Commission will be required to produce a regular overall evaluation covering the exchange of supplementary information. This overall evaluation will be produced three years after SIS II enters into operation and every four years thereafter.

The Government is content that this requirement will provide sufficient supervision of the exchange of supplementary information.

163. There must be harmonisation of statistics to ensure consistency and comparability between EU and national statistics on SIS II relating to extradition requests, visa refusals, refusals of entry at the border and refusals to grant or renew residence permits. (paragraph 69)

The Government agrees that, where there is already a requirement for statistics on SIS II to be produced, it would be desirable for there to be harmonisation of EU and national statistics. As the Committee is aware, however, we would have to agree any such step with both the Commission and the other Member States. The value of any statistics will depend upon their consistency and comparability. The UK will press for and support any necessary work to achieve. We will raise this issue at the appropriate working group, and put forward the Committee's suggestion that Eurostat should carry out this function.

164. We welcome the procedural harmonisation concerning immigration alerts contained in the legislation, but there should also be harmonisation of the substantive rules for listing a person. There should be a requirement to publish in the Official Journal a summary of the different national laws and practices concerning the creation of an immigration alert. (paragraph 71)

165. The forthcoming review of the grounds for listing an immigration alert should also examine how well the right to appeal is secured in practice, and whether there is a need to address the timing of the right to appeal, and its link with the right to information. (paragraph 72)

We welcome the Committee's recommendations in this area. As the UK is not participating in the SIS II Regulation, which sets out the conditions for entering immigration alerts, we have a limited scope to influence the Commission and other Member States in their actions in this area. However, we will seek to ensure that the Committee's recommendations are heeded when the forthcoming review takes place.

166. The United Kingdom is particularly affected by the application of the current SIS, and SIS II, to the family members of EU citizens. A British family which includes a third-country national subject to a SIS or SIS II alert will not be able in practice to travel to the Schengen area. This is justified if the third country national has committed crimes sufficiently serious to justify exclusion under EC free movement law, but not otherwise. The application of SIS and SIS II rules needs to be monitored closely to ensure that they are being correctly applied. (paragraph 76)

As set out in the Committee's Report, the application of SIS alerts in relation to third country national family members of EU citizens was considered by the European Court of Justice in *Commission v Spain* C-503/03. The Court ruled that the right of such a family member to move around the Union with an EU citizen could only be derogated from on the ground that the family member constituted a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society, as set out in the free movement legislation—now Directive 2004/38. Such a family member could not be prevented from entering a Member State on the sole ground that he or she was covered by an alert entered into SIS.

In the light of this ruling, and of Article 25 of the SIS II Regulation which was inserted to cover this situation, the Government considers that the rights of third country national family members of a UK citizen wishing to accompany the UK citizen to a Schengen Member State should be protected. We agree with the Committee, however, that it is important that these rules are correctly applied.

167. The Home Office should start planning for the inevitable increase in the resources needed by the Crown Prosecution Service. The resources should be agreed in sufficient time so that the effectiveness of the Crown Prosecution Service in issuing and executing extradition requests and European Arrest Warrants is not reduced. (paragraph 78)

We welcome the Committee's interest in the important task of planning for the business changes which will come about when SIS II goes live. The Government expects that the introduction of SIS II will lead to efficiencies in some areas, as well as requiring increased resources in others. In order to understand the impact this will have on their work the Home Office will be engaging with the Crown Prosecution Service this year, along with a number of other stakeholders who will be affected by the growth in arrests and extraditions expected to follow the implementation of SIS II.

Management of the system

168. The Government should press for the establishment as soon as possible of a dedicated Management Authority for the Central SIS II. The legislation setting it up must provide for:

- the Authority to have the required technical expertise in overseeing and operating large-scale information systems;
- the Authority to be required to publish full and clear statistics at regular intervals;
- the Authority to be subject to effective scrutiny, including by the Court of Auditors;
- clear differentiation between the tasks which remain the responsibility of the Commission, and those delegated to the Authority; and
- clear lines of accountability. (paragraph 88)

The Government welcomes the Committee's recommendations in this area; they will be useful when we come to detailed discussions on setting up a dedicated Management Authority for SIS II. We are awaiting the outcome of the European Commission's formal Impact Assessment, containing a substantive analysis of the options for setting up the authority. We would not wish to pre-empt the outcome of that analysis, but we will consider the Committee's recommendations carefully at the appropriate time.

169. The Government should ensure that individuals affected by the actions of the Management Authority are not left without an effective recourse to justice. (paragraph 90)

Again the Government welcomes this recommendation; we will seek to ensure that this is not the case, whichever form the Management Authority takes.

Access to data

170. In order to ensure accountability, we believe that all Member States should report on the circumstances in which they will allow further processing of SIS II data, and when they will permit other Member States to process further SIS II data which they have entered. (paragraph 95).

Further processing of any SIS II data must be lawful and within the rules set out in the SIS II Decision. Article 46(5) of the SIS II Decision states that prior consent must be obtained from the Member State issuing the alert before any further processing may take place. In addition, further processing must be linked to a specific case and justified “by the need to prevent an imminent serious threat to public policy and public security, on grounds of national security or for the purposes of preventing a serious criminal offence”. These are the only circumstances under which further processing of SIS II data may take place.

171. We welcome the provision requiring the publication of information on which authorities have access to SIS II data, and for what purposes. There is no reason why such information could not be published already in respect of access to data held in the current SIS. (paragraph 99)

As the Committee is aware the UK is not currently connected to SIS I, and we therefore have a limited ability to persuade our European partners to publish this information. We will however raise this point in the appropriate forum.

172. The Government should now publish:

- the list of those authorities which will have access SIS II data;
- the purposes for which they will have access;
- the list of those authorities which will be able to input data into SIS II; and
- the circumstances in which they will be able to do so. (paragraph 100)

The Government will be required to publish a list of those authorities which will have access to search SIS II, as the Committee notes. We have no objection in principle to publishing these details.

However SIS II is still in development stage and the exact list of authorities who will access SIS II and the means by which they will access the system has yet to be finalised. In order to avoid confusion, we do not intend to publish an exhaustive list of those authorities which will access SIS II until this has been finalised. Authorities which will have access will include police forces, the Serious Organised Crime Agency and the Border and Immigration Agency. All SIS II access will of course be in line with the strict limitations set out in the legal instruments.

173. Access to SIS II data (or data in the current SIS) by asylum authorities, to determine responsibility for an asylum application or to decide on the merits of an application, must be subject to detailed safeguards ensuring a full exchange of relevant information following a hit. It is not enough simply to note that there is an alert against a person. (paragraph 106)

In the UK asylum claims are determined on a case by case basis considering all available information. Consequently, no asylum claim would be determined solely on the basis of whether or not the individual was subject to an alert on SIS or SIS II. All asylum decision in the UK are subject to a right of appeal before an Immigration Judge. If information of an alert formed part of the information available to the UK asylum authorities then we agree that it would have to be clarified by detail of the reasons for the alert in order to be used.

174. Europol should indicate in its annual reports how often it has accessed SIS data, and what use has been made of that data. (paragraph 110)

This information should be held as part of Europol’s Management Information Systems data. We will ensure that this issue is raised with them.

Data protection and data processing rules

The Government considers the data protection measures in SIS II to be robust, specific to and appropriate for the highly specialised nature of the database.

It is the Government’s expectation that the data protection measures in SIS II will not contradict the Data Protection Framework Decision (DPFD), although the DPFD is still in draft. The DPFD will set overarching minimum standards of data protection across the whole of the third pillar, which will be supplemented by the more specific data protection provisions in SIS II. Where the rules in SIS II are stricter we would expect them to prevail over those in the DPFD.

175. We agree with our witnesses that the data protection regime applicable to the SIS II rules is unduly complex. There are several third pillar instruments in force or in the course of preparation which have data protection provisions which are similar to but not identical with those in chapter XII of the Decision. (paragraph 119)

The Government does not agree that the data protection rules in the SIS II Decision are unduly complex. The bespoke data protection rules for SIS II are necessary to ensure an appropriate level of data protection, bearing in mind the highly specific functionality of the SIS II database.

Other third pillar instruments do contain different data protection rules. This is sometimes simply because the data protection provisions have been negotiated at different points in time but, more importantly, because the provisions are tailored to fit the bespoke nature of the various instruments and the often highly specialised data they contain. The Government believes the DPF, once agreed, will help to ensure consistency of approach across the third pillar in establishing a clear, legally binding minimum standard of data protection, above which bespoke provisions will apply to specific instruments.

176. The third pillar Data Protection Framework Decision should prescribe exactly which data protection rules are applicable, and which are to prevail where there is a conflict. The Government should press the Council to achieve effective harmonisation of data protection rules in the Framework Decision, and ensure that it sets a sufficiently ambitious data protection standard. (paragraph 120)

The aim of the DPF is to set minimum standards of data protection in the third pillar. The intention is that other third pillar legislation observe these minimum standards but may also impose higher data protection standards dependent on the specific nature of the instrument.

The ongoing negotiations on the DPF include discussions about the relationship between the DPF and other third pillar instruments. It is difficult to give a definitive view of the Council position on this at present, as we are not yet sure what the final DPF text will look like. However, our understanding is that in the case of a conflict the higher standard of data protection would apply. In most cases the higher standard would come from the more specific provisions in third pillar instruments, such as SIS II, rather than the more general provisions in the DPF.

The Government has always supported the DPF in principle. We want to ensure that the provisions strike the right balance between providing an appropriate level of data protection and ensuring that law enforcement agencies can share data effectively in the fight against crime.

177. Given that the Data Protection Framework Decision would apply to SIS II, it is not appropriate to implement SIS II until the Framework Decision has been adopted and is being implemented. The Government should seek to have this Framework Decision adopted by the summer of 2007. (paragraph 124)

The Presidency circulated a revised DPF text on 14 March which was discussed at Working Group level on 29 and 30 March and 3 April. However, due to the diverging positions of Member States on the DPF it would appear unlikely that an agreement will be reached by the summer of 2007. The Government would welcome agreement on a DPF text as soon as possible but we need to ensure that its provisions do not prevent UK stakeholders from fulfilling their duties, including statutory functions, in an effective and efficient manner.

The Government is keen to have access to SIS II as soon as possible as it will be a useful tool in the fight against serious crime. However, if SIS II is implemented before the DPF is in place, the Council of Europe Convention on the automatic processing of personal data (Convention 108) will apply to SIS II as will article 8 of the European Convention on Human Rights, which requires public authorities to protect people's privacy rights. Convention 108 currently provides general data protection provisions for third pillar business. The DPF will provide more detailed provisions and, once implemented, will replace Convention 108 in relation to the SIS II Decision.

178. Because of its importance for civil liberties, the Framework Decision should be negotiated with the maximum degree of transparency and involvement of data protection authorities at national and European level. (paragraph 125)

Data Protection authorities at national and European level are indeed involved in the negotiations on the Framework Decision. The European Data Protection Supervisor (EDPS) has issued two opinions on the Framework Decision and we would expect a further opinion on the new draft of the Framework Decision. National supervisory authorities feed in to the work of the EDPS.

The UK Government has a good working relationship with the Information Commissioner's Office (ICO) with regard to the Framework Decision and officials from the DCA and the ICO contact each other regularly. We understand that other Member States are also in regular contact with their supervisory authorities.

179. As regards SIS II, the exclusion of Europol, Eurojust and security agencies from the proposed Data Protection Framework Decision is unjustified unless equivalent data protection standards apply to these bodies. (paragraph 127)

The new draft of the DPFDD brings Europol and Eurojust within its scope. However, negotiations on this draft have only just begun it is difficult to say whether these bodies will remain within scope.

We are content with the data protection standards applied to Europol and Eurojust, although it is worth noting that the data protection measures in the draft Council Decision on Europol are currently being redrafted. The DPA applies to the security agencies.

180. The Government should press for amendments to the data protection rules when they are reviewed, in particular:

- to provide for clearer rules on the right to information, and
- to limit the ability of Member States to derogate from data protection rights to those cases where national security and the operations of law enforcement authorities would be directly prejudiced. (paragraph 130)

The Government believes that the rules on the right to information in the SIS II Decision are already clear. The Decision states that any person has the right of access to data about them entered into SIS II in accordance with the national law of the Member State in which they invoke that right. In the UK, therefore, individuals may make a subject access request under the Data Protection Act. If the request for access occurs in the UK but the alert was entered by another Member State, the UK would need to advise that Member State of the UK's intention to disclose or withhold the relevant data.

181. The Government should seek to ensure that the Data Protection Framework Decision requires that all national data protection authorities enjoy all of the powers referred to in the EC Data Protection Directive. The Framework Decision should also make clear that this provision applies to the SIS II Decision. (paragraph 133)

The current draft of the DPFDD gives the national data protection authorities the powers consistent with those set out in the EC Data Protection Directive. The UK supports this. Article 60 of the SIS II Decision relates to the powers of the national supervisory authority and, once implemented, the DPFDD would also apply to the data shared under SIS II. In most cases, we would expect the provisions setting the highest standard of data protection to apply if the two instruments differ on particular points. As the draft DPFDD currently stands, it would provide for greater subject access than SIS II (in some Member States but not in the UK) and so here we would expect the DPFDD to prevail over SIS II. However, this is a matter we will be able to comment on further as the DPFDD text comes closer to being finalised.

182. The question of adequate resources for data protection authorities to enforce EU data protection rules, and the SIS II rules in particular, should be reviewed on a regular basis. (paragraph 134)

Article 60(3) states that Member States "shall ensure that the (National Supervisory Authority has) sufficient resources to fulfil the tasks entrusted to it under this Decision". This obliges Member States to ensure the National Supervisory Authority has sufficient resources to carry out these tasks.

The ICO's resource requirements are the subject of regular discussion between the ICO and DCA.

United Kingdom access to immigration data

183. We accept, as do the Government, that the position under the Amsterdam Treaty is that the United Kingdom cannot have access to all SIS II immigration data as long as it retains its border controls. However the contribution this information can make to the overall security of the European Union needs to be taken into account. We hope that when amendments to the EC and EU Treaties are next negotiated the Government will seek to persuade our partners of the benefits, to them as well as to us, of securing amendments to the relevant provisions. (paragraph 148)

The Government agrees with the Committee that access to these alerts by the UK would benefit the overall security of the EU. Although this matter could be considered in the context of any future change to the treaties the Government's view is that the UK should be able to access immigration data for law enforcement purposes under the current treaty arrangements. The UK is being prevented from accessing this information as a result of the legal interpretation currently afforded to the application of the Treaty Protocol integrating the Schengen *acquis* into the framework of the EU and the Protocol on the position of the UK and Ireland (1997). But the UK is currently challenging the interpretation of those Protocols in the European Court of Justice and will review the position in light of the judgment, which is expected next year.

184. In the meantime, Ministers should persuade their colleagues from the Schengen States that police and other law enforcement bodies in the United Kingdom must have access to other Member States' immigration data relating to the criminality of the individuals concerned. In return, the United Kingdom would make available to other Member States its own data on individuals who are undesirable due to their criminal activity. (paragraph 149)

185. Time is of the essence. These recommendations rely on it being technically feasible to distinguish between alerts on unwanted aliens for public policy, public security and national security purposes, and alerts based on immigration control purposes. The sooner attempts are made to resolve these technical problems, the more likely they are to succeed. (paragraph 150)

186. To help the United Kingdom and its EU partners in their joint fight against terrorism and serious crime, the Government must therefore press ahead with representations at the highest levels. (paragraph 1.51)

The Government agrees on the importance for the UK of being able to access other Member States immigration data relating to the criminality of the individuals concerned and will continue to lobby other Member States on this important issue. If and when the UK is able to access these alerts we will explore with our EU colleagues the technical and operational issues which arise.

187. We recommend this report to the House for debate. (paragraph 11)

12TH REPORT: FUNDING THE EUROPEAN UNION

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

I am grateful for sub-committee A's report *Funding in the European Union* (HL Paper 64) and apologise for the delay in sending this response. I have noted the content and summary of conclusions in the Report which I found interesting.

27 June 2007

14TH REPORT: "IMPROVING THE MENTAL HEALTH OF THE POPULATION": CAN THE EUROPEAN UNION HELP?

Letter from Ivan Lewis MP, Parliamentary Under Secretary of State, Department of Health to the Chairman

We were grateful to receive the Inquiry Report of Sub-Committee G on their scrutiny of the European Commission's Green Paper on mental health; I have pleasure in submitting to you the Government's response.

I would like to take this opportunity to express our appreciation of the constructive and thoughtful approach that the Sub-Committee adopted.

GOVERNMENT RESPONSE

Introduction

1. The Government welcomes the Committee's report of its inquiry as a thoughtful and constructive contribution to the debate. This response follows the order of the Committee's report, addressing the main points in turn.

2. We feel the Committee's main conclusions are broadly consistent with our positive response to the European Commission's Green Paper on the potential value and content of an EU mental health strategy. In brief, this was that an EU strategy could add value by supporting delivery of the World Health Organisation's action plan—for example, by promoting cross-sector activity in ways that a single-subject body like the WHO cannot.

3. However, we also expressed the view that a strategy should be flexible enough to accommodate Member States' own priorities for delivery and their different starting points. We still believe that the EU should encourage particular developments by disseminating information and facilitating local developments rather than by attempting to set EU-wide priorities that are significantly more closely defined than those in the Green Paper.

4. The Commission's consultation exercise ended in May 2006, and at the time of writing the adoption of a Commission Communication on Mental Health—ie the strategy—is scheduled for the summer of 2007. We have no firm information about the nature of the strategy other than the Commission's comment in May 2007

that it will “open up opportunities for exchange, cooperation and co-ordination at EU level on key aspects in mental health and it will also announce a number of specific initiatives.”

5. Clearly, with the strategy’s publication imminent our scope for influencing its content is now limited. However, we expect Member States to have discretion in how to use the strategy, and the Committee’s report will help us to frame our reaction to the strategy when it appears. We respond to the report largely on that basis, while recognising that we are discussing a mental health strategy intended to benefit the EU as a whole, not the UK alone.

Chapter 1: setting the scene

6. The first chapter of the Committee’s report accurately describes the scale and variety of the challenges that mental illness presents to society, and to government. In some ways those challenges are common across EU Member States, but in others they are not—suicide rates vary widely, for example, as do the systems and services in place for providing care and promoting good mental health. It is relevant to the discussion of an EU strategy to note that the UK is considered by the WHO to be one of Europe’s strongest performers in this field, with a comparatively low suicide rate, significant increases in investment and work force over recent years, and a greatly strengthened emphasis on treatment within communities rather than in hospitals.

7. That is not an excuse for complacency, of course, which is one reason why the UK Government is a signatory to the 2005 WHO Helsinki Declaration and action plan for mental health in Europe. We continue to share the Committee’s support for that plan and believe we can demonstrate real progress against all its key points.

8. In our response to the European Commission’s Green Paper, and in our evidence to the Committee we expressed support for the idea of an EU strategy designed to facilitate the implementation of the WHO plan rather than add to it or rival it in any way. That remains our position and, so far as we know, that of the Commission.

Chapter 2: defining mental well-being and mental health problems

9. The vocabulary used to discuss these issues is not a trivial matter. We prefer to remain flexible, and to use language appropriate to the context and audience. What matters is that the meaning is mutually understood, and therefore we normally employ the current most widely accepted and conventional terminology.

10. In our 1999 National Service Framework we defined mental health as:

“An individual’s ability to cope with the stresses and challenges of life.”

11. “Mental illness” is a very broad concept, and liable to be misunderstood if used in isolation to describe something more specific. The NSF definition is:

~ “[A] range of diagnosable mental disorders that excludes learning disability and personality disorder.”

12. Taken together, we feel that in most ways these definitions are close enough to the terminology of the Green Paper to allow meaningful communications with the Commission.

13. There is a consensus that mental illness is common and sometimes serious, and that its impact—on individuals, the economy or society as a whole—can be correspondingly significant. When discussing the prevalence of mental illness in the UK, we normally quote an Office for National Statistics survey of 2000 which indicated that, at any one time, about a sixth of the adult population are experiencing symptoms of mental disorder. It does not follow that clinical intervention would be necessary or beneficial in all those cases, any more than it is in every instance of physical illness.

14. We can accept that the five observations of the EU made by the Committee in paragraph 30 of its report apply to at least some extent in the UK. We are not certain of the precise meaning of the fifth—that there is not sufficient or good enough treatment for most mental health problems—but we recognise that care for the most common disorders needs to improve, for example through the programme now underway to increase access to psychological therapies.

15. We agree that it would be inappropriate for a strategy to attempt to address mental illness and learning disability jointly. They are, as the Committee points out, distinct conditions that require distinct approaches. In England we set out our intention to improve the life chances of people with a learning disability in the 2001 White Paper *Valuing People*. We would consider carefully any proposal for a European learning disability strategy.

16. To avoid any risk of confusion, we should note here that mental illness itself can be classed as a “disability” under the Disability Discrimination Act 2005, so that the protection the Act provides can extend to people with mental health problems.

Chapter 3: the social and economic impact of mental health problems

17. We believe the Committee’s report presents a comprehensive and accurate summary of the evidence, and there is little to add. The UK Government response to the Green Paper made similar points.

18. We welcome, and share, the Committee’s recognition of the indispensable role played by the families and other carers of people with mental health problems. In 1999, the year that we published the mental health National Service Framework, we also published the first National Carers’ Strategy. The NSF itself includes a standard for carers which states that they should be offered an assessment of their own needs, and there are now almost 800 dedicated mental health carer support workers in post nationally. We agree that it would be appropriate for a European Union mental health strategy to offer support to Member States’ own efforts to strengthen support for carers.

Chapter 4: the added value of an EU mental health strategy

19. The report describes the rationale for an EU strategy that the Commission’s Green Paper presented. We feel that the Committee’s conclusions are positive and consistent with our own.

20. The EU’s role in promoting good mental health and preventing mental illness is, as the Committee notes, complex. This is because an effective EU strategy could extend beyond health care into sectors such as employment. We agree that this opportunity for cross-boundary working makes an EU strategy an attractive option, and one that can genuinely complement WHO activity. We do, however, recognise that Member States have exclusive competence for the organisation of their health services.

21. We share the Committee’s view of the potential value of the “platform” approach that the Commission suggested as a method of engaging stakeholders and spreading information and ideas. We await the final proposals on this, and on the wider governance arrangements for the strategy.

Chapter 5: human rights issues

22. The Committee recognises the significance of human rights issues for mental health care policy, and how the challenges they present vary across Member States. As the Committee notes, the UK is recognised as having made great strides in the transfer of care from long-stay institutions to communities, although there remain times when a period of care as an inpatient is the most clinically appropriate and safe course of action. An EU strategy should not neglect the needs of these inpatients. For the small proportion of patients who need to be subject to compulsion in treatment to avoid harm to themselves or others, we have strong safeguards enshrined in mental health and human rights legislation. As we have already noted, the protection of the Disability Discrimination Act extends to people with a mental disorder both in hospital and in the community.

23. Like the Committee, we hope that an EU strategy for mental health can—alongside the WHO action plan—help all Member States to offer care that respects human rights, and is provided in an appropriate and minimally restrictive environment that fosters recovery.

Chapter 6: social exclusion, stigma and discrimination

24. We welcome the emphasis that the Committee has given to these issues. We acknowledged the problems in our response to the Green Paper and, like the Committee, believe that the strategy has a potentially important part to play in providing encouragement and support to Member States as they attempt to address them.

25. Tackling the social exclusion, stigma and discrimination still suffered by people with mental health problems is a priority in the UK and we have already discussed with the Committee some of the action we are taking through the “Shift” campaign against stigma, our social inclusion action plan and the provisions of the Disability Discrimination Act, for example.

26. On social exclusion, we accept that we have some way to go. We recognise the particular problem of mental health in prisons that the Committee highlights, and are responding with investment in training for prison staff and in specialist “inreach” services that every prison in the country now has access to.

27. On stigma, the Shift campaign is actively promoting changes in attitude and behaviour—for example, through its recent guidance to employers and its work with the media on how mental illness is portrayed. Despite that, we accept that public attitudes to mental illness can still reflect a degree of fear and ignorance, which is disappointing given the proportion of the population that has either first hand experience of a mental disorder or experience as a friend or relative of someone with a mental health problem.

28. Much of our work in this area (and others) involves, or is addressed at, employers—including small employers. We share the Committee’s recognition that one of the principle benefits of an EU strategy is its potential to reach beyond the health sector into areas such as employment, and we also accept that there will need to be a meaningful way of measuring the strategy’s progress: We are not, however, convinced that this should require any new obligation on Member States to supply additional information.

Chapter 7: promotion and prevention

29. Promoting good mental health and preventing mental illness are two of the four priorities that the Commission have proposed for a strategy. Like the Committee, we have endorsed this approach and look forward to a strategy that facilitates the exchange of ideas, evidence and good practice.

Chapter 8: mental health issues for population subgroups

30. The development of policy and practice in the UK increasingly recognises the varying needs of different subgroups of the population. We have distinct strategies in place for each of the four groups that the Committee’s report considers (children and adolescents, older people, Black and minority ethnic groups and women) and new policy is now guided by equality impact assessments that examine how the policy might affect different groups.

31. We share the Committee’s analysis of the issues. In our response to the Green Paper we stressed the importance of addressing inequalities in mental health, and in mental health services; we look forward to seeing the strategy’s proposals for taking that forward.

Chapter 9: setting minimum standards or promoting principles

32. We agree that it is impractical to attempt the imposition of uniform minimum standards across Europe, for the reasons the Committee have described in their report.

33. The Committee’s proposal for a set of principles to guide mental health policy across Europe is interesting. Reaching agreement between Member States on what those principles should be may not be straightforward. Domestically, we are not immediately convinced that the UK administrations would find such principles useful.

34. Assuming the EU strategy resembles the Green Paper, it is possible to infer clear principles from it, and from the WHO action plan, even if they are not explicitly presented as such: for example, the need to respect human rights, tackle stigma, reduce inequalities, abolish discriminatory practice, and the other matters that the Committee identifies.

35. The Committee may have something more explicit and direct in mind; we are aware that the Council of Europe has addressed some of these issues in the past and may be doing so again, in which case we shall consider their proposals carefully. We will, of course, also remain open minded about any related proposals from the EU, but we do not feel able to argue positively for a set of principles that goes further than we expect the strategy itself to.

Chapter 10: information needs

36. Like the Committee, we recognise the value of comprehensive and reliable statistics to the development and monitoring of mental health policy. Much data is already available in respect of the UK, and we hope the strategy will help us to exchange useful information with Member States across the EU.

37. Sharing data, good practice and research findings in this way was an important strand of the Green Paper and one that we explicitly supported in our response to it. We believe there is untapped potential to spread useful information more quickly and avoid wasteful duplication of effort. Individual Member States have their own systems for gathering data; we believe that the strategy will need to respect that, exploit the existing information and offer support and guidance to Member States seeking to improve data collection and reporting.

Conclusion

38. We are grateful for the Committee's interest in mental health and the issues that the Green Paper raised. We await the strategy, and the Committee's consideration of it, with interest and hope to play a full part in making it work for the benefit of people across the European Union.

15TH REPORT: AN EU COMPETITION COURT

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

Thank you for your letter dated 23 April and the copy of the Select Committee's report *An EU Competition Court*, I enclose the Government's response to that report.

We had originally hoped to discuss the proposals with the European Commission, the European Court of Justice and the Court of First Instance but unfortunately that has not proved possible in the time available.

We will, of course, be happy to keep the Committee informed as matters progress.

18 June 2007

GOVERNMENT RESPONSE

INTRODUCTION

1. The Government would like to thank the EU Select Committee ("the Committee") for their helpful report, the Confederation of British Industry (CBI) for their proposal and the witnesses called before the Committee for their constructive engagement on this subject.
2. The Government submitted written representations to the Committee on 18 January and 19 February 2007. In these responses it was argued that mergers were uniquely time sensitive but doubted whether either a new Competition Court, or a specialist Competition Chamber within the existing Court of First Instance (CFI) would actually address the timing problem. We did not rule out a Competition Court in the future but thought that before fundamentally changing the structures, checks and balances of the existing EU institutions we should first consider ways to make the existing institutions work more effectively.
3. We note that the select Committee sees the issue in similar terms. Therefore when commenting on the Committee's recommendations our focus is on how they might best be taken forward and what the UK might do to assist. Of course, to the extent that amendments to the Court's Rules of Procedure are required, this will be a matter for the CFI with ECJ agreement and ultimately will be subject to Council approval. We believe that a number of the Committee's proposals have considerable merit.

EXECUTIVE SUMMARY

4. The response is divided into two main sections. The first deals with the need for a Competition Court and concludes that while the appeals system for mergers is undermined by the length of time it takes to resolve a case, options to streamline the existing process should be explored before considering the establishment of a Competition Court.
5. The second substantive section deals with the recommendations made in the Committee's report on improvements to case handling and procedures.

THE NEED FOR A COMPETITION COURT

6. The Government agrees that merger cases are uniquely time sensitive and long delays in the appeal process could prevent a merger taking place. We acknowledge the steps the CFI have taken thus far to address these delays and welcome the Committee's proposals to further reduce the time taken to complete an appeal.
7. While every case is important to the parties involved it should be recognised that only a small minority of mergers are rejected by the Commission and go to appeal before the CFI. It seems clear from the Committee's report that while delays of longer than six months can kill off a merger, the nature of the process, the necessary safeguards within the procedures and the rights of third parties make this target, even with the best endeavours of all parties, difficult to achieve.

8. It should also be recognised that time is not the only issue. It is important to get these decisions right and the proposed changes to the processes should not be at the cost of rigour.
9. In their original proposal the CBI believed that language and translation was a significant cause of delay. The Government agrees with the Committee's view that a new court would not resolve these problems and, as stated in the Government response to the call for evidence, suspect the complexity of cases and level of documentation are more likely to be significant causes of delay than the language issue.
10. The Government also agrees with the Committee's view that the creation of a separate judicial tribunal would create a further level of appeal and, given the resources of parties bringing these appeals, is likely to lead to further delay.
11. In their report, the Committee rejected the idea of a separate CFI competition chamber but formed some views on the composition of any future Competition Court should it be necessary.
12. The Government does not disagree with the Committee's view on this subject but if this proposal is to be taken forward issues such as languages, appeals and qualifications of judges will need to be closely examined. We must also consider the resource implications and administration costs of any new court.
13. The Government agrees that if a Competition Court is set up in the future, a careful study of the implications for the relative competences of the CFI, the new court, and the ECJ should be carried out in advance before any decision is taken.

CHANGING CFI RULES AND PRACTICE

The Committee proposed that consideration should be given to allowing both courts, the ECJ and the CFI, some measure of autonomy to set their own Rules (para 127).

14. Article 224 EC states that "The Court of First Instance shall establish its Rules of Procedure in agreement with the Court of Justice. Those Rules shall require the approval of the Council, acting by a qualified majority." Any alternative to this will require Treaty change. The Courts do already have some autonomy to set their own Rules. They are able to adopt Practice Directions, relating in particular to the preparation and conduct of the hearings before them and to the lodging of written statements of case (Articles 125 of the ECJ Rules of Procedure and 150 of the CFI Rules of Procedure) and do so regularly. It is considered that these powers are sufficient for the Court to introduce improvements in case management and improve administrative practices.

15. The Government has generally been supportive of initiatives giving the Courts a certain measure of autonomy in order for them to work more efficiently. However, the Government believe it is desirable that Member States maintain a degree of control over the Rules of Procedure.

The report suggests that recent experience shows that there are opportunities available in the current Rules of Procedure which might be better exploited. Firmer case management by Judges could lead to significant time savings (paras 138, 148).

16. The Government supports this view. It seems clear from the EDP case,¹ and others, that pro-active case management and, crucially, the cooperation of the parties to the case, leads to significant time savings. This is complicated where a third party intervenes, but again, strong case management at the earliest opportunity will assist.

17. Examples of changes to case management procedures could include, *inter alia*:

- The possibility for the Court, on a case by case basis and by application of the parties, to decide to conduct their internal deliberations in the language of the case, rather than in French;
- Prioritising time-sensitive competition cases;
- Working with the parties to try to conduct initial processes within statutory time limits.

The CCBE (Conseil des Barreaux Europeens—Council of Bars and Law Societies of Europe) suggested that a party should be able to launch an appeal on the basis of a summary application which would be supplemented with detailed pleadings and evidence shortly thereafter (para 141).

18. In principle this is an interesting idea but it is unclear how it would work in practice and what the savings would be. It would allow the Judge-Rapporteur to case manage at a very early stage, perhaps producing a timetable, but it may not be equitable for any time limits for interventions to begin when the summary application is lodged because there may be insufficient information and evidence to take an informed view on whether an intervention would be necessary. Any interventions would therefore have to wait until the detailed

¹ Case T-87/05 *EDP v Commission* (2005).

pleadings and evidence were submitted. That being the case it is difficult to see what is gained by such a proposition but we would be interested to canvas the opinion of the Commission and CFI on the subject.

The Committee state that they see no reason why, in an age of virtually instantaneous communication, there remains a need for the additional 10 days *delai de route* when lodging an appeal against a Commission decision (para 143).

19. The Government believes that, despite this seeming anomaly, this is a case where rather than saving a few days, the greater good is served by thorough examination, the entry of informed and detailed pleadings and, as in paragraph 9, reaching the correct decision.

20. On a different timing point, we do note that the current Rules of Procedure state that despite accepting service by e-mail and facsimile the Court also requires hard copies to be lodged within 10 days, which inevitably introduces delay in that as we understand it, the Court does not usually progress the case until those copies are lodged. We suggest that the CFI accept full service electronically, which it is already empowered to do under Article 43(7) of its Rules of Procedure.

It has been suggested that where a third party challenges a Commission merger decision the merging parties, as interveners, should have the right to request an accelerated procedure so that the case can be decided quickly (Para 149).

21. The Government supports this proposal. There is widespread acceptance that it is not necessarily in the interests of every party to the case to get a speedy resolution and that some parties use the length of proceedings tactically for their own benefit regardless of the merits of their case. The Government acknowledges there may be genuine legal concerns over a full examination of the issues and confidentiality considerations but anything that would prevent a party or intervener taking advantage of the process for their own ends should be investigated. This proposal would allow the merging parties, as interveners, to request expedition when a third party challenges a merger but does not apply for expedition. It would then be for a Judge to decide whether the case can be expedited or not and parties would have to justify their position to the court. Currently under the Rules of Procedure, the CFI may, on application by the applicant or defendant, decide to use the expedited procedure, but there is no mechanism for an intervener to apply.

The Committee suggest judgments might include shorter summaries of the arguments of the parties. This could reduce CFI's workload: there would be less to translate (para 151).

22. We believe this proposal is entirely a matter for the CFI, it would not be appropriate for the Government to comment. However a clear rationale for decisions will be important, if this could be accomplished succinctly the UK would have no objection.

The Committee's report proposes that the Court should be given the discretion, in merger cases, to take the final decision itself where, for example, there has been no substantial alteration in the circumstances nor other factor apparently requiring a fresh investigation (para 161).

23. This proposal would alter the jurisdiction of the CFI and would require the agreement of the Council. In the abstract, the concept that a Court which overturns a Commission decision and sends it back for the Commission to do it again, even when there is no fresh evidence or change of circumstances, seems bureaucratic and cumbersome. It would seem logical for the CFI to take the decision itself leaving the avenue of appeal on points of law only to the ECJ. We note the idea is supported by the CBI, Business Europe and the Commission itself but we should not change the jurisdiction of the CFI without serious consideration of the mechanics, resources and wider implications. Again, the agreement of the Council (acting unanimously as this proposition would require a modification of the Statute of the Court) would make this a medium-term proposal.

24. This proposal also highlights important constitutional law issues concerning the separation of judicial and executive functions. In the past the ECJ has been very cautious about maintaining this separation, it may be that the CFI is likely to take much the same line.

25. Careful consideration should be given as to whether this proposal sets a precedent for state aid cases and incrementally other Article 230 cases against the Commission.

26. There is also a view in some quarters that, as the CFI has frequently reduced anti-cartel fines imposed by the Commission it may be better for the Court to actually set the fine as is the case elsewhere, eg US and France, but this would logically mean that every cartel case must go to the Court which is contrary to the aim of reducing workload and speeding up cases.

INTRODUCTION OF PLEA-BARGAINING IN CARTEL CASES

The Committee considers this proposal by the Commission constructive but have a concern that the rights of the parties concerned should be fully respected, but if the practical effect is to remove time-consuming cases from the Court's list then it would be welcomed (para 164).

27. The introduction of effective plea-bargaining or “settlement” procedures in the context of cartel (and indeed non-cartel) cases may go some way to reducing the number of cases appealed to the CFI. That said, there are already mechanisms allowing settlement at an early stage, ie during the investigation of the case by the Commission.² Moreover, settlement of cartel cases raises sensitive issues and the use of such a mechanism for resolving competition cases, will need to be carefully considered. For example, as well as raising rights of defence issues (as the Committee has rightly pointed out), settlements could also have significant impact on:

- Deterrence. Settlements are likely to result in the Commission agreeing to reduce financial penalties; and,
- Leniency. Undertakings may be less likely to apply for leniency if they believe that, if their infringing conduct were discovered, a reduction in financial penalties would be available through settlement.

28. These and other important questions continue to be the subject of emerging debate and thinking in enforcement circles throughout the EU. While relevant to the debate, therefore, the impact of settlements on the CFI's workload is but one of many factors which will need to be considered further.

29. There is a need to reflect further on the legislation that has to be amended in order to introduce a plea-bargaining procedure. This will determine the feasibility of such a reform.

TRANSFERRING TRADE MARK CASES

The report notes that the transfer of trade mark cases could lead to a marked decrease in the CFI's workload. The Lords encourage the Commission to give urgent consideration to this suggestion (para 173).

30. The UK is the second largest user of the Community trade mark system, and in many cases the brand recognition and consumer confidence embodied in a trade mark will be the most valuable asset a company owns. A Community Trade Mark Court must be capable of delivering legal clarity both to enable businesses to promote their goods and services and to enable consumers to make an informed choice between competing brands.

31. Trade mark cases should not be allocated to a judicial panel solely to lighten the load of the CFI, and any decision to create a judicial panel should be taken on the basis of the benefits it will give to industry and consumers. The Government would support a Commission review to determine whether a specialist trade mark court attached to the CFI can improve the quality, timeliness, and certainty of judgments delivered by the Court, through efficient and affordable procedures. The review would have to take account of similar concerns raised with respect to a Competition Court, in particular as to whether such a system would add an extra appeal layer, and with it complexity, uncertainty and delay.

NEXT STEPS

Over the coming weeks we will explore the viability of these and other options with the European Commission, the ECJ and the CFI, and discuss the best way to progress. We will be happy to keep the Committee informed on progress.

17TH REPORT: MOBILE PHONE CHARGES IN THE EU: CURBING THE EXCESS

Letter from Rt Hon Margaret Hodge MP, Minister of State for Industry and The Regions, Department of Trade and Industry to the Chairman

Thank you for your report. I am pleased to enclose our response to your recommendations in advance of the debate in the House of Lords on 24 May.

22 May 2007

² Article 85 paragraph 1 . . . the Commission shall investigate cases of suspected infringement of these principles [ie agreements, associations and concerted practices in Article 81 TEC and abuse of a dominant position in Article 82]. If it finds that there has been an infringement, it shall propose appropriate measures to bring it to an end. Article 85 paragraph 2 “If the infringement is not brought to an end, the Commission shall record such infringement of the principles in a reasoned decision . . .”.

GOVERNMENT RESPONSE

The Government welcomes the Committee's report. In view of the importance of the Regulation and the issues it raises, the report is a useful contribution to the debate about the regulation of prices on international mobile roaming.

Our responses to the specific conclusions and recommendations of the Committee are set out below. We particularly welcome the Committee's support for the line that the Government has taken for this Regulation; we also welcome the Committee's stance on the importance of better regulation and our emphasis upon evidence-based policy making, which is proportionate, pragmatic and robust.

We stand ready to provide such further information as the Committee and the House require to clear their scrutiny of the proposal.

THE CONCLUSIONS AND RECOMMENDATIONS OF THE COMMITTEE

Is there a need for regulation?

In our view the data used by the Commission to calculate the cost of roaming is incomplete. Nevertheless, from the majority of the evidence we have received there is a circumstantially compelling case for agreeing with the Commission that operators' profit margins, as far as roaming services are concerned, are excessively high, compared to the wholesale cost of roaming for operators. (para 17)

The Government agrees that the Commission has demonstrated that the differential between the wholesale cost of roaming and the retail prices charged to consumers by operators were too high.

Is EU action appropriate?

We agree that there is a clear case for regulation at a Community level. (para 21)

The Government agrees that given the international nature of the telecommunication sector, and the difficulty this entails for effective action by NRAs on cross-border issues, any attempt to control roaming mobile prices needs to be undertaken at a Community level.

We consider that high roaming prices have an impact on the efficiency of Small and Medium-sized Enterprises (SMEs) and their ability to conduct business when having to operate from abroad. Furthermore the lack of transparency in prices has reduced the consumer's ability to compare costs of roaming across the Single Market and between operators. (para 22)

The Government agrees that high roaming prices might have impacted unfairly upon SMEs, particularly those who used such services infrequently and therefore could not benefit from the special packages that operators conclude with larger organisations. The Government also agrees that in the past information on international mobile tariffs has not been transparent.

We are aware of the differences of opinion on the use of Article 95 as the legal base for the Regulation. We expect the Government to give this issue close attention. (para 24)

The Government has considered this issue carefully and has had further discussions about it with the Commission and in the relevant Council Working Groups. As a result of these discussions, a modification to a recital (in the Regulation) has been added in order to further strengthen the justification for using Article 95 as a legal base.

In addition, the Committee will be aware that in the last couple of years there have been two unsuccessful challenges by the UK to the use of Article 95 and in both cases the European Court of Justice took a very wide view of the meaning of Article 95 and the measures which can be adopted on the basis of that Article. Having regard to these judgments and taking into account the particular circumstances of the mobile roaming market, which we consider to be a distinct market with its own characteristics not replicated in other markets; the Government has reached the view that Article 95 is an acceptable legal base for this Regulation.

However, the Government agrees with the Committee that Article 95 should only be used as a legal base where clearly justified, and will continue to consider its suitability on a case by case basis.

We feel that the evidence we received on the need for action at the EU level to reduce the cost of roaming is convincing. But we do not want to see excessive regulation that will harm the operation of an otherwise healthy and innovative industry. (para 25).

The Government concurs with the Committee's view and has attempted throughout the negotiations for the Regulation to achieve a balanced solution, which would achieve its primary objective of ensuring lower roaming prices for consumers, whilst providing the telecoms industry with sufficient "breathing space" to allow and encourage the development of innovative offerings, which might result in consumers receiving a still more favourable deal.

Wholesale regulation

We believe that wholesale regulation at the European level is an appropriate response to the regulation of roaming within the EU. There are several possible approaches to such regulation. It is important that the approach taken delivers immediate benefits to consumers; encourages market competition; and sends appropriate signals to the market to encourage competition and innovation. (para 29).

The Government agrees with the Committee's view that wholesale regulation will play an important part in the regulation of roaming prices for consumers within the EU. Our objective throughout discussions has been to reach an agreement with our fellow Member States that will be implemented within a reasonable timeframe (two months), long enough to allow the industry to put in place the appropriate arrangements, but not so long as to disadvantage consumers.

We believe that the absolute price cap approach suffers from a number of defects that question its applicability to this issue. We note that the absolute price cap model:

- May remove the incentive for operators to be efficient and innovative, as the market settles on a single pricing point for an wholesale services and there are limited incentives to move away from this point (Q 64);
- Does not provide the flexibility for operators to vary their charges to reflect cost differences. Evidence from the operators suggests that they need the ability to set higher prices at peak times and lower prices when their networks are less congested, thereby sending the appropriate signals to the consumers to maximise efficient use of networks (Q61); and
- Does not fully reflect the cost structure of the industry. We accept that costs vary across networks and that an absolute cap should not be set so as to lead to wholesale call charge that are below cost. Whilst this places some limitations on the level of an absolute price cap it does not rule out the absolute cap approach; based on the limited evidence available to us on cost differentials for networks across the EU. (Para 33)

The Government concurs with the views of the Committee on this issue. Throughout the negotiations we have been adamant that we should be specifying average rather than maximum wholesale caps. I am pleased to confirm that after much debate this now also seems to be the view of the European Parliament and the Council.

We are satisfied that national regulators are capable of carrying out the necessary cost studies for this approach to be effectively targeted. (para 35)

The Government agrees with this assertion. The UK's own regulator Ofcom, has provided invaluable technical assistance throughout the negotiations for the Regulation and has demonstrated that it has all the requisite in-house technical expertise to carry out any cost studies required for the successful implementation of this regulation.

We would support an average wholesale cap of approximately 30 eurocents per minute. We believe that wholesale regulation should reflect costs, and as therefore that the cap should be on the "tougher" end of this spectrum. (para 36)

The Government agrees that the wholesale price should reflect closely the related costs. We believe that an initial average wholesale price cap of 30c will be agreed, with the charges decreasing to 28 and 26 cents after 12 and 24 months respectively.

We are however concerned that the current data supporting the level of wholesale price caps is limited; and that the true cost of wholesale roaming cannot be identified with sufficient accuracy at present. (para 37)

The Government believes that the data used to derive the wholesale price cap levels is fit for purpose. This data is primarily based on detailed cost calculations and analysis undertaken by national regulatory authorities, who after consultations with mobile operators set mobile termination rates (MTRs). While there are components of the wholesale roaming costs (for example roaming specific costs) for which data is less readily available, these costs are much smaller than the relevant costs captured by the Mobile Termination Rate analysis. In the context of setting the same wholesale price cap level across all EU Member States, more detailed data would not add materially to the accuracy of the final result.

Retail regulation

On balance, we believe that the consumer protection tariff provides the best form for any retail intervention, as it allows operators to innovate and compete through the differentiation of their own tariffs and offers, as well as from those of their competitors. However, we also stress the importance of base information upon which to set the appropriate cap. (para 46)

The Government agrees; we have sought the introduction of a consumer protection tariff (Eurotariff), which is based on an economic analysis of the gap required between wholesale and retail roaming costs to sustain competition and innovation in the market.

We believe that a CPT is a logical regulatory instrument in the absence of full retail regulation, ie, setting a “safety net”, tariff which would protect the most vulnerable consumers. It therefore follows that any CPT should be set at a level that provides this safety net, but allows retail competition below this level. (para 47)

The Government agrees and we have been working hard with Member States to ensure that the price levels for the Eurotariff adequately reflect the costs of operators, whilst allowing them an appropriate rate of return. It now looks likely that the regulated rates, for the first year, will be 49 cents for outgoing and 24 cents for incoming calls.

We agree with the German Presidency proposal for the CPT to operate under an “opt in” model for existing customers and an “optout” model for new customers. This approach appears to have received support from many parties, and we endorse it. (para 48)

The Government agrees with the Committee’s view and we have advocated the same approach, however, it now looks likely that a compromise solution, acceptable to all parties, will be passed. The current proposal relates to “standard” and “non-standard” tariffs; customers already on the former will be automatically placed on the Eurotariff, while the latter group—including, for example, businesses whose current tariff is better than the Eurotariff—will not be automatically migrated. (The definition of non-standard tariffs relates to special packages such as Vodafone’s Passport.)

Data regulation

We believe that the underlying market failure that exists in roaming for voice services is every bit as evident for data services, which have even less price transparency than their voice counterparts. It is thus important that this regulatory initiative should also consider these services. However, there is even less evidence as to whether roaming charges for SMS, MMS and data services are more excessive than for voice services. (para 52)

The Government accepts the Committee’s views that the price levels for SMS and data services are becoming increasingly important for business and consumers. However, the initial Commission proposal did not seek to control prices for such services and thus the current draft agreement only seeks to impose monitoring and transparency obligations in respect of such services.

We agree with the German Presidency that a separate study of SMS, MMS and data roaming should be conducted. As with our previous recommendation to collect more data to support the regulation of voice roaming, this study must be conducted on a consistent pan-European basis. We would again suggest that the Commission co-ordinates this study supported by the NRAs. (para 54)

The Government agrees with the Committee and are pleased to report that the draft agreement does include requirements for the Commission to monitor such prices and to include such an analysis in the report on the effectiveness of the Regulation.

We do not believe that voice regulation should be delayed whilst this study is conducted. We would, however, suggest that if regulation is considered appropriate a similar approach as outlined for the regulation of voice (see above) should be considered. (para 55)

Until we are able, following the Commission report, to determine whether there is a problem, it is difficult for the Government to speculate upon the instruments which might effectively be used to address it.

A Sunset clause?

We agree with the suggestions of the German Presidency on the introduction and timing of a review and sunset clause for this regulatory intervention. This must be in tandem with better data collection; as such data will be critical in reviewing the success, or failure of the Regulation. (para 58)

The Government agrees with the Committee's views on a review and sunset clause and with the stress laid upon the collection of data to inform the debate upon whether the lifetime of the Regulation should be extended or not. The current agreement does include sunset agreements; namely that the Regulation will expire after three years unless the Council and Parliament vote to extend it.

We make this report to the House for debate.

18TH REPORT: PRÜM: AN EFFECTIVE WEAPON AGAINST TERRORISM AND CRIME?

Letter from Joan Ryan MP, Parliamentary Under Secretary of State, Home Office to the Chairman

I am writing in response to the European Union Committee's report—*Prüm: an effective weapon against terrorism and crime?*

The Government welcomes this report and is pleased that the Committee broadly shares our view of the importance of the implementation of the provisions under the Principle of Availability, including the data sharing covered by the Prüm Council Decision.

The attached response details the Government's reactions to the recommendations made by the Committee on a point-by-point basis. The Government looks forward to debating these recommendations at the earliest opportunity.

15 May 2007

GOVERNMENT RESPONSE

99. We put on record our regret that the German Presidency should have been unwilling to discuss with the Committee of a national Parliament an initiative to which we, like them, attach great importance.

100. We believe that for seven Member States to enter into an agreement including first pillar matters falling squarely within EC competence may have breached the letter, and certainly breached the spirit, of Article 10 of the EC Treaty.

The Government wants an EU that adds value to the efforts of Member States and which provides the opportunities and tools for better practical cooperation. If a sensible proposal is put forward by a Member State or a group of Member States that appears to meet these criteria then the Government will react positively as long as it is consistent with national interest and democratic accountability.

Article 10 of the EC Treaty provides that Member States are to abstain from any measure which could jeopardise the attainment of the Community's objectives. It is intended to prevent Member States from taking action which would undermine the objectives of the Treaty. It does not prevent Member States from entering into an agreement in an area falling within Community Competence particularly if these allow for closer cooperation which would advance the objectives of the Community.

The second recital to the original Prüm Convention reads, "Endeavouring, without prejudice to the provisions of the Treaty on European Union and the Treaty establishing the European Community, for the further development of European cooperation, to play a pioneering role in establishing the highest possible standard of cooperation." This clearly sets out that the original signatories' intention was to increase cooperation without undermining the Treaty.

101. In the space of a year four ministers told us that the question of accession to Prüm was under "close", "active" and "serious" consideration. We do not understand why it should have taken so long for the Government to conclude that there was at least one provision of the Treaty to which the United Kingdom could not agree.

The Government seriously considered signing up to the full Prüm Convention as we believe that the information sharing aspects of the Convention will bring real value to the fight against terrorism and cross border crime. There were however aspects of the Prüm Convention, such as the provisions on air marshals, a measure on action to be taken in urgent situations and those on immigration that prevented our firm support for the Convention and consequently accession. We strongly believe however that this approach has not prevented the UK from achieving a positive result which will benefit our citizens.

102. The threshold for holding DNA profiles on the United Kingdom DNA database is far lower than in any other Member State, and the proportion of the population on the database correspondingly far higher. The Government should as a matter of urgency examine the implications of DNA exchanges for those on the United Kingdom database.

The UK already shares DNA information bilaterally with a number of countries (all EU member states included). This is via law enforcement co-operation and mutual legal assistance channels. Whilst there have been a small number of notable successes (identifying suspects for serious crimes), the impact of international DNA sharing is limited by the relatively low numbers of exchanges.

This low number of exchanges is in part due to the lack of any automation in the process of sharing. With ever increasing travel by offenders and the transnational nature of organised crime, the necessity to share all types of forensic intelligence increases accordingly. The present non-automated procedures are slow and cumbersome.

It is important to keep three points in mind when considering the implications of Prüm search requests for individuals whose profiles are recorded on the UK National DNA Database:

1. The UK (as with other Member States) will decide which profiles on the national database should be exposed to search requests from other member states. There need be no assumption that all profiles would be searched routinely under Prüm.
2. The results of any search request will be reported to the other member state on a “hit no hit” basis. Confirmation of the profile match may be provided, but no details which would provide the name or other personal details of the individual would be provided.
3. Any consequent exchange of data following a hit on a Prüm search request will rely on already existing law enforcement and Mutual Legal Assistance channels. Consequently any disclosure of personal information about individuals whose profiles are on the UK database would be under existing conditions. This provides for a case by case consideration of the legal basis as well as the necessity, proportionality and justification of the disclosure taking into account data protection and ECHR considerations.

103. Law enforcement authorities in all the Member States must be provided with the same clear guidance and training which will enable them to operate the new laws responsibly in the fight against crime.

The Government supports this recommendation in principle and agrees that common guidance can be useful. Within this context differences in national legislations and professional codes of conduct need to be considered. An implementing agreement will be agreed following the Prüm Council Decision, and will we take this recommendation into account in the negotiation.

It should also be noted that as the Prüm Council Decision focuses on information sharing. The usage of the data is covered by the data protection provisions set out how data can be used and are legally binding.

104. It is understandable that a State which holds the Presidency should wish to make use of that opportunity to further legislative proposals which it is particularly anxious to see implemented. This should not however be seen as a reason for cutting short full consideration by all the Member States. The timetable for initiatives by Member States should be the same as for Commission proposals.

105. We congratulate the Government on having successfully insisted on the removal from the Prüm Decision of a general provision which would allow designated officers and officials of one Member State to enter the territory of another Member State without prior permission.

106. Since unanimity is needed for the adoption of the Prüm Decision this shows that, given the will, the Government should be able to secure agreement on other matters which need to be settled before the Decision can be adopted.

The Government agrees that EU initiatives, whether from Member States or the Commission, should be developed in a time-frame which allows for their proper discussion and a full consideration of their implications. However, although the timetable for negotiating the proposal to incorporate elements of the Prüm Convention into EU law has moved quickly, the Government does not believe that the process for consideration of the proposal has been cut short as a result. Indeed the Presidency has devoted considerable resources both on a bilateral basis and through Ministerial and expert level meetings of all Member States in Brussels, Wiesbaden and Potsdam to discuss and examine the detail of the Council Decision. Through this process the Government has been able to secure changes to the text to meet our concerns, in particular about its potential use in hot pursuit situations and to limit the scope of its application to serious crime in relation to the sharing of vehicle registration data. We are continuing with this negotiating process to ensure that the data protection provisions are acceptable.

107. If and when the Prüm Decision is agreed, any matters in the Framework Decision on the principle of availability which have not been adequately dealt with must continue to be the subject of negotiation.

The draft Council Decision provides a mechanism for the exchange of information between police and law enforcement bodies, consistent with the principle of availability. The Government supports the application of the principle of availability and therefore welcomes a measure that provides a concrete method for its implementation in relation to three specific types of data. The Government therefore supports the Committee's recommendation that the elements of the Principle of Availability not taken forward under Prüm should continue to be subject to negotiation.

108. There should be a convention that any legislative proposals by Member States should, like Commission proposals, be accompanied by full explanatory memoranda and regulatory impact assessments.

109. Member States which are asked to consider an initiative by some of their number should normally decline to do so unless and until they have been supplied with a full explanatory memorandum covering in particular the estimated cost of the initiative.

The Government agrees that any EU initiatives, whether submitted by the Commission or by Member States, should respect better regulation principles, including the use of explanatory memoranda to explain the need and reasoning for the proposal and the use of regulatory impact assessments. However, the Government also believes that there may be cases, such as with the Prüm proposal, where practical experience of operating a particular system can provide the same information and evidence of costs and benefits.

The Committee will be aware that experts from those States already implementing and operating the data sharing elements of the Prüm Treaty provided such information to all Member States at an expert level seminar in Wiesbaden. The experience of the signatories in operating elements of the Prüm demonstrated to the Government that the Decision could bring real benefits to the UK.

110. The Government should not allow the Prüm Decision to be incorporated into EU law unless and until there is available a reliable estimate of the start-up cost and the running costs of doing so, and then only if they believe that the benefits to the United Kingdom of implementing the Decision justify these costs.

The Government believes that we have a suitable estimate of the start up costs of £31 million this includes running costs for the first year, which we have considered to be around £2.5 million. We must however clarify that this is an estimate, and taking into account the changing nature of technology and the negotiation of the implementing agreement this is subject to change. Therefore, these are informed but necessarily limited estimates of cost based on the information currently available. It is likely that a project such as this one will require a more detailed feasibility study and impact assessment before we agree on the specific implementation models within the UK. We believe that considering the considerable benefits that this Decision could bring to public security that this represents a reasonable cost.

111. The Government should insist on the inclusion in the Prüm Decision of provisions to ensure that its operation is properly monitored. What is required is at the very least:

- an obligation on national agencies to produce annual reports, including statistics, on the use of their powers under the Decision; and
- an obligation on the Commission to produce an overall evaluation of the operation of the Decision, for submission to the Council, the European Parliament and national parliaments, to see whether it needs amendment.

The Government welcomes the Committee's recommendations in this area; they will be useful when we come to consider the more detailed provisions on the implementation of the Council Decision, which will be set out in the implementing agreement. We will of course be looking to ensure that the evaluation and reporting processes on this Decision are appropriate.

On the evaluation of the operation of the Decision you will be aware that the Decision sets out in Article 37 that, "the Commission shall submit a report to the Council by at the latest after four years after taking effect on the implementation of this decision accompanied by such proposal as it deems appropriate for any further development." The Government will work to ensure that this report is issued in a timely manner and that the evaluation procedure is comprehensive.

112. There should be a requirement that Member States putting forward initiatives with data protection implications should consult the European Data Protection Supervisor.

The European Data Protection Supervisor (EDPS) is, amongst other things, responsible for monitoring and ensuring the application of EU data protection legislation and advising European Community institutions and bodies on all matters concerning the processing of personal data.³

Member States, of course, are not Community institutions or bodies, and so have a more distant relationship with the EDPS. The EDPS must cooperate with national supervisory authorities (in the UK, the Information Commissioner's Office or ICO) to the extent necessary for both bodies to fulfil their tasks. The ICO is obliged to cooperate with other European Community supervisory authorities and has powers to achieve that under the Data Protection Act 1998 (DPA). As a matter of practice, we would expect all such supervisory authorities to work with each other in order to fulfil their functions effectively and efficiently.

Government routinely consults the ICO with regard to EU legislation and other initiatives with data protection implications. The ICO shares its views with the EDPS and other national supervisory authorities at Article 29 Working Party meetings. We therefore do not foresee any tangible benefits to be gained by a formal requirement for Member States to separately, and directly, consult the EDPS on initiatives with data protection implications.

113. We share the view of the Commission that negotiations on the Data Protection Framework Decision (DPFD), instead of being sidelined, should proceed in parallel with those on the Prüm Decision.

It is not our view that negotiations on the DPFD are being sidelined. In fact, we believe that considerable progress has been made towards reaching agreement on the text. The German Presidency's redrafts have addressed a number of key concerns of Member States and we expect to reach the end of the second reading at the next Working Group meeting on 6 June 2007.

As you know, the Government is keen to reach agreement on an appropriate DPFD text as soon as possible. However, if an agreement is not reached in parallel with the Prüm Council Decision, the Government believes the data protection safeguards in the Prüm Council Decision are adequate for the specific type of data sharing which would take place under that instrument.

114. The Government should seize the opportunity to stipulate that they will agree to the Prüm Decision only if other Member States, led by the German Presidency, simultaneously agree to a Framework Decision setting high standards for the protection of data across the third pillar.

We believe strongly in the many benefits that the Prüm Council Decision will deliver, and, given the bespoke data protection measures contained in the Prüm Decision, it would not be appropriate to delay this Council Decision in an attempt to speed up negotiations on another instrument.

The DPFD will provide for a minimum standard of data protection across the whole of the third pillar and so needs to be a flexible and subtle instrument. By contrast, the purpose and scope of the Prüm Council Decision is much more narrowly constrained. Consequently, negotiations on the DPFD were always likely to be more prolonged than those on the Prüm Council Decision. We are none-the-less making good progress on the DPFD negotiations.

115. If the Presidency wishes other Member States to accept its own views on the exchange of information, it must be prepared to listen to views on how that information is to be safeguarded, and to act on those views.

UK officials have worked closely with the Presidency on the development of the draft Council Decision on Prüm. We have discussed key aspects of the text in detail with the Presidency and other Member States and this has resulted in helpful clarification and favourable amendments to the text.

116. The Government should strongly resist any suggestion that agreement on a statement of general principles on data protection would be an adequate *quid pro quo* for the adoption of the Prüm Decision.

We would not regard a statement of general principles on data protection to be an acceptable substitute for the DPFD. Furthermore, appropriately restrictive data protection provisions in Prüm would not detract from the Government's firm commitment to concluding negotiations on the DPFD as soon as possible (although we recognise that this is unlikely to be achieved during the German Presidency).

117. The Government should try to ensure that United Kingdom data protection standards are replicated across the EU. The only way to achieve this is to adopt for all third pillar measures a Framework Decision which will guarantee those standards for the protection of personal data in all Member States.

We agree the DPFD is an important instrument to ensure data protection under the third pillar. In many respects, it is likely this standard will reflect our domestic legislation.

³ Regulation (EC) No. 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies on the free movement of such data.

The negotiations on the DPFDF should ensure that the minimum standard is set at an appropriate level to preserve the rights of the data subject and foster the required degree of mutual trust necessary for the effective flow of data between Member States.

The Government believes that the UK, like all other Member States, should remain entitled to impose higher standards of data protection than those required by the final version of the DPFDF with regard to how we process data received from other Member States.

118. We believe that, given the need for unanimity, the negotiations on the Prüm Decision provide an unrivalled opportunity for adopting a data protection regime at the same time as the legislation facilitating data exchange is adopted.

We are keen to conclude negotiations on the DPFDF as soon as possible. However, it is not our view that the Prüm Decision should be delayed until agreement is reached on the DPFDF. Signatories to the Prüm Treaty are already benefiting from the real advantages of greater data sharing for cross-border crime prevention and prosecution. We do not want to slow down the process by which other Member States, including the UK, are able to enjoy these benefits.

20TH REPORT: STOPPING THE CAROUSEL: MISSING TRADER FRAUD IN THE EU

Letter from Rt Hon Dawn Primarolo MP, Paymaster General, HM Treasury to the Chairman

Please find enclosed the Government's response to Sub-Committee A's report on Missing Trader Fraud. I hope the Committee find the response helpful and informative.

I would also like to take the opportunity to respond to the points you raised in your letter of 13 June 2007 to John Healey, Financial Secretary, following his recent letter on Missing Trader Fraud.

You asked about the effect of the verification strategy on honest traders. HMRC knows that most people and businesses want to pay the right tax at the right time and are therefore committed to making this as easy as possible. Customer focus is a core HMRC value and HMRC constantly seeks to achieve the right balance between customer requirements and compliance.

However, HMRC will deal firmly with anyone who intentionally avoids their responsibilities. Government and HMRC have a duty to protect the revenue. The response to VAT Missing Trader Fraud has been, in my view, proportionate, targeted and risk-based. The courts, to date have supported HMRC's policy and practice.

The strategy for tackling MTIC fraud is risk-and-intelligence based and HMRC's interventions to verify repayment claims are targeted at specific activity indicative of trading in supply chains tainted by VAT fraud. There was a dramatic escalation of activity by companies trading in goods traditionally associated with MTIC in the first part of 2006 for which HMRC was unable to identify any legitimate commercial reason. This was accompanied with dramatic increases in the value of VAT being reclaimed by these companies. HMRC and I consider it proportionate, given the huge sums of public money involved, that those involved in such a large and unexplained growth in trading should have their large repayment claims investigated before payment.

Given the contrived and highly-orchestrated nature of the supply chains, it is inconceivable that any business can be unaware of MTIC fraud, or not suspicious of the trading patterns and practices encountered. Although the repayment claims have been pre-selected on risk criteria, verifications are not commenced with any pre-determined outcome in mind, and the aim from the beginning is to establish the facts and the true nature of the relevant transactions as soon as possible. It is only when this has been established that HMRC can then determine the validity of the claim. Of 95% of the traders whose repayments have been selected for verification, HMRC have to date found firm evidence of fraud in 34% of cases by value. Of the remaining 66% they have identified strong indicators of links to MTIC fraud, requiring them to undertake further investigation to determine the veracity of these claims.

If at any time it becomes clear that the transactions HMRC are verifying do not form part of an overall scheme to defraud—for example, when a claimant has purchased goods direct from a manufacturer for wholesale distribution to the retail market—then arrangements are made to release any monies withheld. Similarly, HMRC pay input tax claimed in respect of legitimate business overheads such as accountancy costs or freight forwarder charges, once satisfied of their veracity.

The introduction of the reverse charge on 1 June 2007 will remove immediately the threat of fraud in the goods to which it applies, enabling honest genuine traders in those goods to continue trading free of the risks of MTIC fraud in their industry.

FINANCIAL GUARANTEES

You also commented on the provision of financial securities to businesses facing hardship. I note the point you make here, but to date HMRC have found that questions and comments about financial security from traders under verification have not focused on the fact that they are unable to convince banks about the long-term viability of their businesses.

FRAUD LEVELS

As you have stated, our practice is to publish fraud estimates alongside the PBR and we are unable to provide an interim figure. However, HMRC has updated the trade statistical data that was previously provided to the Committee and the table is below.

Estimates of missing trade associated with MTIC fraud in the UK

| <i>Quarter ending</i> | <i>Value of MTIC-related trade (£bn)</i> |
|-----------------------|--|
| September 2004 | 0.6 |
| December 2004 | 0.7 |
| March 2005 | 1.0 |
| June 2005 | 2.3 |
| September 2005 | 3.5 |
| December 2005 | 4.4 |
| March 2006 | 11.8 |
| June 2006 | 14.7 |
| September 2006 | 2.1 |
| December 2006 | 0.4 |
| March 2006 | 0.3 |

25 June 2007

GOVERNMENT RESPONSE

77. We recommend that Government works with other Member States to ensure that the Court of Auditors' proposed changes to the Community Transit system are prioritised in order to attack the supply chain for this variant of MTIC Fraud.

The Government is working with other Member States to secure improvements to the Community Transit System (CT) as a matter of priority. In particular, HMRC is actively working with the Commission and other Member States to support improvements both in the use of New Computerised Transit System and in the development of improved control procedures, which are intended readily to identify goods subject to MTIC Fraud being moved in the CT system.

78. Missing trader intra-community fraud is occurring on a substantial scale across the European Union. We agree with HMRC that this is an outright attack on the tax system, and note that it precipitates other crimes, such as theft of consignments. We accept the evidence that the majority of the fraud is being undertaken by a small number of criminal gangs.

The Government welcomes the Committee's conclusion.

79. As things stand, HMRC has no option but to continue with extended verification; however they need to take real and substantive steps to ensure that their actions do not damage the innocent and are proportionate to the scale of the fraud. We note that, according to the Paymaster General, this approach has led to a "massive drop" in attempted MTIC fraud in 2006–07. This appears to justify their approach; however, the system of extended verification is an inefficient and unsustainable use of HMRC's resources, and does impose a significant burden on smaller firms.

The Government welcomes the fact that the Committee recognises that HMRC's extended verification exercise was justified by the very large reduction in attempted fraud. It considers that, given the unusual circumstances surrounding what was an unprecedented attack on the VAT system, HMRC's response proved to be an efficient and well-targeted use of resources.

In the longer term, HMRC expects that their multi-faceted approach, supported by the introduction of the reverse charge and the extension of joint and several liability, will enable them to reallocate resources from the verification exercise to other compliance-related work.

Most businesses want to pay the right tax at the right time and HMRC are committed to making this as easy as possible. Customer focus is a core HMRC value and HMRC constantly seeks to achieve the right balance between customer requirements and compliance.

Extended verification is tightly targeted on claims from businesses whose trade HMRC suspects to be connected to MTIC fraud. Only 1% by value of the VAT withheld under this programme has been found to be correctly claimed and properly payable. In over 95% of cases where traders have been subject to extended verification, HMRC has found either evidence that they have been participating in or profiting from trading linked to MTIC fraud (and therefore their repayment claim is not properly due), or sufficient grounds to justify further investigation to determine the veracity of the claims. In any case, where HMRC are satisfied that any part of the claim is valid, for instance where it relates to legitimate business overheads such as accountancy costs, they repay the appropriate amount.

It is inevitable however that it can take HMRC officers much longer to verify the ever more complex supply chains that may be tainted by fraud and reach a decision on whether repayments are properly due. As soon as they have satisfied themselves that even part of the claim is valid, they repay that part immediately. The courts, to date, have fully supported HMRC's policy and practice.

80. It is generally accepted that the broad phenomenon of MTIC fraud is out of control; we expect it to continue to mutate into other sectors.

Indicators show that levels of fraudulent activity have fallen dramatically since the inception of HMRC's verification activity. The Government does not, however, underestimate the possibility that the fraud could mutate into other sectors. Although there is no evidence to date of widespread mutation into other goods, HMRC have put in place resources and an intelligence framework to identify and tackle risk areas if they emerge. In addition, the Government has recently extended the scope of the joint and several liability legislation to help counter any mutation into electronic goods used for leisure or recreation, the next most common category of goods used to perpetrate the fraud.

81. We suggest that HMRC should undertake further work to examine the viability of real-time data capture of transactions by VAT-registered companies.

The European Commission is undertaking work to evaluate such a proposal and the UK is actively participating in this work. The Government will support such change to the VAT system if it is clear that the additional burdens on business are justified as a proportionate response to tackling the fraud and potential fraud.

82. HMRC's current strategy has succeeded in containing MTIC fraud, but will not eliminate it; the Government sought the reverse charge derogation because HMRC's current strategy is unsustainable. The reverse charge will stop MTIC fraud where it has been most prevalent, but we expect the fraud to migrate and mutate. Consequently we anticipate that when the UK's derogation is reviewed in two years time there will be requests for the reverse charge scheme to be expanded, either to other Member States or other products, or both.

The Government welcomes the Committee's recognition that the reverse charge will stop MTIC fraud in the areas where it has been most prevalent. The reverse charge only came into effect on 1 June, and accordingly the Government feels it is premature to consider whether it will seek renewal of the reverse charge and if so what its scope should be.

83. The current mechanism for intra-community VAT transactions is not sustainable. While the amount of money being lost in the UK may have fallen in 2006-07, mutation into other industry sectors will bring a subsequent rise in fraud levels. We believe that prevention is better than cure. A wide-ranging change to the VAT system is required and the Government should start discussions with the European Commission and other Member States on the form this should take.

The Government believes that the current mechanism for intra-community VAT works very well for the vast majority of business transactions throughout the EU. MTIC fraud is a sustained and organised criminal attack on the system that exploits a weakness in the VAT treatment of cross border trade in order to commit fraud. The Government is actively engaged with our European partners in looking at a wide range of measures, including the use of a wide reverse charge, the taxation of intra-community trade, and a number of other options to improve the working of the current system.

As the report recognises, the Government firmly believes that any change to the VAT system must fit three criteria:

- the right tax ends up in the right place;
- the potential for fraud and non-compliance is minimised; and
- business is not overly burdened.

It is with these criteria in mind that we are engaged in these discussions.

84. We believe that an Origin System or Flat Rate origin system without a clearing house merits further serious study.

The Government believes it is extremely difficult to envisage agreement to any origin system, whether applying the rate VAT of the Member State of departure, or a flat rate, without a clearing house. The system would involve a net revenue loss for those Member States who import more goods from other Member States than they export, and a corresponding gain by those with surpluses. It would therefore effectively represent a levy on their EU trade deficit in goods.

Reflecting this, the report correctly points out that there would be winners and losers to this system. Indeed, footnote 42 on page 29 shows that the UK would effectively lose some €8.6 billion of VAT revenue, based on 2006 trade figures. And it would not just affect the UK, as some 16 other Member States would be losers to some degree. In contrast, a few winners would massively benefit, some by as much as €15 billion. It is very unlikely that Member States would unanimously agree such an unfair system and one which, certainly for the UK at least, simply replaces one loss of revenue, which is being combated, with an even greater one.

However, the Government remains committed to exploring EU solutions and is engaged in discussions with other MS's on a range of options.

85. Harmonisation of the VAT rates would remove the opportunity for MTIC fraud. The UK is not alone in opposing this harmonisation. Doing nothing is not an option. A continued ratcheting up of the complexity and compliance requirements related to the existing system will impose increasing costs on legitimate business. A solution to MTIC fraud will benefit every Member State: countries need to recognise this and agree to act together. It is now time for the Government and other Member States to look more sympathetically at a radical change to the VAT system. The flat rate origin system proposal, with or without a clearing house, merits further serious study of the potential impact on business, levels of trade, and Member State revenues.

Harmonisation of VAT rates would not of itself remove the opportunity for MTIC fraud. It is not this lack of harmonisation that allows the opportunity for the fraudsters to steal the VAT, but the mechanism for cross border trade. The report is quite right that the UK is not alone in opposing harmonisation, and this is because the vast majority of Member States recognise the right of a Member State to set the rate of VAT appropriate to its own social and economic needs.

Following discussion at ECOFIN on 6 June, the UK will be examining, with its European partners, a range of possible changes to the VAT system, including the use of the so called flat rate origin system, but only when accompanied by a clearing house system. The European Commission is exploring this possibility further and will be presenting their findings to the Council by the end of 2007.

86. We invite the Government, when responding to this report, to assess the relative merits of all the options for reform, which it describes.

The options for reform presented by the report would deal with MTIC fraud in its current form, but each would be in danger of failing at least one of our three core criteria, that of the right tax ending up in the right place; that the potential for fraud and non-compliance is minimised; and that business is not overly burdened.

A generalised reverse charge would lead to an increased burden on businesses/administrations and increased fraud opportunities at the retail end. The taxation of intra-community trade in the Member State of destination would also lead to increased fraud opportunities, due to businesses reclaiming input VAT on cross border invoices and the difficulties administrations would face in recovering VAT from non established businesses. The taxation of intra-community trade in the Member State of origin, creates new, large revenue risks and for reasons already explained, necessitates a clearing house system in order to satisfy the first criterion.

However, the UK and our European partners are looking at these radical approaches, and indeed the Commission is carrying out a study, due to report to the Council by the end of this year, on both the generalised reverse charge and the flat rate taxation of cross border trade with a clearing house system. As part of this process we will explore ways of mitigating the risks. It is when this activity is complete that we will be in a position properly to assess the merits of the options for reform.

In addition, the UK is participating in discussions on changes to the current EU VAT system, such as improving the frequency and efficiency of the exchanging of information between Member States, and strengthening the joint and several liability legislation. These are changes which can be implemented in the short term and may prove effective long before any radical changes could be approved.

21ST REPORT: THE EU/US PASSENGER NAME RECORD (PNR) AGREEMENT

Letter from Michael Wills MP, Minister of State, Ministry of Justice to the Chairman

Thank you for your letter of 16 July. I am grateful to you for your report on The EU/US Passenger Name Record (PNR) Agreement. I was pleased to learn that the Select Committee fully accept the potential value of PNR data in the fight against terrorism.

Your report was very valuable. A copy of the report was given to the EU Commission and the UK Permanent Representation to the European Union discussed it with them. The Commission was aware of all the points at the time of the negotiations, which was helpful. As you would expect these were tough negotiations, where the US has a strongly held position.

The EU Commission and Member States are satisfied that the necessary data protection safeguards for the processing and transfer of PNR data by air carriers to the Department for Homeland Security are in place through the Agreement. It is clear that this Agreement is much better than no agreement. The UK Government believes that this Agreement provides a good level of data protection for UK passengers.

We expect the Agreement to be agreed by the General Affairs & External Relations Council when it meets on Monday, 23 July.

We intend to respond formally to the report by the end of this month, as well as submit an Explanatory Memorandum on the final Agreement, once the Agreement has been signed, in the normal way.

23 July 2007

Letter from Bridget Prentice MP, Parliamentary Under Secretary of State, Ministry of Justice to the Chairman

I apologise for the delay in responding to the European Union Committee's report—*The EU/US Passenger Name Record (PNR) Agreement*.

The Government is grateful to the Select Committee for its report and is pleased that the Committee fully accept the potential of PNR data in the fight against terrorism. A copy of the report was given to the EU Commission and the Commission was aware of the points at the time of negotiation, which was helpful. As we have already explained, these were tough negotiations, where the US has a strongly held position. It is clearly better to have an Agreement that provides proper safeguards for data protection than no Agreement at all.

On 31 July 2007 the European Union and the United States of America signed an Agreement on the processing and transfer of Passenger Name Record (PNR) data by air carriers to US authorities. The agreement will be valid for seven years. That Agreement is supplemented by an exchange of letters between the US and the EU. The US letter contains a series of conditions about how the US Department for Homeland Security (DHS) handles the collection, use and storage of EU PNR data. The EU letter states that the assurances explained in the US letter allow the EU to deem that DHS ensures an adequate level of data protection for the purposes of the Agreement. The letters form part of the Agreement.

The attached response details the Government's reactions to the recommendations made by the Committee.

11 October 2007

GOVERNMENT RESPONSE

157. It is the perennial conflict between the security of the public and the privacy of the individuals who make up the public which is at the heart of our inquiry. A balance has to be struck, and the guiding consideration must be the principle of proportionality: the collection and retention of data for security purposes must be no more invasive of individual privacy than is necessary to achieve the objective for which they are collected. That objective must be narrowly and clearly defined.

The Government believes that this Agreement balances the need to prevent and combat serious crime and terrorism with the need to provide data protection safeguards for UK passengers.

The letter from the Department for Homeland Security (DHS) that accompanies the Agreement sets out that the “DHS uses EU PNR strictly for the purpose of preventing and combating: (1) terrorism and related crimes; (2) other serious crimes, including organised crime, that are transnational in nature; and (3) flight from warrants or custody for crimes described above.” We believe this undertaking by the DHS ensures that the objective for EU PNR data is sufficiently narrow and clearly defined.

Passenger Name Records

158. It is an important principle of democratic accountability that Parliament should be able to reach its own conclusions on the value of PNR in combating terrorism, and not have to rely on statements from the executive. This would help to secure public confidence.

159. Nonetheless, having received no evidence to the contrary, we are prepared to accept that PNR data constitute a valuable weapon in the fight against terrorism and serious crime, and that their continued use is both necessary and justified.

The Government welcomes the view reached by the Committee that the use of PNR data is a valuable weapon in the fight against terrorism and serious crime. The Government is fully committed to the fight against such acts.

The data exchanged under the Agreement has proven to be a most important source of data for risk assessment and intelligence purposes. For example, through a combination of operational experience, specific intelligence and historical analysis, we can build up pictures of suspect passengers or patterns of travel behaviour. PNR data may then be used to indicate suspect behaviour by enabling the identification of individuals whose travel details share common characteristics with those pre-defined profiles.

The Committee was provided with evidence from the Government, in the context of Project Semaphore, and from the US about the successful operational use of PNR data. We believe PNR can play a valuable part in this work and it is important that we have an agreement with the US to enable us to work effectively together whilst respecting fundamental rights and freedoms, notably privacy.

160. The principal risk of error in using PNR data seems to us to arise, not from the quality of the data, but from the erroneous interpretation of the data, even if accurate.

The Government notes the Committee’s views. The Government acknowledges that it is possible to draw an erroneous interpretation from accurate data, including PNR data. However, account is given to this risk in the context of PNR as it is in any other context. No-fly lists are completely independent of PNR, although PNR data are checked against them. In the example set out in the report, the Committee acknowledges that the authorities correctly identified Mr Arar, however the problem lay not with the PNR data but that Project A-O Canada supplied the American agencies with a good deal of inaccurate information about Mr Arar, some of which was inflammatory and unfairly prejudicial to him.⁴

161. It is important that intending passengers should be aware of who will receive their personal data, and subject to what conditions. We agree with the Working Party of national data protection authorities that the airlines should be responsible for informing passengers, and we endorse the Working Party’s proposals.

The Government welcomes the Committee’s recommendation in this area. Under the Data Protection Act, data controllers must ensure, so far as is practicable, that individuals have, are provided with, or have readily made available to them certain information, including information about the purpose for which data is intended to be processed. It is important that people understand what their personal data will be used for.

The Department for Transport is working with air carriers to raise awareness amongst passengers of PNR data and the main UK airlines already provide passengers with information about how their data will be used.

As part of the new Agreement the DHS will provide airlines with a form of notice concerning PNR collection and redress practices to be available for public display. Both the DHS and the EU will work with the aviation industry to promote greater visibility of this notice, including incorporating it in the official contract of carriage.

⁴ Paragraph 5.1.5.3 Report of the events relating to Maher Arar, analysis and recommendations. Commission of Inquiry into the Actions of Canadian Officials in Relation to Maher Arar.

The Interim Agreement

162. The negotiators should as a matter of principle insist that data transferred under the 2004 and 2006 Agreements must be destroyed no later than 3.5 years after the transfer, unless a formal Agreement is negotiated allowing these data to be retained longer.

The Government notes the Committee's concerns. The retention periods negotiated under the new Agreement will also apply to data collected under the 2004 and 2006 Agreements.

Under the Data Protection Act, data controllers have the flexibility to retain data for as long as is necessary for the purpose for which the data is processed. Terrorist groups often operate over a long period of time and the recruitment and training of their personnel may be spaced over several years. It is important therefore for data to be retained to allow retrospective analysis of intelligence to identify links between known operatives and others.

The new Agreement increases the retention period for active data from 3.5 years to seven years. After seven years the data will move to a dormant non-operational status for eight years, accessible only in exceptional circumstances and under strict conditions.

163. Whatever the justification for extending data elements, for wider sharing of data, or for using data to identify possible carriers of dangerous communicable diseases, there is no justification at all for doing so through a unilateral declaration by one of the parties to an agreement.

164. An undertaking which includes a provision allowing the party giving it to amend it virtually at will is of very limited value, and scarcely deserves the name. No such provision should be included in any future agreement.

The Government notes the Committee's views. The new Agreement takes account of the changed legal environment and the legal duties that US authorities are under to share information. This Agreement and the DHS letter are binding on both parties. If the US does not comply with the Agreement the EU can terminate the Agreement (under Article 8).

Negotiations for a new Agreement

165. In our view the worst possible result of the negotiations would be an agreement to extend the current Interim Agreement.

The Government believes that this Agreement is much better than no agreement, particularly as the new Agreement provides an appropriate level of data protection for data subjects. The Information Commissioner has also welcomed the conclusion of an agreement with the US authorities as it is important to have safeguards in place for the personal details of passengers passed on to the US authorities.

Under US legislation, if people wish to fly to the United States then carriers must provide their data to the US authorities. If there were no agreement, the consequences would have meant that airlines in breach of US rules would be liable for fines of \$6,000 per passenger, and could have their US landing rights withdrawn. As you would expect these were tough negotiations where the US had a strongly held position.

The agreed package contains important commitments by DHS on how they will handle EU PNR data in full respect of data protection. The EU Commission and Member States are satisfied that the necessary data protection safeguards for the processing and transfer of PNR data by air carriers to the Department for Homeland Security are in place through the new Agreement.

42. EU/US PASSENGER NAME RECORD (PNR) AGREEMENT*The views of the European Parliament and the data protection authorities*

166. The fact that the European Parliament no longer has a formal role to play is not a reason why the views of its members should be disregarded. On the contrary, in a Union of democracies special attention must be paid to the views of representatives, since they are well placed to balance the public good against private rights.

167. The European Data Protection Supervisor, and national data protection authorities individually and collectively in the Article 29 Working Party, have great experience of the practical working of data protection laws and of nonbinding declarations on the handling of personal data. Those negotiating a new agreement should be guided by their opinions.

The Government agrees that the views of experts and representatives, including MEPs, are important. The Government believes that the way to achieve the best outcome for the EU, and hence for the UK, that balances the rights of UK citizens with the use of PNR data to combat terrorism and other serious crimes, was for the negotiations to be led by the Commission and the Presidency. As Jonathan Faull made clear in his evidence to the Committee for this Report, the Commission was very well aware of the views of the European Parliament and had numerous meetings with interested MEPs, and took their views into account. The Commission also participated in the “March seminars” with the Article 29 Committee and the European Parliament’s LIBE Committee. They were also aware of the European Data Protection Supervisor’s views in relation to the negotiating mandate and kept him updated through the Article 29 Committee. We believe that the Agreement reached ensures an adequate balance between security and data protection concerns.

The EC/Canada PNR Agreement

168. We believe that the PNR Agreement with Canada could be a useful starting point for the negotiations with the United States.

The Government notes the Commission opinion, as given during evidence to the Committee, that there was no question of topping and tailing the agreement with Canada and replacing references to Canada with the United States. The Government is of the view that the Agreement reached is one that takes into account the needs of both the EU and the US and benefits both parties.

Data elements

169. We expect those negotiating the new Agreement to take a robust attitude in the negotiations before being satisfied that any additional data item is essential and therefore permissible.

170. It would be wrong to include among the agreed data elements open-ended data elements like “general remarks” or “open fields”, which merely serve as a means of introducing other data elements not specifically listed.

The Agreement does not allow more data to be exchanged. The number of accessible types of EU PNR collected is reduced from 34 to 19 as a result of merging a number of data elements that cover the same type of information. To the extent that the information that the passenger gives to an airline, and is then made available to the US authorities, is regarded as sensitive data, such data will be filtered and not used, except in an exceptional case where life is at risk. The DHS will maintain a log of any access to sensitive data and will inform the European Commission normally within 48 hours.

Undertakings

171. We hope that the talks will have started on the basis that the Undertakings being negotiated, unlike the current ones, are legally binding on the United States authorities.

172. All the terms of the Undertakings being negotiated must be specific, unequivocal, contained in the document itself, and not susceptible of amendment without the agreement of all the parties.

173. If any clarification is needed, this is a matter for subsequent open negotiation between the parties. There can be no scope for amendment by unilateral “interpretation” of the Undertakings.

The Agreement between the EU and the US is intended to meet security and data protection requirements through assurances provided by the US. The new Agreement, which is binding, is in three parts: (i) an Agreement signed by both parties; (ii) a letter which the US sends to the EU in which it sets out assurances on the way in which it will handle EU PNR data and (iii) a letter from the EU to the US acknowledging receipt of the assurances and confirming that it considers the level of protection of EU PNR data in the US as adequate. Compared to the Undertakings, which formed part of the 2004 and 2006 Agreements, the agreed assurances are more precise. The Agreement ensures that the assurances set out in the US letter are binding upon DHS by explicitly referring to those assurances. The wording of the Agreement underlines its binding character. Either party may terminate or suspend the Agreement. Termination will take effect 30 days from the date of notification, unless either party deems a shorter notice period is essential for national security.

Purpose limitation

174. Under the 2004 Agreement the use of PNR data was to be limited to:

- the prevention and combating of terrorism and related crimes;
- other serious crimes, including organised crime, that are transnational in nature; and
- flights from warrants or custody for these crimes.

The negotiators should seek to retain these limitations in the new Agreement.

The Government notes the Committee's recommendation. The purposes set out in the previous interim agreement have been retained in the new Agreement. The new Agreement also states "PNR data may be used where necessary for the protection of the vital interests of the data subject of other persons, or in any criminal judicial proceedings, or as otherwise required by law". This is not a new concept. This use of PNR data was also mentioned in former undertakings.

EU/US PASSENGER NAME RECORD (PNR) AGREEMENT 43

175. We believe that the use of PNR data for general law enforcement purposes, as opposed to countering terrorism and serious crime, is undesirable and unacceptable.

176. If, contrary to our view, it is agreed that data should be used for other purposes, those purposes must be specifically listed at the outset. Words such as "vital interests of the data subject" are too vague.

The use of data transferred under the new Agreement is limited to certain purposes. The Agreement also enshrines the principle of proportionality. PNR may be used where necessary for the protection of the vital interests of the data subject or other persons, or in any criminal judicial proceedings, or as otherwise required by law. The term "vital interests of the data subject" is one which is drawn from the Data Protection Directive and which is recognised in the Data Protection Act 1998. The first data protection principle is that personal data must be processed fairly and lawfully and in particular, shall not be processed unless one of the conditions in Schedule 2 is met. One of the conditions in Schedule 2 is that "The processing is necessary in order to protect the vital interests of the data subject". It is generally recognised that "vital interests" covers situations where the processing is necessary for matters of life and death.

Retention of future data

177. We are prepared to accept that routine retention of data for longer than 3.5 years may be necessary, and may be acceptable so long as the data are kept and handled securely. What is not acceptable is for these data to be used in that time for purposes other than those strictly permitted under the Agreement.

The Government welcomes the Committee's conclusion that routine retention of data for longer than 3.5 years may be necessary. The purposes for which the data may be used are set out in the Agreement. The new Agreement increases the retention period for active data from 3.5 years to seven years. After seven years the data will move to dormant non-operational status for eight years. The new Agreement imposes stringent conditions that it may be accessed only with the approval of a senior DHS official designated by the Secretary of Homeland Security and only in response to an identifiable case, threat or risk.

Data sharing

178. If United States government authorities with whom data are shared by the Bureau for Customs and Border Protection (CBP) believe that other authorities need access to such data, the decision must be for CBP. Access should be subject to the same undertakings as CBP has given. Records of this data sharing should be kept for independent inspection.

179. It may not always be possible for data to be scrutinised on a case by case basis before they are shared with other authorities, but indiscriminate bulk sharing should not be permitted. It must be for CBP to "push" the information to other authorities, not for those authorities to "pull" it from the CBP database.

DHS will share EU PNR data with other US Government authorities only for the same purpose for which it may use the data itself, i.e. focusing on the purpose of preventing and combating terrorism and other serious crimes. Although other US agencies will have the right to obtain EU PNR information under the new Agreement, they will not have automatic or unconditional access to DHS's database. Access will be strictly limited to these purposes and in proportion to the nature of the case for which the data are being sought.

180. The negotiators must stress how serious it is for an individual to be wrongly placed on a no-fly list, and must ensure that provision is made for rapid access to an enforceable means of redress.

A passenger may be placed on a no-fly list for reasons that are unconnected with the use of PNR data. The Department for Homeland Security has launched a *Traveller Redress Inquiry Programme* (DHS TRIP) that enables people to file complaints on its website. DHS TRIP is a central gateway to address: watch list misidentification issues; situations where travellers believe they have faced screening problems at ports of entry; and situations where travellers believe they have been unfairly or incorrectly delayed, denied boarding or identified for additional screening at transportation hubs.

Furthermore, the DHS has made a policy decision to extend the administrative Privacy Act protections providing redress to data subjects seeking information about or correction of their PNR data to non-US citizens. EU citizens will have the same legal remedies as US citizens. This is a significant improvement to the 2006 Agreement.

“Pull” v “Push”

181. The negotiators should ensure that the United States honours the commitment given three years ago to move to a system allowing the airlines to “push” the data to them, and should insist on a single “push” of data at the time of departure.

The Government welcomes the recommendation. A deadline, 1 January 2008, has been set obliging DHS to move to a “push” system for all carriers operating out of the EU that have implemented a system that complies with the DHS technical requirements. PNR data will continue to be pulled from other carriers operating out of the EU until such time as their systems comply with the technical requirements.

Review of the working of the Agreement

182. The new Agreement must provide for thorough annual reviews of the working of the PNR Agreement, and the parties must ensure that they take place as intended. The EDPS and National Data Protection Authorities must take part. The EU team must be allowed the fullest access to data to enable it to assess the value of PNR data in the fight against terrorism.

183. This is an Agreement between equal parties. The EU team should not have to sign general non-disclosure agreements, even though there will of course be matters which they will agree not to disclose.

184. Reports of reviews should set out in detail the degree to which data are shared by CBP with other US authorities, and the conditions applying to such data sharing.

The parties will periodically review the implementation of the Agreement. For the EU, this task will be undertaken by the Commissioner responsible for Justice, Freedom and Security or by another person designated by him. The modalities of how these views will be carried out will be mutually agreed by the EU and DHS.

44. EU/US PASSENGER NAME RECORD (PNR) AGREEMENT

185. Reports of reviews must be published. Any editing of a report prior to publication should be confined to what is strictly necessary for security reasons.

The Government is committed to open and transparent government. Unless there are good grounds for non-disclosure, for example, for national security reasons or because disclosure would prejudice law enforcement functions, the information should be disclosed.

Report

186. We recommend this Report to the House for debate.

Letter from the Chairman to Bridget Prentice MP

Thank you for your letter of 11 October 2007 with which you enclosed the Government’s response to this report. It was considered by Sub-Committee F (Home Affairs) of the Select Committee on the European Union at a meeting on 14 November 2007 and by the Select Committee itself on 20 November 2007.

We agree with you when you say that “it is clearly better to have an Agreement that provides proper safeguards for data protection than no Agreement at all.” Where we differ from you is in the implication, throughout the response, that the new agreement does in fact provide proper safeguards. However, as you know, the report was recommended to the House for debate, and we will take that opportunity to put our views forward.

27 November 2007

22ND REPORT: MODERNISING EUROPEAN LABOUR LAW: HAS THE UK ANYTHING TO GAIN?

Letter from Pat McFadden MP, Minister of State for Employment Relations and Postal Affairs, Department for Business, Enterprise and Regulatory Reform to the Chairman

I am pleased to enclose the UK Government response to the European Union Committee’s report *Modernising European Union Labour law: has the UK anything to gain?* published on 27 June 2007.

28 September 2007

GOVERNMENT RESPONSE

The Government welcomes the Committee’s Report on European Labour Law.

Detailed responses to the Committee’s specific conclusions and recommendations are set out below but the Government welcomes the Committee’s general endorsement of its approach to the European labour law debate and its assessment that it is for individual Member States to pursue employment law reform consistent with their very different structures and traditions. Whilst the EU has agreed (or has under discussion) a framework of minimum employment standards there is no “one-size fits all” model of employment law that could be applied across the EU and we see little appetite for major new employment law initiatives at the EU level. However the Government welcomes the Committee’s emphasis on the potential benefits of sharing best practice and experiences of labour law working in practice across European Member States. In our view, this is an area where the EU could add real value.

Since publication of the Committee’s Report, we have learned that the European Commission has received over 400 responses to its open consultation on the Green Paper on Labour Law. The European Commission is expected to issue a summary report on the responses received in October/November. We will keep the Committee updated on further developments and stand ready to provide further information as required.

THE CONCLUSIONS AND RECOMMENDATIONS OF THE COMMITTEE

Chapter 2: The development of 21st century labour markets

We conclude that most of the issues raised in the Green Paper are already adequately addressed within UK labour law where the labour market is relatively lightly regulated in comparison with some other Member States.

In consequence, we recommend that it would not be helpful to introduce new EU wide changes to labour law since this would not meet the specific circumstances of the UK nor of other individual Member States.

We consider, nevertheless, that the Green Paper provides valuable insights into the role of labour law in promoting labour market flexibility and in enhancing the genuine employment security that comes from helping people to cope with structural change. In addition, we welcome the focus it provides on what Individual Member States might learn from the experience of others when deciding what reform of labour law of other employment and welfare policies might best help them to meet the economic and social challenges of the early 21st century.

(Paragraphs 45–47)

The Government agrees with the Committee that employment law reform is primarily a matter for individual Member States who are able to tailor approaches to their own labour market systems, practices and culture.

The Government also agrees that the EU has a valuable role in helping Member States share experiences and best practice. The UK Government is very actively involved in the existing processes based on the Lisbon National Reform Programmes and the National Report on Strategies for Social Protection and Social Inclusion through which Member States learn from each other about what works well in delivering shared economic and social outcomes.

Chapter 3: Labour law and the UK economy

We accept the evidence that the UK's relatively light employment protection legislation, by facilitating a high degree of numerical labour market flexibility, has benefited the UK economy (although we recognise that this has not necessarily been a major factor in the improved performance of the economy in recent decades). This has helped the UK to avoid the high unemployment and labour market segmentation witnessed in some other EU Member States, notwithstanding the problems of structural unemployment and social disadvantage suffered by some people in this country.

We recommend, however, based on evidence to the Inquiry discussed later in this report, that the problems of structural unemployment and social disadvantage in the UK need primarily to be addressed by measures directed at tackling poor skills and social inequality, and by enforcing existing labour law where this is being flouted, rather than by changes to labour law.

(Paragraphs 72–73)

The Government agrees with the Committee that tackling poor skills is a top priority for dealing with the problems of structural unemployment and social disadvantage. That is why following Lord Leitch's review we published "*World Class Skills*" (the Government's skills implementation plan), as well as a Green Paper on next steps to full employment. In particular, the Government is aiming to improve adult participation in training at basic, intermediate and higher skill levels, through *Train to Gain* and other measures, especially by putting employers at the heart of the system and meeting the needs of disadvantaged individuals.

We are also taking additional steps to ensure that the framework of workplace rights and standards we have put in place is properly enforced. An update on the Government's activities in this field, including the recent consultation on National Minimum Wage enforcement and strengthening the powers of the Employment Agencies Standards Inspectorate, can be found in the response below to the conclusions under Chapter 7 of the Committee's report.

It was clear from our evidence that, whatever the overall success of the economy, there remains a major problem for the UK in relation to labour productivity. Our view is that significant changes in labour law can have either a positive or a negative, but only marginal, effect on productivity. We conclude that, to improve the UK's productivity performance appreciably, the priority needs are:

- to raise levels of investment in physical capital and in research and development;
- to improve skills at all levels;
- to assist the innovation process; and
- to increase the standard of people management and development in the work place.

(Paragraph 74)

The Government agrees that whilst labour market flexibility clearly contributes to overall economic success, tackling productivity goes much wider than questions of labour law.

Improving the UK's productivity performance is a long-term challenge—it takes time for workers, businesses and consumers to respond to economic reforms and for the impacts to feed through into the productivity data. However, available data suggests that the UK's productivity growth has improved in recent years and these improvements in productivity have coincided with strong employment performance. Progress has been made under all drivers of productivity identified under the Government's framework for improving performance investment, innovation, skills, enterprise and competition—but there is still scope for improvement.

Progress is monitored and presented under the five driver framework in the joint HM Treasury/BERR annual report on *UK Productivity and Competitiveness Indicators*, which compares the UK's economic performance with that of other advanced economies.

Chapter 4: Flexibility and employment security—"flexicurity"

We commend the Commission for starting, in the Green Paper and elsewhere, an important policy debate on how labour market flexibility and employment security might be combined and reinforced to the benefit of both employers and workers and in furtherance of the common good.

However, we recommend that the purpose of this debate should be primarily to share information and examples of good practice, recognising the diversity of circumstances between Member States identified by the report of the Commission's Expert Group on Flexicurity. Any common principles of flexicurity agreed at EU level should therefore be interpreted as guidelines rather than as obligations.

We recommend also, that as far as the UK is concerned, progress toward enhancing flexicurity requires action on skills and welfare to work measures rather than changes in labour law.

(Paragraphs 93–95)

The Government agrees that Flexicurity Principles to be agreed at EU level should provide broad guidelines rather than specific detailed obligations—so we welcome that the recent Commission Communication on Flexicurity (10255/07, 4 July) recognises that Member States have different approaches to suit national needs, and that the EU level focus is the Treaty based exchange of good practice through Integrated Guidelines and National Reform Programmes.

As far as the Government’s approach to flexicurity in the UK is concerned, the current primary focus is on “work first” including enhancing skills and helping the most disadvantaged. While it would not be appropriate to pre-empt what we will set out in the 2008 National Reform Programme we will want to say more on the Leitch skills implementation plan and welfare reform Green Paper, all of which is in line with the Committee recommendation.

Chapter 5: The need for labour law reform and the role of the EU

We conclude that the present framework of individual labour law in the UK strikes a fair, efficient and sensible balance between the rights and responsibilities of “employees” and “workers”.

We agree with the Government that any change in this framework would create difficulties for employers without providing any substantive advantage to workers and possibly harm employment prospects. The focus of attention should therefore be on informing all workers of their rights and enforcing existing entitlements.

(Paragraphs 132–133)

The Government agrees with the Committee that having put a platform of employment rights in place the key focus of attention should be on informing workers of their rights and enforcing existing entitlements. This is particularly important with regard to vulnerable workers. That is why we have created an the Employees section on the directgov website which serves as a one-stop shop to provide a single source of employment law information for individuals. In addition, ACAS (the Advisory, Conciliation and Arbitration Service) provides a major source of information and advice for employers and workers and organisations such as the TUC and Business Link have helpful initiatives to assist employers in fulfilling their obligations. Further detail on specific initiatives for vulnerable workers can be found in our response to the conclusions under Chapter 7 of the Committee’s report along with an update on the Government’s enforcement-related activities, including the recent consultation on National Minimum Wage enforcement and strengthening the powers of the Employment Agencies Standards Inspectorate.

We recognise the important role played by trade unions and collective machinery in helping to ensure people are treated fairly at work, are able to exercise their legal rights, and can make a productive contribution in the workplace. However, we see no need for action at an EU level to alter directly the scope of collective labour law in the UK or other Member States.

(Paragraph 134)

The Government agrees that there is no need for EU level action in this area. It is an issue for Member States.

We fully appreciate the particular pressures facing smaller businesses in coping with an increasing amount of labour law which may seriously hamper their ability to create jobs and improve their performance. We therefore recommend that the Government should pay serious attention to the concerns of small businesses about the impact of employment protection provisions on their operations. We would not, however, wish to see any groups of workers, including those working in the smallest businesses, left without the employment protection which is afforded to workers in larger organisations.

(Paragraph 135)

The Government recognises the particular situation of small businesses and has therefore strengthened the Small Firms Impact Test to continue to further embed the “think small first” principle into all new and amended policy development—thereby targeting regulation only where it is needed. Government has committed to conduct a Small Firms Impact Test on all measures affecting business and makes every effort to involve them and their representative organisations in policy discussions and formal consultations on employment law and more broadly. As outlined in our written evidence to the Committee, our approach to successfully combining a flexible labour market with a fair framework of rights for workers without overburdening business lies in the application of better regulation principles, including consultation and high quality impact assessment. Guidance is an essential part of giving clarity and thereby reducing costs,

increasing confidence and encouraging compliance. Businesslink.gov.uk—the cross government website designed especially to help small business cope with regulation—offers an employment law checklist and a No-Nonsense Guide to regulations which apply when businesses employ people. This is designed to make it easier for smaller businesses without professional HR departments to understand and comply with employment regulations.

Other elements of our better regulation approach to help minimize burdens on business include two common commencement dates (CCDs) per year, 6 April and 1 October, for all domestic legislation across Government that bears on business and the publication at the start of each year of annual statements by departments. This initiative gives businesses early notification of what is coming in and when, allowing them to plan ahead. To save small business time and money and help with compliance, www.businesslink.gov.uk/ccds offers a summary of regulations due to come into force on a CCD, which links to plain English guides. To continue to keep up-to-date, businesses can sign up for free email alerts about forthcoming new and changing domestic and European regulations at www.businesslink.gov.uk/regulationupdates.

We do not believe there is need for more convergent definitions of worker in EU directives. We also firmly reject any suggestion of a common floor of rights, although we do not consider this to be the intention of the Green Paper. The UK already provides a sensible floor of rights covering all workers and any changes to this legislative floor should be left for the UK to decide for itself.

(Paragraph 136)

The UK Government agrees with the Committee. A harmonised EU level definition of worker is neither practical nor necessary. The question of a “floor of rights” is a matter for individual Member States to determine; the UK has in place a framework of core rights that are applied to all workers not just employees.

We recommend that efforts at EU level to affect the broad frameworks of labour law within Member States should be planned to promote the sharing of experience and good practice, rather than to introduce new legislation.

(Paragraph 137)

The Government welcomes this recommendation and, as stated previously, believes this is where EU level action can add real value.

Chapter 6: issues for groups within the labour market

We recommend that in the UK, the agency should continue be treated as the primary employer of agency workers and that agency workers should retain their current status in law. There is no strong case for change in the current regulation of agency work, the existence of which benefits employers, agency workers and the UK economy as a whole.

We conclude also that there is no strong case for any change in the definition of employment and self-employment or the extension of employment rights to those deemed genuinely self-employed. We recognise, however, that in the UK the distinction is complicated by tax authorities sometimes adopting a narrower definition of who is self-employed than Employment Tribunals or courts. We recommend that, so far as possible in practice, the Government should clarify this position.

(Paragraphs 162–163)

The Government agrees that there is no strong case for change to the current framework of employment rights and employment status. The Government considered the current framework as part of its review of employment status and the conclusions were published as part of the policy statement *Success at Work: protecting vulnerable workers, supporting good employers* in March 2006. In relation to employment rights, the courts have devised a number of tests to establish an individual’s employment status. These tests enable the court to consider all aspects of the relationship, including what a contract may say or what it does not say. Once a court judgment on a particular type of arrangement is made, and not successfully appealed, that interpretation will stand.

As part of *Success at Work*, the Government is committed to improving the guidance on employment status, and to developing an interactive tool on the employee pages of direct.gov, so that individuals have a much clearer idea of their legal position and are not tricked out of their rights.

On a point of clarification, agency workers do not necessarily have a contract of employment whereby the agency is the employer but a contract for personal performance of services. However, the agency is generally responsible for ensuring that agency workers receive their employment rights such as the National Minimum Wage and Working Time entitlements including paid annual leave.

Chapter 7: Addressing labour market disadvantage

We have noted the high rate of transitions between different forms of employment and contractual status within the UK labour market. We conclude that whatever market segmentation does exist is explained primarily by social disadvantage, caused by lack of basic skills and qualifications, rather than by barriers created by labour law.

In the UK context, therefore, we recommend that measures to improve employability, rather than modernisation of labour law, should be the main priority of government policy toward the labour market.

(Paragraphs 184–185)

The Government agrees with the Committee's recommendation on improving employability. As above, the Government is working to increase the participation of low-skilled adults in training. Part of our response to the Leitch report is to ensure that an integrated employment and skills service meets the needs of disadvantaged individuals, including benefit claimants, by focusing on sustainable employment and progression as an outcome. In addition, our latest Green Paper on setting out pathways towards full employment is based on core principles which include that employment support should be focused not just on job-entry but also on retention and progression.

We are greatly concerned by evidence of the exploitation in the UK of vulnerable groups, especially migrant workers. We conclude, however that the appropriate course is to tackle abuse where it occurs and to provide vulnerable and migrant workers with information about their existing legal entitlements.

We welcome the action taken by the Government during our Inquiry to consult on the introduction of measures which would help to strengthen the employment protection in the UK of vulnerable groups of workers by creating better enforced and more effective penalties for employers' non-compliance with National Minimum Wage legislation and the Employment Agencies Act. We will take a close interest in the outcome of this consultation and in the effectiveness of any new measures which result from it.

(Paragraph 186–187)

The Government fully agrees with the Committee's conclusion. Our vulnerable worker strategy has five strands: maintaining a fair legal framework; raising worker awareness of rights and remedies; helping businesses understand and comply; joined up, effective and targeted enforcement; and helping vulnerable workers develop skills to strengthen their position in the labour market.

Initiatives under these strands include the two vulnerable worker pilots mentioned by Jim Fitzpatrick in his oral evidence to the Committee in May 2007. Launched on 1 June 2007, they aim to identify and test practical ways of improving the advice and support available to vulnerable workers and their employers at a local level. They will build on the services that unions, advice bodies, community and business groups; enforcement agencies and others already provide. The TUC is leading a pilot in the City of London and Tower Hamlets focused on the cleaning sector; Marketing Birmingham is leading the second pilot focused on the hospitality sector.

In addition, a Vulnerable Worker Enforcement Forum was established on 1 June 2007 to bring together front line unions and other interested parties, including the enforcement agencies, business groups and advice bodies, to consider evidence on the nature and extent of abuse of legal worker rights and legislation. Chaired by the Employment Relations Minister, the Forum will move on to consider whether abuses can be tackled using the existing enforcement regime and whether improvements are needed. It is expected to conclude its work by March 2008. A dedicated mailbox: vulnerable.workers@berr.gsi.gov.uk—has been setup to help collect evidence about the abuse of vulnerable workers.

As highlighted in Jim Fitzpatrick's oral evidence to the Committee in May 2007, the Government also published a consultation document earlier this year on measures to protect vulnerable agency workers, including giving workers the right to withdraw from services provided by an agency, such as accommodation and transport without suffering any detriment, and providing advice on living in Britain (including the cost of living) to distribute to migrant workers coming from EU states before they come to Britain. The consultation closed on 31 May. We are currently analysing the responses and will make an announcement shortly.

Awareness of workplace rights is another key element of the strategy, particularly for migrant workers. BERR has produced a one page leaflet *Working in the UK: Know your rights and where to get help and advice* available in Bulgarian, English, Latvian, Lithuanian, Polish, Romanian and Slovakian. This is available on BERR's website and The Home Office is sending the leaflet to all workers registering under the worker registration schemes for recent EU accession countries. In addition, *Know Before You Go* leaflets are being distributed to Lithuanian and Polish nationals before they leave for the UK.

On enforcing the law, we are taking a tougher approach to the enforcement of the National Minimum Wage and other workplace rights. The consultation exercise the Committee refers to, on a new penalty for employers who fail to pay the National Minimum Wage (NMW) and a fairer way to calculate NMW arrears and proposals to strengthen the investigative powers of the Employment Agency Standards Inspectorate (EASI), closed in August 2007. The Government is currently considering the responses received and changes to the law will be included in a Bill on employment simplification, expected in the incoming Parliamentary session.

The consultation proposals on the NMW built on the announcement in January 2007 that a penalty notice will be issued in virtually all cases where an employer does not comply with a national minimum wage enforcement notice. The first successful criminal prosecution occurred in August 2007 where an employer who was guilty of obstruction was fined £2,500 and £500 costs. The budget for National Minimum Wage enforcement has been increased by 50% for the next four years and a rolling programme of NMW targeted enforcement is also in place targeting low pay sectors in turn. The hotel sector is being targeted in 2007–08; the wider hospitality sector in 2008–09. These are both sectors where there are large numbers of migrant workers.

Chapter 8: EU legislation: its formulation in Brussels and its implementation in the UK

We are persuaded that the current social partnership consultation arrangements for formulating EU legislation have an exclusive “two sides of industry” feel.

We recommend, therefore, that the Government should support UK small business organisations in finding means to ensure that social dialogue in the EU includes a wider representation of interests, in particular representatives of the small business sector. This would seem the most appropriate way of making sure that the EU matches up to the spirit of its treaties which state that the EU should avoid imposing administrative, financial and legal constraints on small and medium sized enterprises.

(Paragraphs 199–200)

As stated in the supplementary memorandum sent to the Committee by Jim Fitzpatrick on 15 May 2007, the Government agrees that it is important for small firms should be engaged in social dialogue at EU level. While small business interests fall within the overall remit of Business Europe, which counts small businesses among its members, we remain unaware of any intentions by UK small business organisations to join UEAPME, the European level organization representing SMEs with recognised Social Partner status.

However, the Government notes that by choosing to have an open consultation on the Green Paper on Labour Law the European Commission opened the debate to all interested parties and we welcome that small firm organisations took the opportunity to make their views known. The Government also recognises efforts by the European Commission to engage small businesses in aspects of European policy making for example, through establishing the European Small Firms Envoy and European Commission initiatives such as the European Business Test Panel; a virtual, representative group of businesses from across the EU generally canvassed at the very early stages of policy formulation. In addition, the strengthened impact assessment process used by the European Commission since 2004 requires policy makers to consider particular impacts on SMEs and new EU level targets to cut administrative burdens stemming from existing EU regulation were announced in 2006, although reforms will take time to flow down to operational level.

We recognise that the perception remains strong that the UK “gold plates” EC directives relating to employment. However, we have seen no conclusive evidence to support this view and indeed the final report of the Davidson review suggests that the perception is exaggerated. We recommend no further action on this matter.

(Paragraph 201)

It is Government policy to avoid “gold plating” in all areas of legislation. Sometimes UK transposition involves a larger number of pages of legislation than in other EU countries but in most cases this provides vital clarity and does not add burdens to business. If the UK did regularly gold plate, it would be a less attractive place to do business than other Member States—international surveys show this is not the case—and, as the Committee recognises, the Davidson Review of the implementation of European legislation published on the 28 November 2006 found no evidence of “gold plating” in BERR policy. The Committee may wish to note that the Government launched new guidance for officials to improve implementation of EU law on 6 September 2007.

23RD REPORT: THE COMMISSION'S ANNUAL POLICY STRATEGY FOR 2008**Letter from Jim Murphy MP, Minister for Europe, Foreign and Commonwealth Office to the Chairman**

Thank you for the copy of your report on the European Commission's Annual Policy Strategy 2008 (APS), published on 4 July 2007.

The Government welcomes the quality of analysis and expertise, reflected in this report, that the Committee contributes on European issues. I read your report with interest and welcome its conclusions.

I welcome your suggestion that the European Commission should consider the issues raised in the report when drafting the Annual Legislative and Work Programme for 2008.

I agree with you that the APS should provoke constructive debate between European institutions and national parliaments about EU priorities, and that the APS should consider the broad priorities rather than specific proposals.

I note your welcome of the European Commission's continuing commitment to Better Regulation, and share your view that there should be greater prominence given to ensuring human rights compliance of its proposals as it works on its strategic review of Better Regulation.

I also note your suggestion that our Explanatory Memorandum to Parliament should give a greater prominence to the Government's views about the policy areas raised in the APS. You will be interested to know that officials from the FCO have visited the European Commission to discuss with officials responsible for drafting the APS ways to improve the process.

23 October 2007

25TH REPORT: PROPOSAL TO ESTABLISH THE EUROPEAN INSTITUTE OF TECHNOLOGY⁵**Letter from Ian Pearson MP, Minister of State for Science and Innovation, Department for Innovation, Universities and Skills to the Chairman**

Thank you for your letter of 5 July 2007 and for the Committee's report on the proposal to establish the European Institute of Technology. I am pleased to attach the Government's response.

14 August 2007

GOVERNMENT RESPONSE

The Government thanks the Committee for the detailed work it has undertaken in its examination of the Commission proposal to establish a European Institute of Technology (EIT). The Government agrees with the Committee's view that Europe needs to address the relative weakness in its capacity to realise its great innovation potential. Although the EIT proposal cannot by itself be the panacea to Europe's relative weakness in this area, the Government believes it could over time usefully complement existing EU instruments. The Government's objective during negotiations has been to work constructively to achieve an outcome which will deliver tangible benefit. We believe that this approach has helped to secure substantial improvements to the concept of the EIT.

2. The conclusions and recommendations of the Committee align closely with the position adopted by the Government during the course of negotiations. We endorse the Committee's observations on the challenges that lie ahead for the EIT, namely the importance of the composition of the Governing Board and the need for rigorous evaluation and monitoring of the EIT and KICs. The Government has consistently stated its position that the EIT should have a light touch governance regime, which allows maximum autonomy for the individual Knowledge and Innovation Communities (KICs), while maintaining transparency, quality assurance and accountability.

The note below sets out the Government's response to the individual recommendations in the Committee's report.

⁵ 14871/06.

LIST OF RECOMMENDATIONS AND GOVERNMENT'S RESPONSE*Budgetary provision for the EIT*

Recommendation 1. We recommend that EU funding for the EIT should be reduced to a level commensurate with the gradual phased approach which is now envisaged for its implementation; and that the year by year profile of the total budget should properly reflect that phased approach. (3.18 and 4.33)

3. Following the Conclusions of the European Council of 21-22 June 2007, which called for rapid agreement on the European Institute of Technology, the German Presidency secured a “General Approach” on its compromise text at the 25 June 2007 Competitiveness Council. The compromise text provided for a budget envelope of €308.7 million, unchanged from the Commission’s proposal. The source of this budget would need to be agreed in subsequent negotiations with the European Parliament. While the Government expressed its support for the significant improvements made to the overall legal text, it opposed the retention of this level of direct contribution from the Community budget, especially since the number of KICs had been scaled down compared to the Commission’s original proposal. Despite similar concerns expressed by other Member States, none joined the UK in opposing the compromise text.

4. The European Parliament has still to complete its first reading of the proposal. While it appears to accept the total proposed budget figure, it shares Member States’ concerns with the lack of clarity in the source of the budget. The Government will maintain its position in Council that a mutually acceptable solution for financing the EIT must be found before any agreement can be made between the European Parliament and the Council on the substance of the proposal. The Government favours redeployment of funds from within Heading 1A, and strongly opposes any moves to re-open the Financial Perspective ceilings as part of the negotiations on funding the EIT or other projects.

Recommendation 2. We recommend, further, that the practice of funding such a major project as the EIT from a reserve budgetary source (from the margins of heading 1A of the Community budget in the case of the EIT) should not be regarded as acceptable except in the most pressing emergencies or other unforeseen circumstances. (3.19 and 4.34)

5. The Government agrees with the Committee. It is unfortunate that no provision was made for the EIT in the Inter-Institutional Agreement for the 2007–13 Financial Perspective. During negotiations we strongly disagreed with the budgetary approach adopted for this proposal, reasoning that a project should only be agreed when a budget has been properly justified and when clarity on the sources of funding has been established. During Council negotiations the Government consistently opposed any use of the margins, which are reserved for unforeseen needs and which should only be used for existing programmes. The Government also made clear that the margin of Heading 1a is already under considerable pressure from other projects. Using this margin as a source of funding is inconsistent with the principles of budget discipline and sound financial management. However, the political momentum behind the project was such that other Member States opted to support the Presidency compromise text as a whole, including on budgetary aspects.

Composition of the EIT Governing Board

Recommendation 3. We recommend that the EIT Governing Board should include an appropriate representation of Members with business experience so that it can ensure that the EIT’s activities are focussed on technological developments which are commercially viable, as well as innovative. (3.22 and 4.35).

In the Government’s view, a high calibre Governing Board is key to the success and reputation of the EIT. The Board will have responsibility for setting overall strategy, guiding the EIT through its formative phase and carving out a distinctive niche for the EIT in the European research and innovation landscape. We agree with the Committee’s recommendation on the importance of the Board having Members with direct business experience. The Commission will be responsible for implementing this objective, by virtue of its role in appointing Board Members on the basis of proposals from an Identification Committee. The Government will monitor the appointment process to ensure that it is transparent and results in a high quality and well balanced membership.

The EIT's priorities

Recommendation 4. We recommend that references to suggested topics for EIT work, such as renewable energy and climate change, should not be included in the final text of the EIT regulation, since this could be interpreted to imply that the Governing Board will have an insufficient degree of autonomy in setting the EIT's priority. (3.27 and 4.36)

7. The Government sympathises with the Committee's view that the Governing Board should have sufficient autonomy in setting the EIT's priorities. Equally, the Government considers that it is reasonable for the Council and European Parliament to give a broad political steer on the key challenges facing the European Union, which the EIT could help to address. The Government believes that the compromise text strikes an appropriate balance in this regard, by means of the inclusion of a non-binding reference to climate change and renewable energy in Recital 21 of the text. It will remain the role of the Governing Board to draw up strategy and specify fields of activity.

Monitoring the effectiveness of the EIT

Recommendation 5. We recommend that there should be a firmly based commitment in the EIT Regulation to a process which ensures that a rigorous evaluation, focused on the business impact of the work of the KICs at local level, must be carried out and assessed in Council before the initial scale of the EIT can be significantly expanded.(3.31 and 4.37)

8. The Government shares the Committee's view that the EIT requires rigorous evaluation, especially as this is an untried concept. The provisions in the "General Approach" text, especially those contained in Article 16, will ensure that the activities of KICs are subject to systematic monitoring and periodic independent evaluation, the outcomes of which will be made public. While the focus of the EIT is necessarily on raising the level of the EU's innovation capacity as a whole, the Government firmly expects successful KICs to be able to point to examples of local and regional impacts, for example the creation of spin-off companies and other innovation activity. The Government's success in securing agreement on a two-phase approach means that a further legal decision by Council and European Parliament will be necessary before any expansion in the number of KICs can take place.

Recommendation 6. We recommend that the key element of the EIT's annual reports and external evaluations should be an assessment, in commercially relevant terms, of the success of each KICs activities at local level (3,32 and 4.38)

9. In addition to the comments made in response to Recommendation 5 above, the Government notes that annual reports and external evaluations will need to cover a range of issues. These would include, for example, progress made in promoting entrepreneurship and business skills in doctoral courses run by KIC partners and the depth of links between academic and business partners. While the Government believes therefore that commercialisation activities at the local level could form a valuable part of evaluation reports, we would expect them to focus on the impact of KICs in contributing to the improvement in wider European-level innovation performance.

26TH REPORT: THE EU AND THE MIDDLE EAST PEACE PROCESS**Letter from Kim Howells MP, Minister of State, Foreign and Commonwealth Office to the Chairman**

I thought I should write to you following the publication of your Committee's Report on "The EU and The Middle East Process" on 24 July, which followed my evidence session in April.

The Government welcomes the quality of analysis and depth of expertise, reflected in your report. Your Report contained a number of Conclusions and Recommendations. I attach a note covering these points. I look forward to continuing contacts with the Committee.

October 2007

GOVERNMENT RESPONSE

Conclusions and Recommendations

166. The credibility of the Middle East Peace Process needs to be restored by a renewed, concerted and sustained effort by the whole international community. We believe therefore that the EU, which has many interests at stake in this region, should participate actively and forcefully in such an effort. (Para 5)

The Government agrees with the Committee that the international community should make a concerted and sustained effort to make progress towards resolving the conflict. The EU has a key role to play in this. We are pleased that Prime Minister Olmert and President Abbas have been meeting fortnightly and that both sides have now established negotiating teams to look at core issues in the build up to the US-hosted international meeting in November. This is an important opportunity, not only for the Israelis and the Palestinians, but also for regional and international partners. But we expect a substantive meeting with concrete results. On 8 October the Prime Minister said: "we would like to see an agreement that puts the Israelis and Palestinians on a path to real negotiations in 2008 leading to a final settlement of two states living side by side in peace and security."

Our objective is to return to a formal negotiation process as soon as possible. A negotiated two state solution is manifestly the best way forward and it is in all of our interests to make rapid progress towards it. The engagement of regional partners will be crucial. The Arab Peace Initiative will be an important part of the way ahead.

The bedrock of our approach remains: first, to be unstinting in our support for the principle of a two-state solution; second, to give every support to those who are committed to peaceful progress in the region; and third to support economic and social development across the Occupied Palestinian Territories. The peace process needs a multi-faceted approach, with economic, security and social development tracks supporting the political process.

The EU has a crucial role to play. In its own right and as a leading member of the Quartet, the EU is already heavily engaged in trying to secure a just and lasting peace in the region. The EU also plays a key role economically, as the largest international donor to the Palestinians and as a trading partner with both Israel and the Palestinians. We have two ESDP missions: one in country to lend support at the border at Rafah, another takes the lead in supporting reform of the Palestinian Civil Police.

The EU is now developing additional roles, including building Palestinian institutional capacity. The Quartet announced on 27 June the appointment of Tony Blair as Quartet Representative with a mandate that includes: mobilising international assistance to the Palestinians; identifying and securing support for the institutional governance needs of the Palestinian state; and developing plans to promote Palestinian economic development.

The Temporary International Mechanism, originally set up by the European Commission to ensure emergency funding reached those who needed it following the boycott of the Palestinian government, has now been extended by the Quartet until 31 December 2007. The international community, with Commission and UK support, is working to establishing a co-ordinated multi-donor successor. The Commission is also working on a mechanism to help reduce Palestinian Authority private sector arrears.

167. The EU's consistent support since 1980 for a negotiated two-state solution as the basis for a final and comprehensive settlement of the Israeli-Palestinian conflict has subsequently gained the adherence of the majority of the international community and, above all, since 2002, of the US. This is one of the major successes of EU diplomacy in the MEPP, particularly in influencing the evolution of US policy. The seriousness of the current situation is a major test for the EU, which again needs to put its full weight behind the search for a comprehensive solution. For 20 years extremists have been allowed to dictate the agenda. Any resumed peace process now needs to be proofed against their acts. (Para 11)

We agree with the Committee that the EU has played, and continues to play, a significant role. The EU values its close relationship with the US on the MEPP. Together we are continuing to work towards the establishment of two states, Israel and Palestine, living side by side in peace and security. We are working to create the conditions for formal negotiations to start between the parties, and to ensure that confidence-building steps are taken to underpin such negotiations.

168. We are not convinced that the Road Map, as originally conceived in 2003, is the only vehicle for progress, and consider that the interim steps it describes should no longer be pursued to the exclusion of the consideration of final status issues such as the territorial limits of the two states, the fate of refugees and the status of Jerusalem. We are reinforced in this view by the recent statement by High Representative Javier

Solana that the time has come for the EU and the Quartet to focus more directly on resolving the issues, which are at the heart of the conflict. (Para 20)

Clearly the precise timescale envisaged in the Roadmap no longer applies. But we continue to believe that the Roadmap principles, and its vision of the need for interlocking confidence building measures in key areas by both parties, remain relevant. The Roadmap has been endorsed by both the parties and the international community, giving it continued validity.

We agree that an independent, democratic and viable Palestinian state peacefully co-existing with a secure Israel, and an end to the occupation that began in 1967, must remain the basis for a solution to this conflict. Our entire policy on the Middle East Peace Process is based on this principle. Achieving this remains one of our key foreign policy priorities. We are determined to work actively with the parties and our international partners to this end.

169. We believe that the EU needs to explore more imaginative ways of re-engaging the Israelis in the search for peace. EU policy contains a clearly stated position calling on the Israeli government to take “further steps, including the freezing of settlement activities and dismantling of settlement outposts and Israeli abstention from measures which are not in accordance with international law, including extra-judicial killings and collective punishment.” (Para 26)

The EU remains fully engaged with Israel in the search for peace and regularly lobbies on issues like settlements and the barrier. The EU understands Israel’s security concerns and condemns the violence by Palestinian militant groups, which seeks to undermine the prospects for peace. We believe the current EU policies towards Israel are the right ones and welcome the work of the EU High Commissioner, Javier Solana, and the EU Special Representative, Marc Otte, in taking these policies forward with the Israelis.

170. We believe the EU needs to use all the instruments at its disposal. The European Neighbourhood Policy, in particular, offers a promising route through which the EU can work for a deepening bilateral relationship with Israel within the context of steps towards resolving Israel’s conflict with the Palestinians. The EU needs to make clear to the Israeli government that there could be opportunities for developing the relationship within the Neighbourhood Action Plan. Conversely, a lack of engagement by Israel in the MEPP would in the long run hinder the process of economic harmonisation and bilateral technical and security co-operation. (Para 33)

Israel was the first country to agree with the EU an Action Plan under the European Neighbourhood Policy (ENP). Through the ENP, the EU invites its neighbours, on the basis of a mutual commitment to common values, to move beyond existing relationships to offer a deeper political relationship and economic integration.

The ENP Action Plan, with the EU/Israel Association Agreement, is a key tool for the EU not only to enhance co-operation with Israel, but also to raise issues of concern. The Action Plan contains a number of commitments in relation to the MEPP.

The EU/Israel Reflection Group, at which EU Member States are represented by the Presidency, offers a forum for Israel to put forward proposals for deepening its relations with the EU. While the EU Presidency is not currently mandated to enter into negotiations at this forum, there may be opportunities for developing the relationship within the Neighbourhood Action Plan.

171. We are gravely concerned about the security, human rights and socio-economic situation in the occupied Palestinian territories. It is becoming evident that the Quartet approach contributed nothing to ameliorate the crisis. (Para 40)

We share the Committee’s concern about the situation in the OPTs. The international community has always made clear its desire for peace and its willingness to work with all those that share that goal. The socio-economic decline in the Occupied Palestinian Territories has been caused by a number of factors including: increased restrictions on movement and access; Israel’s decision to withhold Palestinian clearance revenues (though these have recently been restored); reduced flows of migrant labour into Israel; and the Palestinian Authority’s fiscal policies.

Last year, the European Union gave over €680 million to the Palestinians, more than in any previous year. Without this assistance it is clear that the situation would have been far worse. Whereas the World Bank forecast a 27% economic decline at the start of 2006, this was reduced to only 10% due in large part to increased aid levels. During 2007, the EU has stepped up its assistance even further, and is scheduled to deliver over €800 million.

172. The EU should engage more urgently and consistently with the Israeli government to persuade them to transfer the remainder of the withheld Palestinian tax and customs revenues to the Palestinian authorities in a way that benefits all Palestinians 33. (Para 41)

We welcome the resumption of Palestinian tax and customs revenues transfers, which are now taking place regularly alongside additional payments of withheld arrears. We expect Israel to transfer the arrears in full.

173. We believe that the European Union's support for a Palestinian coalition government, including Hamas, could not have been unconditional. To require that a Hamas-led government not only renounce attacks on Israel but also use its governmental authority to prevent such attacks by others was entirely justified. (Para 45)

We appreciate the Committee's support.

174. However, the EU should not allow the peace process to be held hostage by any faction, individual, or state. The history of the Middle East is scarred by peace initiatives that have been derailed by extremists on both sides. Although each situation is different, recent experience in other situations, such as Northern Ireland, can serve as a source of inspiration and valuable lessons on how to bring into the peace process individuals and movements who previously espoused violence and how to avoid the process succumbing to acts of violence. (Para 46)

We agree with the Committee. The international community has always made clear its desire for peace and its willingness to work with all those that share that goal. On 17 September, we published a report on the "Economic Aspects of Peace in the Middle East" which draws inspiration from the Northern Ireland peace process and the role of the business community there in promoting peace, condemning violence and enfranchising the population through economics.

175. We believe that the EU's objective should be to attempt to maintain a peace process that is as inclusive as possible, while firmly rejecting attempts by outsiders and extremists to derail it. Dialogue with the key parties is an essential aspect of the peace process, and channels of communication should as far as possible be kept open. (Para 47)

We agree with the Committee that the peace process should be as inclusive as possible, and that we should firmly reject attempts by outsiders and extremists to derail it. We have made clear that we are willing to work with all those whose words and actions reflect the Quartet principles (non-violence; recognition of Israel; and acceptance of previous agreements and obligations, including the Roadmap). These principles are an essential basis for progress.

176. The requirement that the Palestinian government accept and respect positions established collectively by the Arab side, most recently at the Arab League Summit in Riyadh, is entirely justified. But conditions about the formal recognition by Hamas of the state of Israel amalgamate elements of any final status negotiations with the preliminaries to such negotiations. We believe that the interpretation of the conditions set by the Quartet was undesirably rigid and we would urge the government and the EU to reconsider the precise formulation of any conditions and to apply them in future with a reasonable amount of flexibility. (Para 51)

We do not agree that the Government's interpretation of the three Quartet principles was undesirably rigid. Rejecting those principles means rejecting peaceful negotiations and the two-state solution. The Quartet principles are no more than what was demanded of the PLO in the 1990s as the essential basis for progress.

We were very clear that we would engage with those members of the National Unity Government whose words and actions reflected the Quartet principles. The issue was not whether they were Fatah or Hamas, but whether they lived up to the responsibilities of Government. In the case of Hamas Ministers, given their history, we needed some time to make that assessment.

177. We are concerned that military support for one faction over another heightened tensions in the occupied Palestinian territories. (Para 55)

We share the Committee's concerns and therefore only support the legitimate security forces of the Palestinian Authority.

178. We also believe that the EU should engage in a frank dialogue with the United States on this issue, with a view to ensuring that all aid provided by members of the Quartet improves the cohesion of the Palestinian administration and avoids increasing tensions. (Para 56)

The EU engages closely with the US, both in capitals and on the ground. We already work to ensure our aid is complementary. An example of this is on Security Sector Reform. The US has taken the lead in reforming the Palestinian Authority Security Forces under the leadership of General Dayton and the EU has taken the lead in reforming the Palestinian Civil Police. Both programmes are designed to improve security on the ground in the Occupied Palestinian Territories. The UK has provided a police adviser to General Dayton's team to ensure coherence between the EU and US's security sector work.

179. We also believe that it is a necessary condition for any peace settlement between Israel and its Arab neighbours that there should be a Palestinian Authority capable of fulfilling any responsibilities it has accepted under such a settlement. It should also be able to provide stability and good governance within the Palestinian

party to a two-state solution. Accordingly, the European Union needs to keep that ultimate objective firmly in mind at every stage of its dealings with the Palestinians and Israelis and the wider international community; and to concentrate its efforts on moving towards that objective. The provision of emergency humanitarian aid by the EU must not conceal the need to move as soon as possible to a situation where the EU's resources go directly to properly constituted Palestinian governmental institutions. (Para 57)

The Government agrees with the Committee that the international community should move towards direct financial assistance as soon as possible. We are working with partners in the EU and elsewhere to develop the conditions that will make this possible. DFID officials are working with the Commission and the Palestinian Ministry of Finance to develop a mechanism by which donors can contribute directly into the Single Treasury Account to assist in paying off the PA's private sector arrears. DFID has earmarked £3 million to be used for this and is encouraging others, including the Commission, to contribute. Over the medium term, DFID is working with partners in both the Commission and the World Bank to develop mechanisms for direct budget support to the PA linked to dialogue on urgently needed reforms. DFID is also providing technical experts to assist the Ministry of Finance prepare a medium term development plan and budget, which will be an essential pillar of future budget support.

The UK strongly supports Tony Blair's appointment as the Quartet Representative and has seconded four officials to his team. Tony Blair's mandate includes building the capacity of the Palestinian Authority and promoting Palestinian economic development.

180. The present situation on the ground is far removed from the stated objective of creating a viable Palestinian state. But the "Mecca agreement" between Hamas and Fatah, brokered by the Saudi government offered, the possibility of a first step along that road. The European Union needs, by its statements and its actions, to encourage further progress along these lines. (Para 58)

The Government agrees with the Committee that the Mecca Agreement offered the possibility for progress. The EU encouraged further progress through its statements and actions, including through its General Affairs and External Relations Council conclusions which stated: "The EU recalls its readiness to work with and to resume its direct assistance to a Palestinian government whose policy and actions reflect the Quartet principles. In that context, it continues to closely evaluate the policy and actions of the new National Unity Government. It has initiated co-operation with members of the government who accept these principles".

181. We believe that a key role for the EU in the EU/US relationship is to press upon the US the importance to the future of the region of its sustaining an active, balanced and consistent interest and engagement in the MEPP, and supporting the Palestinians as well as Israel in achieving the two state solution. In pursuit of this objective, the EU and Member State governments should give their full support to their parliamentarians, in making full use of the existing relationship and in increasing links to explain and discuss the European position with their counterparts in the US Congress. (Para 63)

The Government believes that the US is already engaged, supporting the Palestinians as well as the Israelis in achieving the two-state solution. Secretary Rice regularly visits the region and the US, as announced by President Bush in his 16 July speech, will host an international meeting later this year. The US also supports Security Sector Reform through US General Dayton's team and committed over \$70 million to the Palestinians in 2006. The Government welcomes the input of parliamentarians.

182. We acknowledge the importance of the diplomatic energy and commitment to reviving the MEPP demonstrated in recent months by Saudi Arabia and other Arab League states, and the facilitating role played by Saudi Arabia in the formation of the Palestinian National Unity Government as having been one of the most helpful developments in recent months. While it is premature, and perhaps unwise, to focus too closely on the machinery and form that the new, and unprecedented, engagement of the Arab states in the MEPP will take, the EU and other members of the Quartet should take seriously and encourage the renewal of Arab regional leadership. Recent initiatives, such as the designation by the Arab League of Egypt and Jordan as the League's interlocutors with Israel and the Palestinians in the MEPP, should be fully supported by the EU. (Para 70)

The Government agrees with the Committee's conclusion that the League of Arab State's Arab Peace Initiative (API) is a positive proposal. We welcomed the API as an important contribution to the MEPP when it was first announced in 2002, and reaffirmed that after the 2007 Arab League Summit in Riyadh. We particularly welcome the role of King Abdullah of Saudi Arabia in advancing this initiative, and the positive role of other regional states, including Jordan, Egypt and the United Arab Emirates.

The API offers the potential of normalised relations between Israel and the Arab world on the establishment of a Palestinian state on the 1967 borders. The EU has a key role in engaging the Arab League and encouraging them to discuss their proposal with Israel. The EU welcomed the meeting on 4 May between the Quartet and members of the Arab League Follow-Up Committee. We also welcome the meeting

between Israeli Foreign Minister Tzipi Livni, Egyptian Foreign Minister Aboul Gheit, and Jordanian Foreign Minister Abdelalah Al-Khatib in Sharm el-Sheikh on 10 May, and the historic follow up visit to Israel by the Egyptian and Jordanian Foreign Ministers on 25 July. The Quartet met the Arab League on 23 September in New York.

183. We recognise the importance of the EU continuing its engagement with Syria, not least to test President Assad's seriousness of purpose. Syria has clear and legitimate national and strategic interests at stake in the MEPP. Both the Israelis and Palestinians have an interest in ensuring that Syria does not undermine the prospects for peace, either by supplying weapons to support Hezbollah attacks from Lebanon into Israel, or by providing a safehaven and financial support for a Hamas leadership in exile. (Para 76)

The Government agrees with the Committee's conclusions that the EU should continue to seek to engage with Syria with a view to encouraging them to play a more constructive role in the region and testing their willingness to do so. Both EU Member States and the EU High Representative, Javier Solana, have taken steps to work with Syria to address a number of regional concerns. Javier Solana's March 2007 visit to Damascus clarified what would need to happen for Syria to progress its relations with the EU. We will continue to support his work. However, Syria's policies in a number of areas, including Iraq, Lebanon and the Middle East Peace Process remain a cause for concern. The Government's view is that a more constructive Syrian policy in the region is a pre-requisite for progressing its relations with the EU.

The Government agrees with the Committee that Syria has a legitimate national interest in the MEPP. The Roadmap sets out steps to a comprehensive settlement, including the Palestinian, Syrian and Lebanese tracks. We continue to be concerned by Syria's support for Palestinian rejectionist groups, including Hamas, Palestinian Islamic Jihad and others. Such support only reduces the prospects for peace in the Middle East.

In Lebanon, we judge that Syria continues to play an unhelpful role. Syria continues to support Hizbollah, including by allowing arms to be smuggled across the border destined for Hezbollah, in violation of UNSCR 1701. We continue to call on Syria to cease any destabilising activity and develop a mature and constructive relationship with Lebanon. Full implementation of UNSCR 1559 remains the Government's objective in this context.

184. We believe negotiations for a comprehensive settlement of the Arab-Israeli dispute must involve Lebanon, whose political stability and viability is a necessary element for progress towards such a settlement. We urge the EU to continue to give full support to the government of Lebanon, including by continuing to support the establishment of an international tribunal to try those suspected of involvement in the assassination of former Prime Minister Rafik Hariri and other Lebanese public figures. (Para 83)

The Government agrees that a comprehensive settlement of the Arab-Israeli dispute must involve Lebanon and that promoting stability in Lebanon is vital for achieving this, including by supporting the Special Tribunal for Lebanon. The Government worked closely with international partners at the UN Security Council to ensure that the Special Tribunal for Lebanon was established; indeed, the Government played a key role in the process by co-sponsoring UNSCR 1757, which established the Tribunal. Securing a just and swift outcome to the ongoing UN investigation and to the future work of the Special Tribunal will remain a high priority for the Government. In its Conclusions of 18 June, the General Affairs and External Relations Council welcomed the adoption of UNSC Resolution 1757 and called on all states and all parties to fully cooperate with it.

185. The stability of Lebanon requires the continuing absence of hostilities along the country's border with Israel. We urge the EU therefore to give full support to UNIFIL II in its strengthened form and mandate, including the prevention of attacks on Israel from southern Lebanon, and to make clear to Israel that any military action from their side will be met by the condemnation of the international community. Given that the only remaining territorial dispute in the area concerns the Shebaa Farms, and in order to neutralise it as a source of conflict, we suggest that the EU seeks to convince Syria and Lebanon to refer the issue to the International Court of Justice, and to convince Israel to declare that it will respect any judgement by the Court and evacuate the area in dispute forthwith. (Para 84)

The Government agrees that maintaining peace along the Blue Line separating Israel and Lebanon is critical to the stability of Lebanon. The strengthened UNIFIL peacekeeping force has played a vital role in maintaining stability since the end of the conflict between Israel and Hezbollah last year. EU Member States continue to make a major contribution to UNIFIL and EU troops form the bulk of the peacekeeping force there. The fact that there have been very few serious breaches of the Blue Line since August 2006 attests to the value of UNIFIL and the role they have played.

The Government remains committed to the full implementation of UN Security Council Resolution (UNSCR) 1701, including on the Shebaa Farms. The UN has made important progress on this issue and the next report by the UN Secretary General on progress towards implementing UNSCR 1701 will include the results of the UN's cartographic work to form an accurate territorial definition of the Shebaa Farms area. This will be an important step towards initiating discussions with the relevant parties to resolve the issue of sovereignty. The Government maintains that the Security Council is the best forum in which to forward work on resolving this dispute, rather than other bodies such as the International Court of Justice.

186. We believe that it is important that the EU continues to engage with Iran diplomatically, but it should not allow the content of these negotiations to "leak into" or create a direct linkage to the MEPP. Iran should not be allowed to have a veto over the MEPP. (Para 91)

We agree with the Committee's conclusions about Iran's role in the MEPP. We have long-standing concerns about Iranian support for groups seeking to undermine the MEPP through violence. We have called on Iran to renounce all links to groups using terror and violence, and support a solution to the Palestinian question based on the principle of two states living side-by-side in peace and security.

The Foreign Secretary has made clear that Iran has every right to be a proud and respected member of the international community. It has the potential to play a constructive role in the Middle East. We would welcome dialogue and engagement with Iran in this vein. But Iran must also accept that it has responsibilities to the region and the wider international community.

187. We believe that leading EU Member States have an important role to play in any renewed peace effort and that this needs to be coordinated within and designed to support an overall EU position. The Government should direct the UK's involvement with these objectives in mind. (Para 99)

The Government agrees with the Committee.

188. The EU has a very wide range of instruments at its disposal, in addition to those available to the Member States, and plays an important role in co-ordinating aid to the Palestinian territories. We believe that the EU Member States should carefully consider the value of engaging in competing or parallel initiatives and demarches, and that they should closely co-ordinate their efforts in the framework of a coherent EU policy. (Para 100)

The Government agrees with the Committee.

189. We see the Quartet of the US, the EU, Russia and UN as continuing to be the essential diplomatic tool for co-ordinating the involvement of the wider international community in any such peace effort. The EU has already played an influential, but largely unacknowledged, role within the Quartet, introducing innovative proposals for the way forward. We believe that the EU's role within the Quartet needs to be more active and assertive than it has been in the past, providing leadership with imaginative ideas, including on final status issues and through engaging in a frank and intensive dialogue with other partners, in particular the US. This should however be done in private and with the aim of building consensus as the best means to preserve the Quartet's influence with both the parties to the conflict, with whom the EU and the Quartet should seek to pursue an even-handed approach. It is essential to ensure that fewer opportunities exist than in the past for the parties to the conflict to exploit divisions between international actors within the Quartet, and most especially those between the EU and US. We urge the Government to seek to ensure that the EU's representatives in the Quartet, notably the High Representative, get the backing they need to play a more active and assertive role. (Para 110)

The Government welcomes the Committee's comments and agrees that the Quartet has an important role to play. We strongly support Tony Blair's appointment as the Quartet Representative and have seconded four officials to his team. Tony Blair is committed to advancing the peace process, and brings unparalleled international and diplomatic experience to the role. His appointment has been strongly welcomed by the parties and by the international community.

We agree with the Committee that the international community needs to remain united and that the Quartet has helped ensure this. We strongly support the EU High Representative's work and the work of the EU Special Representative for the Middle East Peace Process.

190. We welcome the greater role attributed to the High Representative's office in providing a focus for collective EU efforts, but consider that a more structured approach is required to co-ordinate and synchronise the diplomatic efforts of the High Representative with the economic and other instruments deployed by the Commission. The pro-active role of Dr Solana has gone a long way towards improving the situation. (Para 116)

We fully share the Committee's assessment of the need for a structured approach to co-ordinate and synchronise the diplomatic efforts of the High Representative with the practical assistance and delivery work led by the Commission. We are grateful to the High Representative's office for helping to provide a focus for collective EU work and to the Commission for its efforts to enhance cooperation and co-ordination within the EU.

191. We consider that the High Representative, Javier Solana, assisted by the EU Special Representative, Marc Otte, has worked very actively and effectively towards achieving the objectives of the EU in relation to the MEPP. The question now arises as to whether the EU has the capacity in place to participate in intensive negotiations on a comprehensive peace settlement. We would encourage the Council to make the necessary preparations so that the EU can quickly mobilise a full negotiating team to assist the peace process. (Para 117)

We welcome the committee's support for Javier Solana and Marc Otte. The Government strongly welcomes their engagement, including the High Representative's role in Quartet discussions. We believe that negotiations leading to a comprehensive peace settlement need to be conducted between the two parties. However, we will provide any support we can to help facilitate a successful outcome.

192. We believe that the EU's extensive budgetary assistance and humanitarian aid has been vital to the establishment and maintenance of Palestinian institutions and to sustaining the Palestinian people and this should be publicised both in the region and outside. The EU should continue to make every effort to monitor the distribution of its aid in difficult circumstances. (Para 128)

We agree with the Committee's conclusion that EU funding has been vital to the establishment and maintenance of Palestinian institutions and in sustaining the Palestinian people. In particular, the Temporary International Mechanism, to which EU members (and Norway) had committed €513 million by the end of September, has provided allowances to 150,000 public sector workers and paid for more than 76 million litres of fuel for electricity production to run hospitals, waterpumps and sanitation facilities. EU assistance, despite being at record levels, has not enjoyed a high profile. The secondment of a communications expert to the TIM team has helped redress this.

193. The EU should link its financial and technical assistance more directly to its political goals and make that assistance conditional on progress in institutional reform in the Palestinian territories and in the peace process. The EU role is important to strengthening the Palestinians' capacity both to assume their responsibility for achieving peace and to enhance governance standards and accountability in the everyday lives of Palestinian citizens which is critical to public support for the objectives of peace. (Para 129)

We are working with the World Bank, EU and other partners to create a mechanism for direct assistance to the Palestinian Authority that will be based on conditionality around institutional and governance reforms. It will also include appropriate fiduciary controls. The UK government does not tie its aid to political objectives as this runs against aid effectiveness principles.

194. We firmly support the Temporary International Mechanism (TIM) but believe that it has been no more than a stop-gap measure, whose usefulness must not conceal or delay the need to move as soon as possible to a situation where the European Union's resources go to properly constituted Palestinian governmental institutions. The TIM cannot be a substitute for more normal economic conditions, in particular free movement and access, and the full transfer of withheld Palestinian revenues by the Israeli government. (Para 134)

The Government welcomes the Committee's support for the TIM. We agree though that TIM should only be a temporary measure. The priority now should be to provide direct support to the Palestinian Government headed by Prime Minister Salam Fayyad. On 17 July, DFID announced a £3 million contribution to the Palestinian Authority to help pay private sector arrears. We are working closely with the World Bank, EC and other donors to create a mechanism for budget support, to which donors can contribute.

We agree that donor assistance, including the TIM, cannot and should not be considered a substitute for revenues derived from increased economic activity, or from clearance revenues owed by Israel to the PA. We continue to call on Israel to remove restrictions on movement and access in line with their commitments in the 2005 Agreement on Movement and Access. We welcome the resumption of payment of clearance revenues arrears by Israel.

The humanitarian situation in the Occupied Palestinian Territories and particularly in Gaza remains a concern. We have made clear our desire to continue supporting all the Palestinian people and DFID announced on 19 June a £1 million contribution to the work of the ICRC in Gaza and the West Bank.

195. The TIM should accordingly not divert the attention of the EU from the root causes of the insecurity and poverty in the Palestinian territories. The Commission is to be commended on the way in which it quickly set up the Temporary International Mechanism in response to the boycott of the Palestinian government and on its leading role in co-ordinating humanitarian aid, including from the Member States. We would encourage the Commission to continue to work towards the effective co-ordination of humanitarian aid with other donors, including Arab states and the United States. (Para 135)

We agree that the Commission's rapid establishment of the TIM and its leading in role in co-ordinating humanitarian aid should be applauded. We continue to promote the effective co-ordination of aid and are working with the World Bank and the Commission to establish a reform-based trust fund, to which other donors can contribute.

196. We support the European Commission's plans to establish a successor mechanism to the TIM, even though the events of June 2007 re-opened the question of how EU funding mechanisms would evolve. In the meantime it will be important that aid should be available to Palestinians in all the occupied territories. Strict guarantees should be provided that funds will not be diverted to purposes other than those for which they are intended and, over the longer term, particular attention should be paid to reducing the aid dependency of Palestinians. (Para 141)

The Quartet has extended the TIM until 31 December 2007, while the international community works to establish a coordinated, multi-donor successor. The UK is working with other donors to ensure that any new mechanism will provide aid to Palestinians in all the OPTs, and that it will not be diverted to purposes other than those for which they are intended. Work with EC officials on a mechanism for helping reduce the PA's arrears to the private sector will ensure a strict set of fiduciary safeguards are in place with oversight provided by an international audit firm. The UK remains committed to reducing aid dependency. The Government's recent report on "Economic Aspects of Peace in the Middle East" makes clear that only the Palestinian private sector can drive forward sustainable economic growth in the OPTs and therefore reduce the Palestinian economy's dependency on aid.

197. We believe that work to set up EUPOL COPPS should resume when conditions allow, but it should be re-oriented and strengthened. The EU must address the weaknesses of EUPOL COPPS. In particular, the mission must focus on capacity-building and reform rather than equipment, and should strengthen rather than weaken the rule-of-law. Co-ordination with other operational actors and donors also appears to be an area of concern. (Para 153)

EUPOL COPPS has resumed full operations now that Hamas are no longer in government. The mission is committed to both transformational and operational development of the Palestinian Civil Police. In the initial stages of re-engagement, they found that practical assistance was also beneficial, in the form of equipping and training police officers, and also assessing the performance of individual police stations. Certain projects, such as the refurbishment of the Jericho Training Centre also contribute to longer-term capacity building. EUPOL COPPS personnel include non-police experts to allow co-ordination with other parts of the criminal justice sector, contributing to sustainable reform. The mission is also engaging with other international actors, notably General Dayton, the Blair mission, and the UK police expert implanted within the office of the US Security Co-ordinator. EUPOL COPPS will increase its presence by the end of October to allow eight field officers to work alongside and mentor police leaders at a governorate level and substantially enhance its Rule of Law programme.

198. We believe that discussions with the parties to the conflict and the members of the Quartet should commence with a view to identifying whether the EU may be in a position to support a peace settlement through the deployment of a peacekeeping mission. In the light of these discussions, the Council of the EU could consider undertaking scenario development and planning work for a possible EU operational mission to the Palestinian territories. (Para 155)

We welcome any proposal that will ensure peace and security, but the deployment of a peacekeeping mission would be difficult and require the consent of all the parties on the ground. Our immediate priority is the ending of hostilities and the provision of international aid to the Palestinian people. But the EU will need to be open to the possibility of playing a role on the ground as part of a final settlement

199. We believe that while the Euro-Med Partnership has been useful in the past, it is now the European Neighbourhood Policy (ENP) that can make a contribution to developing relations with the parties to the MEPP. The advantage of the ENP is that it allows the EU to develop bilateral relations, which are suited to each individual partner country. Progress made by each country is not dependent on progress made by other countries. Under the ENP, the EU offers various financial and other incentives to support the implementation of each country's Action Plan. (Para 161)

The UK strongly supports the European Neighbourhood Policy, which is now the main framework for the EU's relations with MEPP parties. ENP presents a single, coherent policy towards all EU neighbours whilst allowing differentiation through individual Action Plans tailored to the needs of each partner country. It goes beyond existing relationships to offer a deeper political relationship and economic integration, with the level of ambition depending on the extent to which each partner demonstrates its commitment to common values such as democracy and human rights, rule of law, good governance, market economy principles and sustainable development. An ENP Governance Facility has been established to support neighbours in their reforms and a substantial Neighbourhood Investment Facility will be set up shortly.

200. There is a danger that the situation will deteriorate rapidly and that the crisis will spread beyond the Palestinian territories. In addition, events such as those of June 2007 may be used, as they have often been used in the past, as an excuse for inaction and neglect. We do not believe the international community can afford yet again to repeat these errors and should recognise an even greater urgency in seeking a solution. (Para 164)

We share the Committee's concern at the situation in the OPTs, including the events of June 2007. We have not and will not use this as an excuse for inaction or neglect. On the contrary, we are working with our partners in the Quartet to help ensure that the US-hosted international meeting moves the peace process forward.

201. These recent events, in our view, reinforce the overall conclusion of our report, that the EU now needs to play a more active and imaginative role in the search for peace in the Middle East than it has done in recent years; they underline the importance of the main policy recommendations we have made. Indeed our view is strengthened that the EU needs to increase and sustain its effort to work more closely with all the main players towards an inclusive peace process and settlement. (Para 165)

The Government welcomes the Committee's conclusions. We agree that the EU needs to increase its efforts and the UK is ready to play its part. We want to see the EU playing an active role in all areas of the MEPP—political, security and development. In 2006, the EU gave over €680 million to the Palestinians. This has increased in 2007 to €800 million. The EU Border Assistance Mission (EUBAM) is ready to resume their border-monitoring role at Rafah as soon as the situation allows and the EU is resuming and expanding the EUPOL COPPS mission. We continue to explore with our partners, and, more importantly, the regional players on the ground, ways in which we can push forward the peace process.

October 2007

31ST REPORT: EUROPEAN SUPERVISION ORDER

Letter from Rt Hon Baroness Scotland of Asthal, Attorney General, The Attorney General's Office, to the Chairman

I am writing in response to the European Union Committee's report on the proposed European Supervision Order.

We look forward to debating these matters in due course.

10 October 2007

GOVERNMENT RESPONSE

183. To date EU action in criminal law has focussed primarily on enforcement measures at the expense of human rights and civil liberties—a fact which is entirely understandable given the pressing need for States to cooperate in attacking terrorism and organised crime. Progress on measures, such as the Framework Decision on procedural rights, addressed at safeguarding and strengthening the rights of the individual, has in contrast been slow and disappointing (para 18).

184. It concerns us acutely that people are not being given bail in the trial State at the moment on the basis that, as non-residents, they are likely to abscond and go back to their State of residence, or for more technical reasons, such as a lack of fixed address in the trial State. The numbers are not huge but they are substantial (para 7).

185. The ESO, whose aim is to enhance the right to liberty and the presumption of innocence, is a welcome measure. The Commission's proposal addresses a serious issue affecting the liberty of the individual. It has the potential to reduce hardship for some thousands of EU citizens and is a proposal which, we believe, deserves prompt attention by Member States. However, there are a number of places where the ESO needs to be improved if it is to be workable (para 19).

The Government's objections to the proposed Framework Decision concerned the relationship with and the issue of EU jurisdiction in relation to rights in . . . domestic criminal proceedings. We believe that such problems should be avoided for the proposed European Supervision Order.

The Government recognises that the proposal may help to promote 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. However, this is a delicate area of national law and we shall not be able to agree to anything that risks crime or obstructs our own laws or policies.

The Government agrees that the draft Framework Decision needs further work to ensure that a satisfactory process can be put in place.

186. The ESO is the way forward though the mutual recognition principle upon which the ESO is based might be usefully supplemented by allowing a greater role for the executing State than is currently envisaged in the ESO proposal (paras 48, 51).

We agree.

187. We do not consider that the proposal will lead to a significant increase in the number of interpreters required. Existing resources should suffice (para 61).

188. We are pleased to see that the Government intend to carry out a full impact assessment including an examination of the likely costs of the ESO (para 63).

It appears likely, under the current draft, that there will be more hearings and this is bound to entail additional costs, including interpreting and translation costs.

There will be an impact assessment of this proposal once we have a more established model, further into the working group process.

189. It would be helpful for Article 5 of the Framework Decision to provide that the suspect has a right to be heard before an ESO is made and in particular on what obligations, if any, should be attached to the order. While the precise details of the manner and means by which the suspect is to be heard should be left to Member States the basic right should be expressly set out in the Framework Decision (para 70).

190. There is a need for flexibility in relation to the granting of bail. The court is best placed to determine what conditions are required to meet its concerns about releasing an individual. There is no need for more mandatory conditions (para 76).

191. The ESO is a complicated scheme, whose effectiveness in a particular case will be dependent upon setting conditions which will satisfy the issuing court and can be operated by the executing authority. It seems implicit in the fact that any Article 6(2) conditions are "subject to agreement" that there should be some machinery for discussion between the two States in advance of a decision to grant an ESO. There needs to be a close liaison between the issuing and executing States on the conditions to be imposed. Both authorities should be involved early in the decision-making process, and an ESO should not be issued without such consultation (paras 84, 95).

192. The consultation should focus on the conditions in the ESO but should also cover other matters. The executing State should be under an obligation to provide the issuing State with such information as it needs to decide whether to make an ESO and if so on what terms (para 98).

193. There might be practical benefits if the ESO proposal included provision for recourse to a central authority, in particular to deal with incoming ESOS. Experience in relation to the EAW would suggest that informal consultations can usefully take place between administrative authorities in the respective Member States, thus reducing the need for judge to judge contact. We urge the Government to examine this suggestion which has across-the-board support from practitioners. The extent of involvement of a judicial body in the final agreement of any Article 6(2) conditions will need careful consideration in implementing legislation (paras 56, 97).

194. We note the reliance placed by the Framework Decision on video links but are sceptical as to whether they will work in practice. We therefore recommend that ways should be sought, wherever possible, to facilitate consultations between Member States' authorities and reduce the range of the discussions to ensure that they can be conducted quickly and effectively. A list of common ESO conditions is one way in which this might be done (para 96).

195. The Framework Decision should be more specific about the practical aspects of the grant and issue of an ESO (para 105).

196. The suspect should be released as soon as the issuing State has been notified that the ESO has been recognised by the executing State (para 105).

197. Further consideration should be given to the inclusion of more time limits in the Framework Decision (para 111).

As the Report states, the UK bail process means that an ESO would not be issued without the involvement of the defendant. The Government believes that in securing its aim of equal treatment the European Supervision Order should not confer additional rights or benefits.

The Government agrees that the scheme needs to be kept as simple if it is to be a practicable measure but this cannot mean disregarding the need for proper consultation between Member States. We need to explore with other Member States how best to strike the right balance in this regard. Central authorities, video links and other procedures will need to be considered in the effort to streamline the process. Time limits would need to be reasonable and have a certain amount of flexibility built in.

198. Member States are bound by the ECHR and any implementing legislation would have to ensure compliance with the guarantees set out in that instrument. For the sake of clarity, it may be helpful to include an article in the body of the ESO proposal which provides that in implementing the Framework Decision Member States must ensure respect for fundamental rights (para 115).

199. It is to be hoped that when national parliaments come to consider their implementation of the Framework Decision they will have full regard to the welfare of the child whose liberty would be restricted if the executing State refuses, under Article 10(2)(a), to recognise an ESO because the suspect is under the age of criminal responsibility in that State (para 122).

200. The absence of dual criminality should not be a ground for refusing to recognise an ESO (para 125).

201. The ESO could usefully clarify whether the issuing State of its own motion can review the obligations in an ESO (para 129).

202. We urge the Government to arrange for the Council of Europe to be consulted on whether Article 13 of the Framework Decision as currently drafted complies with the provisions of the ECHR. We note that an opinion from the Council of Europe was obtained in relation to the Framework Decision on procedural rights; there may be a case for a general opinion on the ESO to be requested (para 131).

203. The drafting of Article 13 is defective. The Framework Decision should make clear that an ESO can be reviewed from time to time and Member States should not be able to delay it (by imposing a waiting period) for more than 60 days (para 133).

204. The Framework Decision should distinguish clearly between the issuing State's power to amend and the executing State's power to modify. Modification should be limited to changes of the minor nature suggested by the Commission and we emphasise the need for the issuing State to remain in control of the ESO and the conditions of bail. The power to modify should be a continuing one, to allow the executing State to deal with administrative and technical issues throughout the life of the ESO (para 136).

205. The "without prejudice" formula in Article 5 is potentially confusing and might discourage use of the ESO. This would be regrettable. While we would not advocate that an ESO should necessarily take precedence over the international instruments to which Article 15 refers there is a need for guidance as to how Member States' obligations under the relevant competing legal instruments might be prioritised. Consideration should be given to providing criteria in the Framework Decision to be taken into account by a national judge deciding whether to return a suspect under an ESO, an EAW or other international extradition order or arrest warrant. We also welcome a role for Eurojust in facilitating coordination between Member States to decide how best to prioritise proceedings (para 144).

206. We agree that there needs to be flexibility for the national judge in assessing whether the domestic proceedings should take precedence over an ESO. We welcome the Government's support for a more flexible approach in the UK. In our view the issuing State will clearly be cautious about making an ESO if that order can be overridden by a prosecution, for a relatively minor offence, in the executing State. Here again, consideration should be given to providing criteria in the Framework Decision to be taken into account by the national judge in deciding which proceedings should take precedence. Here again, there may be a useful coordinating role for Eurojust (para 147).

The Government is of the view that respect for fundamental rights and compliance with the ECHR are obligations which are already explicit and that it should not be necessary to include specific provision. However, we will pursue this and the proposal to consult the Council of Europe in the light of other Member States views.

The Government agrees with the statement that the welfare of the child should be fully considered in those cases where a difference in the age of criminal responsibility is an issue between the issuing and executing States.

The issue of dual criminality is not currently included as a ground for refusing to recognise an ESO and the Government will keep this under consideration during the course of the discussions on the scheme.

We will keep this under review, but it appears to us that Article 13 provides that the ESO can be reviewed periodically in accordance with the procedures in the issuing State and provides additionally for a limit of 60 days between requests for a review. This accords with our position that the scheme should not confer separate rights for different groups of defendants or otherwise impinge on national bail laws.

The involvement of the executing State in setting and modifying conditions needs to be made clearer. This topic would form part of the discussions as to the role of the executing State in this scheme as a whole.

Member States should have confidence that a defendant will return or be returned to face proceeding if released under an ESO but there should be flexibility for deciding on priorities when conflicting requests or new circumstances arise, such as in cases of further offending.

207. The Commission's text does not grapple with the question of how to decide, in a contested case, whether or not there has been a breach of an ESO condition. It is clear that this is a matter which requires some consideration. Cases in which the existence of a breach is disputed are likely to be quite common. The Framework Decision needs to address expressly whether establishment of the existence of a breach is the responsibility of the executing State or whether it is a matter to be decided by the issuing State (para 151).

208. While we have doubts about the practicability of tripartite hearings (not least because of the difficulties with video links and interpretation) further consideration should be given to the suggestion that the executing State should, having heard the suspect, establish whether there has been a breach in the particular circumstances (para 158).

209. It is a matter of some considerable concern that the Framework Decision appears not to allow the executing State any power to arrest or take other action preparatory to gaining the instruction of the issuing State. Articles 16 and 17 should ensure that there are the necessary powers to take action in the event of a breach of conditions (para 167).

210. The Framework Decision must also make clear that the authorities in the executing State must be able to deal with apprehended or anticipatory breaches without the need for prior report to and authorisation from the issuing State. This is a serious omission from the present text (para 168).

211. There is a need for clarity and certainty in the provisions of the Framework Decision relating to breach of an ESO. It is unsatisfactory to leave matters such as the power of the executing State to arrest following a breach or in anticipation of a breach to Member States' implementing legislation (para 166).

212. We believe that the judge in the executing State should also be trusted to deal with minor or technical breaches, subject to a requirement to report the decision to the issuing State (para 170).

213. There may also be a case for enabling the authorities in the executing State to go further and deal, if only provisionally, with breaches of an ESO where immediate action is necessary in order to ensure public safety or the protection of individuals or evidence. Subject always to the issuing State remaining in overall control and decisions having to be reported back, the judge in the executing State should be able to vary the ESO temporarily given that there may be a delay before the issuing court can be fully seized of the matter. The suspect would be heard before any such variation is made (para 172).

214. Article 20(2) of the ESO proposal enables transfer of a suspect to be temporarily postponed for "serious humanitarian reasons". A similar provision exists in the EAW Framework Decision (Article 23(4)). In its implementation of the EAW in the UK the judge must order a person's discharge or adjourn the extradition hearing where the physical or mental condition of the subject of the warrant is "such that it would be unjust or oppressive to extradite him". We recommend that consideration be given to the inclusion of a provision to similar effect when implementing the ESO (para 176).

215. There is a question whether the arrest and transfer hearings envisaged under the ESO proposal would be ECHR-compliant. We do not consider that it is satisfactory to leave the question of the hearings for Member States' implementing legislation (para 179).

216. There is a need for certainty and clarity in the Framework Decision concerning the power to arrest a suspect in a third State as well as for consistency on the part of Member States in giving effect to its provisions. Articles 17 and 18 therefore need to be specific as to the responsibility and obligations of Member States other than the executing State where the arrest and transfer of the suspect has been ordered by the issuing State (para 182).

These issues concern the level of involvement of the executing State. The Government agrees these are not adequately addressed in the current draft of the Framework Decision. The court of the issuing State needs confidence that its requirements are being met; the executing State will want its concerns regarding burdens

on resources and potential offending to be taken into account. Both sides will want to keep the process proportionate and cost effective.

The Government agrees that there should be procedures which would allow the executing State to deal promptly with “minor” breaches of ESO conditions. The executing State should have a power of arrest for a breach of a condition without the need to refer to the issuing State first. This will form part of the debate on the role of the executing State.

The time limits and the exceptions for transferring a defendant set out in Article 20 are, in our opinion, limited to consideration of whether the defendant is physically or mentally capable of travelling between Member States. It would be likely to be counter productive to extend consideration of transferring a defendant to the issuing State into whether the physical or mental health of the person precludes further prosecution; a decision which the court in the issuing State may well regard as being in its prerogative. The consideration of whether the executing State should action a request for arrest and transfer from the issuing State and the rights of a defendant to be heard in the process are contained in Articles 17 and 18. We agree that these Articles, and the role and responsibilities of a third Member State to which a defendant may abscond, could benefit from clarification. That discussion highlights the difficulties posed in this proposal; how to produce a practical and proportionate scheme which is not overly bureaucratic but fully complies with ECHR requirements and gives Member States the necessary confidence in its effectiveness to use it.

33RD REPORT: THE 2008 EC BUDGET

Letter from Kitty Ussher MP, Economic Secretary, HM Treasury to the Chairman

I was pleased to have the opportunity on 5 July to give evidence on the 2008 EC Budget to sub-committee A chaired by Baroness Cohen. I have already sent you a report of the outcome of the Budget ECOFIN meeting in Brussels on 13 July, at which the Council discussed and adopted a Draft Budget, which broadly met the Government’s objectives.

I welcome the report that the Committee published on 30 July, and am grateful for the broad endorsement that the report gives to the Government’s approach to the negotiations on the 2008 EC Budget, including our commitment to budget discipline and sound financial management, as well as the principles the Government believes should inform the upcoming comprehensive review of the EC Budget. We will take the report’s recommendations into account in our ongoing negotiations.

I should perhaps clarify, to avoid any misunderstanding, that the Government is pressing for the Commission itself to launch a review of the EU’s administrative expenditure, with the Gershon approach as a possible model: the Government is not best placed to initiate or conduct such a review itself.

As far as the European Institute of Technology is concerned, I agree with the Committee that its budget should have been reduced to a level commensurate with the phased approach now proposed, and that the margins under the headings of the EC Budget should be reserved for genuinely unforeseen needs. Further clarity on the source of funding for this project is essential. The Government opposed the Council’s “General Approach” on the basis of these budgetary concerns at the Competitiveness Council in June. Regrettably, the UK was in a minority on this issue.

The Treasury will continue to keep the Committee informed as the annual budget negotiations, and the Budget Review, progress.

4 September 2007

35TH REPORT: THE EU REFORM TREATY: WORK IN PROGRESS

Letter from Jim Murphy, Minister for Europe, Foreign and Commonwealth Office to the Chairman

The Government welcomes the Committee’s report on the European Union Reform Treaty. The expertise, judgement and analysis of the Committee is, as always, very valuable and the Government welcomes the positive and significant contribution the Committee makes in the European field and will continue to make in the future.

The Government would like to offer the following comments on the Committee’s recommendations and conclusions:

Paragraph 8: We recommend that the Government report to Parliament, after the December European Council, on the implications, both in terms of scrutiny and transparency and of effectiveness in agreeing policy, of an IGC proceeding on the basis of such a tight mandate. The report should also cover the implications for scrutiny of how the mandate was drawn up and presented to the European Council.

The Foreign Secretary outlined the process, and the reasons for the unique approach, leading to the publication of the IGC mandate during his evidence session with the Foreign Affairs Committee on 10 October 2007:

“On process, I would say—obviously I was not the Foreign Secretary in the first half of this year—that, if one steps back, it is clear that Mrs Merkel was dealt a pretty tough hand when she took over the presidency on 1 January. There had been 18 months of this so-called “period of reflection” or “pause for reflection”, and the debate had moved on in a significant and positive way in that, in the words of the Dutch Council of State, the centralising and federalising ambitions that had motivated some of those who had pushed for the constitution had been rebuffed. But she had 27 member state Governments who were having their own debates, and she had a tough hand in trying to bring them together.

Mrs Merkel decided to approach it with a distinctive—I think that that would be a diplomatic way of putting it—approach, which was to talk to all 27 Governments bilaterally through the focal points group, which actually met four times not three; I think that we have alerted the Clerk to that. She had those bilateral discussions and then, on 19 June, she produced the draft treaty. I say that that was distinctive; it reflected the difficulties of the hand that she was dealt. But I do not move away at all from what the former Prime Minister said after the European Council in June: that Mrs Merkel really did an outstanding job in pulling together a mandate for an intergovernmental conference that reflected and respected the different interests of different nations.”

Each Presidency is, of course, free to decide their own approach to co-ordination of negotiations. The German Presidency approach was relatively unusual, but resulted in a tightly defined IGC mandate that the succeeding Portuguese Presidency was able to translate successfully into the text of a new Treaty. I should emphasise that the IGC discussions resulted in a Treaty text that reflected—in full—the UK’s red lines as agreed at the June 2007 European Council.

Since agreement of the IGC Mandate at the June European Council, all IGC papers and draft Treaty texts have been forwarded to your Committee, the Clerks of the Commons European Scrutiny and Foreign Affairs Committee and the libraries of both Houses. Ministers have attended nine evidence sessions with the EU scrutiny Committees and the Foreign Affairs Committee between June and December and Ministers remain available to give evidence as required.

In parallel with reforming the EU institutions to make them more effective, we believe that it is time to consider our domestic arrangements for scrutiny of EU business. The Government intends to bring forward proposals shortly, following consultation with stakeholders including from the House of Lords, that will aim to improve the scrutiny process in Westminster.

Paragraph 9: The Government have, however, made texts promptly available to Parliament as they have emerged, which we welcome.

We welcome the Committee’s comments. The Government has been committed to keeping Parliament informed during the IGC.

Paragraph 10: We recommend that the text agreed at the Informal Summit on 18 October be formally deposited in both Houses of Parliament, together with a full explanatory memorandum by the Government.

Treaty texts are not usually deposited for scrutiny. The final version of the Treaty was laid before Parliament, with an accompanying Explanatory Memorandum, on 17 December.

Paragraph 15: We accordingly recommend that, as soon as possible, the Government deposit in Parliament a full and thorough analysis of the changes which the Reform Treaty, on the basis of existing texts, would bring about, drawing attention to differences from existing Treaty provisions. This should include both a consolidated version of the Treaties as amended by the Reform Treaty and an in-depth policy analysis of the effect of the changes. We expect that all Departments would be involved in the preparation of this material.

The Government has agreed to provide a consolidated text of the Treaties as amended by the Treaty of Lisbon, along with a table indicating how the Lisbon Treaty amends the existing Treaties. Several Government departments have submitted written evidence on the effect of the Reform Treaty in specific areas, and Ministers and officials will also be giving evidence to the various sub-Committees. The Minister for Europe gave evidence on the institutional changes on 18 December. Other Government Departments including, DIUS, DWP, DCSF, DH, BERR, DCMS and DEFRA have submitted written evidence.

Paragraph 31: While we accepted these reassurances, we considered it necessary to ensure that the phraseology was correct while the interests of national parliaments were appropriately presented in the text. If the language were not changed the criticism could be made that the Reform Treaty inappropriately sought to prescribe functions for sovereign national parliaments. We were accordingly pleased to have heard that the word “shall” has been eliminated from the English text.

The Government welcomes the Committee's comments. The Government is confident that the Reform Treaty imposes no obligations on national Parliaments. Parliament's concerns were noted and we secured changes to the text to make that clear. We are confident that there is now no ambiguity. That position has been acknowledged by all Member States and by the Presidency. Portuguese Foreign Minister Amado wrote to the Foreign Secretary to confirm that:

"this article imposes no obligation on national Parliaments and is purely declaratory in nature".

The Reform Treaty gives new powers to national Parliaments to scrutinise EU proposals directly; it does not impose obligations.

The Protocol on the role of national Parliaments refers to the need for the European Parliament to cooperate with national Parliaments. The Treaty does not impose an obligation on individual Parliament to take part in such cooperation. In fact, interparliamentary cooperation already takes place, through the COSAC mechanism established by national parliaments themselves; the article reflects this reality.

Paragraph 35: We recommend that the Government explain how the EU institutions covered by the Article other than the Commission (eg the Court of Justice) will fulfil their obligations under this Article.

The new Protocol to the 2007 Treaty on the Role of National Parliaments in the EU addresses the circulation of draft legislative acts initiated not only by the Commission but also those originating from the EP, which is to forward its proposals to national parliaments directly, and those originating from a group of Member States, the Court of Justice, the ECB or EIB, which are to be forwarded to national Parliaments by the Council. According to Article 4 of the Treaty, an eight-week period is to elapse between a draft legislative act being made available to national parliaments and the date it is placed on a provisional agenda for the council, with exceptions for cases of urgency.

The new protocol differs from the current Protocol on the role of national parliaments in the EU, which expressly applied only to Commission proposals for legislation, with a six-week lapse before being placed on the agenda.

While we do not yet know what mechanisms they will put in place they may well be modelled on the Commission's current procedures.

Paragraph 37: The Government need to explain clearly the role they see for national parliaments under the *passerelle* provisions and how they will be applied in the UK.

The European Union (Amendment) Bill contains a clause which provides that where any draft decision under the listed provisions (which includes both the two "general" *passerelles* as well as the other specific provisions in the Treaty which allow moves from unanimity to qualified majority) comes before the European Council or the Council, the United Kingdom may not agree to the adoption of the decision, unless Parliamentary approval has first been given. That approval must be signified by the agreement of *both* Houses of Parliament to motions approving the Government's intention to support the decision.

Paragraph 39: How the European Parliament and national parliaments co-operate is a matter for them. The Conference of Speakers currently performs this role and the Committee has supported them in doing so as that forum ensures an appropriate balance between the interests of national parliaments and the European Parliament.

The Government agrees with the Committee and welcomes its ongoing contribution to the work of COSAC.

Paragraph 42: The Committee welcomes the extension of the period from six to eight weeks. The Government should provide clarification that the clock does indeed begin only when a document is available in all languages.

Article 4 of the Reform Treaty's Protocol on the role of national parliaments states that:

"An eight-week period shall elapse between a draft legislative act being made available to national Parliaments in the official languages of the Union and the date when it is placed on a provisional agenda for the Council for its adoption or for adoption of a position under a legislative procedure."

Paragraph 46: We recommend that the Government explain why the text of Article 8c inserted by the Reform Treaty only mentions respect for subsidiarity and not proportionality: the Protocol covers both.

Subsidiarity involves the assessment of whether the objectives of a particular measures can sufficiently be achieved by Member States, either at central level or regional and local level. It is therefore particularly important, and appropriate, that National Parliaments are given a direct role in relation to this assessment.

Compliance with the principle of proportionality is assessed and enforced on the same basis of other general principles of EU law.

Paragraph 51: We recommend that the Government establish a mechanism to ensure that the details of the operation of these procedures are discussed and agreed with both Houses of Parliament.

The Government is committed to ensuring that the new provisions in relation to National Parliaments in the Treaty operate effectively, and will work with both Houses of Parliament to make sure that they operate effectively.

14 January 2008

36TH REPORT: ANNUAL REPORT 2007

Letter from Jim Murphy MP, Minister for Europe, Foreign and Commonwealth Office to the Chairman

Thank you for sending me a copy of your Committee's 2007 Annual Report.

The Government continues to welcome the vital contribution the Committee makes on European issues as can be evidenced from the breadth and range of activity recorded in the report. It is also helpful to note the issues the Committee will report on in the coming months.

Your report highlighted a number of procedural issues on which a Government comment may be helpful. The report has been copied widely within Government to draw these points to Departments' attention. I attach a short note covering these points.

17 January 2008

GOVERNMENT RESPONSE

SCRUTINY OVERRIDES

We remind the Government that documents and Explanatory Memoranda must be deposited with sufficient time for scrutiny, and that the Committee must be kept informed about the progress of negotiations in Brussels, including when overrides have occurred. We recognise that negotiations sometimes move unexpectedly fast, especially in the fields of foreign relations and defence. In such circumstances it is important that the Committee receives as much information as possible, including where possible prior warning, and always including full explanation after the fact. We urge the Foreign and Commonwealth Office to continue its ongoing and welcome efforts in this regard, and encourage the Government to make sure that best practice is the norm. (Paragraph 123)

The Government welcomes the Committee's acknowledgement of the generally downward trend in the number of overrides since six-monthly reports were first provided to the Committee in 2003. But there is no room for complacency and the Government will continue to look for ways to keep the figures low, including working with the Committee's staff to review particular cases where lessons can be learned. Cabinet Office officials met with the Clerk recently and agreed new procedures for working with the Committee when compiling the twice-yearly reports, where on the last occasion the Committee noted that the figures held by the Committee differed slightly from those recorded by the Government. The Cabinet Office, when sending the Committee's Annual Report to all departmental scrutiny co-ordinators, drew particular attention to your comments on overrides and reminded departments of good practice to follow.

GENERAL APPROACHES

We reiterate that we consider the reaching of General Approaches in Council negotiations as "agreement", and that the Scrutiny Reserve Resolution applies to such cases—in other words, if a Minister agrees to a General Approach in Council before scrutiny has been completed, a scrutiny override is committed. Following the report by the Commons European Scrutiny Committee in which that Committee took the same line, we encourage the Government to review its position and to consider General Approaches as covered by the Scrutiny Reserve Resolution. (Paragraph 127)

The Government has noted that the Committee has reaffirmed its position that the Scrutiny Reserve Resolution should be interpreted to include the stage of General Approach. The Government is reviewing its stance on this issue, including in the context of the report from the House of Commons European Scrutiny Committee on this issue to which the Committee refers. We expect to be in a position to respond to that report in early 2008.

DELAYS TO THE COMMITTEE'S SCRUTINY

In the Committee's Report "Review of Scrutiny of European Legislation" (2002), the Committee stated: "We will expect responses from Ministers within 10 working days to letters sent by our chairman on behalf of the Committee and Sub-Committees". We remind the Government that they stated in their Response: "The Government agrees that it is unacceptable for letters to go unanswered for long periods. We shall strive to respond to letters from the Chairman within 10 working days." (Paragraph 128).

"... we remind the Government of their undertaking that in cases of "responding to complex matters [the Government] shall send a holding reply." (Paragraph 131)

The Cabinet Office has again reminded departments of the Government's commitments when circulating the Committee's Annual Report to departmental scrutiny coordinators. Cabinet Office officials will continue to work with the Committee's staff and departmental scrutiny coordinators to ensure that the Government's commitments are being met. We have also noted that some improvements have been made to the Committee's "Progress of Scrutiny" document to help monitor outstanding business including setting out more clearly which Minister the Chairman has written to, what further information the Committee has asked for, and to also record those occasions where the Committee has cleared a document but where they have nevertheless asked for further information.

FUNDAMENTAL RIGHTS ANALYSIS IN EXPLANATORY MEMORANDA

In the spring and summer of 2007, the Committee and the Government reached an agreement according to which the Government will provide an analysis of the compliance with fundamental rights of every draft legislative proposal submitted for scrutiny, in the Explanatory Memorandum (EM) accompanying the proposal. Guidance agreed between the Committee's staff and the Government has now been circulated to the relevant Government officials. The Committee is grateful to the Government for agreeing to this helpful move. We will review the procedure after some experience of the new mechanism. We welcome the Government's undertaking to ensure that EMs will continue to be deposited within 10 working days of the deposit of the proposals themselves, with fundamental rights analysis to follow if necessary, and we ask that the Government ensure that this standard is maintained. (Paragraph 136).

This new approach is still settling in and we hope that the information being provided in EMs is meeting the Committee's needs. The Government is ready to work with the Committee when it comes to review the new procedure in due course.

39TH REPORT: EUROPEAN WINE: A BETTER DEAL FOR ALL: FINAL REPORT WITH EVIDENCE

Department for Environment, Food and Rural Affairs

INTRODUCTION

The Government welcomes the Committee's report which makes an important and helpful contribution to the on-going discussions about the future of the EU wine sector and the role that the Common Market Organisation (CMO) for Wine should play in this.

The current Wine CMO is highly complex extending to production, market mechanisms, wine making practices, wine classification, labelling and trade. Yet this complexity is not helping the sector, which is at the crossroads in terms of its future sustainability. The problems facing EU wine producers are set out in the Impact Assessment accompanying the Commission's proposal and are also referred to in the Committee's report. In short, there is a significant and growing mismatch between EU wine production and consumption which is perpetuating a reliance on expensive market management measures to remove surplus wine production from the market. The reasons for this are clear. Consumption is falling in the main wine producing countries as lifestyles change and the penetration of imports of wine from the so called "New World" producers is increasing steadily, with strong demand in consumer countries such as the UK.

In the Government's view, the Wine CMO is not sustainable in its current form and we strongly support the thrust of the Commission's reform proposal. However, given the importance of the wine sector in the key producing Member States of the Community, we do not underestimate the difficulty of reaching agreement on a far reaching reform. The Commission estimate that the EU has around 2.4 million wine producers tending vines on around 3.6 million hectares of land, with wine production accounting for at least 4.8% of the total

share of EU agricultural production and more than 10% in France, Portugal and Italy. Wine is therefore an important economic activity in terms of its contribution to agriculture and employment in rural areas.

The EU is the world's largest producer, consumer, exporter and importer of wine, and accounts for around half of the area under vine and around 60% of production. However, in the period between 1986 and 2004, the EU vine area has decreased by 15%, whilst the area in other countries has shown considerable growth (+21% in the USA, +33% in South Africa, +52% in Chile, +178% in Australia, +360% in New Zealand). The EU remains the world's largest exporter of wine with 17 million hl in 2006, but the so called "New World" countries are beginning to catch-up and are making significant in-roads into the EU market with imports virtually doubling to 10.1 million hl between 1999 and 2004.

The Commission's proposal provides for a significant reform of the Wine CMO building on the principles of market orientation and sustainability started in 2003 for the arable crops and livestock regimes and continued with sugar in 2005 and fruit and vegetables earlier this year. The objectives of the reform are to:

- increase the competitiveness of the EU's wine producers, strengthen the reputation of EU quality wine as the best in the world, recover old markets and win new ones in the EU and worldwide;
- create a wine regime that operates through clear, simple, effective rules that balance supply and demand; and
- create a wine regime that preserves the best traditions of EU wine production, reinforces the social fabric of many rural areas, and ensures that all production respects the environment.

The Commission's proposal was published on 4 July 2007. The Portuguese Presidency's aim is to reach political agreement on the dossier at the December Agriculture Council, with the new regime being implemented from 1 August 2008. Whilst this is an ambitious timetable for such a substantial reform, the UK Government is working closely with the Commission, the Presidency and other Member States to try and ensure it is achieved.

RESPONSE TO THE COMMITTEE'S SPECIFIC CONCLUSIONS

Conclusion (a): We concur with the Government's view that the ending of subsidised distillation is a *sine qua non* of reform of the wine sector. While most of the other measures proposed by the Commission are to be welcomed, the ending of subsidies for distillation is crucial to the success of the reform package as a whole. Without it, none of the other measures will be able to deliver the efficiency gains which are necessary to set the industry on its feet again. We therefore confirm our strong support for this proposal.

The Government strongly supports the Commission's proposal for the immediate abolition of market support measures, such as distillation of surplus wine. These measures are costing around €800 million a year, yet are not leading to any discernible positive change in the sector. The Government therefore sees the abolition of these measures as the single most important item of the reform, as it will immediately introduce much greater market focus than is currently the case.

Conclusion (b): We confirm our acceptance of the concept of national envelopes. While an allocation formula for national envelopes which gives priority to the main wine-producing States is acceptable in the short-term, the medium term aim should be to reduce wine sector funding overall and to re-assess the allocation of national envelopes among Member States.

The Government accepts the concept of National Envelopes, which provide the mechanism for Member States to introduce national measures to fund the adaptations that will be required in wine growing areas. The Government agrees with the Committee that in the medium-term the funding of National Envelopes should be reduced and re-directed to the Rural Development Programme, which provides a broader range of specific measures to be funded to deal with the social and environmental implications of reform.

Conclusion (c): We support the Government's view regarding the use of national envelopes—that they should be used for purposes which will promote the efficiency of the wine sector or address the consequences of its reform and that the most suitable way of achieving this is via transfer of funds from pillar I to pillar II of the CAP. For this reason we do not support the inclusion of "Green Harvest" among eligible measures for funding from national envelopes and we confirm our opposition to this proposal.

The Government shares the Committee's concerns about the "green harvesting" of grapes as an eligible National Envelope measure. In our view the measure resembles old style CAP support, although beneficiaries will be required to contribute at least 50% of the cost. However, the Government is prepared to accept "green harvesting" as a National Envelope measure as part of an otherwise acceptable reform package, and the rules under which the scheme is implemented are tightly drawn to ensure an appropriate level of control.

Conclusion (d): We confirm our support for a programme of voluntary grubbing-up of uncompetitive vineyards and we reiterate our wish to see tight definition of the exemptions which Member States may invoke to block grubbing-up applications by wine growers.

The Government supports the Commission's proposal for a new grubbing-up scheme to provide a way for uncompetitive producers to leave the industry with dignity. We have strongly supported the Commission's position that the structure of the scheme should be designed so as to provide for early uptake to facilitate the rapid transformation of the sector following the removal of market support measures. We share the Committee's view that ultimately decisions on whether to apply for grubbing-up scheme should be an economic choice for individual producers and that concerns about the social, environmental and economic impact of grubbing-up are more appropriately addressed through tailored Rural Development measures.

Conclusion (e): We are pleased to see that the Government shares our view of the need to end the current planting ban. As regards the detail of this, we recognise that it is for the Government to make its own judgement of the situation, taking into account the concerns of the UK Wine Industry. However, it will be better for the EU wine industry as a whole if the ban is lifted sooner rather than later.

The Government agrees with the Committee's assessment. In our view the planting ban should be lifted at the earliest opportunity to ensure that efficient EU producers can expand their production to compete with strong competition from imported wines. We recognise the link that the Commission has drawn between the extension of the planting ban to 2013 and the completion of the grubbing-up scheme. But we have made it clear that we could only accept such an extension, if there was a corresponding change to the *de minimis* provisions of the proposal to ensure that the future development of the small English and Welsh wine sectors is not adversely affected.

Conclusion (f): We confirm our support for the ending of subsidies for the use of grape must in wine enrichment and our opposition to the proposed ban on the use of sucrose.

The Government supports the abolition of the grape must aid scheme and has argued strongly against the proposed ban on the use of sugar for enrichment of wines. Whilst we do not support the use of sugar to artificially increase the alcohol content of wine, we do support its continued use in countries where this is a traditional enriching agent. Banning the use of sugar for enrichment will increase the cost of producing wine in northern and central European Member States and, in the Government's view, is inconsistent with one of the central aims of the reform to increase the efficiency of the sector and the competitiveness of the EU's wine producers.

Conclusion (g): We confirm our support for the transfer of a substantial proportion of Wine CMO funds from Pillar I to Pillar II of the CAP in order to support Rural Development programmes in wine-producing regions.

Conclusion (h): We re-state our opposition to the use of Rural Development funds to remedy an economic problem resulting from a proposed administrative measure (banning the use of sucrose in wine enrichment) which makes no sense in its own right.

The Government believes that Pillar II represents better value for money than Pillar I. We also believe that Pillar II provides a broader framework for Member States to introduce measures into current rural development programmes to help their wine production areas adapt to the changes introduced by the reform. As we have indicated in our answer to Conclusion (b) above, we are arguing that over the period of the reform a greater proportion of the former wine budget should be oriented towards Rural Development measures.

Conclusion (i): We confirm our earlier view that, while the proposed relaxations in labelling rules are to be welcomed, the proposed new wine classification system is unlikely to be sufficient to reverse the trend of mass consumption of non-EU wines. We also wish to sound a note of concern lest the new system could be used to prevent entrepreneurial new wine makers from entering the market after the ending of the current planting ban.

The Government strongly supports the Commission's proposal to increase the range of optional information that can be put on labels of wines, which we believe will help EU producers to respond to the strong competition from imported wines which are largely marketed on the basis of brand, variety and vintage. The Government notes the Committee's concerns that the proposed quality wine system is not sufficiently different from the current arrangements to win back markets. However, we believe that the process of re-registering GIs will contribute to a system of more justifiable and recognisable GIs, which combined with the greater flexibility on labelling, will help to re-establish EU wines on the domestic and overseas markets.

Conclusion (j): We confirm our earlier support for the Commission's proposal that OIV-recommended oenological techniques should become the benchmark for authorisation of wine-making practices within the EU.

The Government agrees with the proposal and the Committee's view.

Conclusion (k): While we consider there would be advantage in bringing all land producing food and drink, including vineyards, within the Single Farm Payment system, we nonetheless support the more modest reform of bringing grubbed-up vineyard land within the ambit of the SFP.

The Government agrees the proposal and the Committee's view. Bringing grubbed-up areas within the ambit of the Single Payment Scheme is consistent with the Government's broader policy objectives in that it will extend environmental conditions to former vineyards.

December 2007

Part II: Commission Responses

3RD REPORT: TELEVISION WITHOUT FRONTIERS

Letter from Margot Wallström, Vice-President of the European Commission to the Chairman

Thank you once again for your opinion on the Commission Proposal for a Directive of the European Parliament and of the Council amending Council Directive 89/552/EEC *Television without Frontiers*).

I am pleased to inform you that further to the adoption of the common position at the Education, Youth and Culture Council on 24 May, the Commission had sufficient elements to give a detailed reply to your opinion, which I enclose.

Let me reiterate that the Commission appreciates the opportunity to respond to comments of national parliaments on Commission's legislative proposals. It contributes to visible improvement of the process of policy formulation. I hope you will find our response valuable to your own deliberations.

I look forward to developing our policy dialogue further.

1 October 2007

COMMISSION RESPONSE

1. INTRODUCTION

On 20 February 2007 the House of Lords EU Committee (hereafter "the Committee") submitted its conclusions and recommendations with regard to its report on the Audiovisual Medias Services Directive (AVMSD) to the European Commission. In a preliminary reply the Commission answered that, with regard to the Council Presidency's declared intention to reach a political agreement at the relevant Council meeting in May, would be in a much better position to give a substantive reply to the EU Committee's observations on the basis of a stabilised legislative text.

Subsequently, the Council unanimously adopted a political agreement with a view to a common position at the Education, Youth and Culture Council on 24 May 2007. The text of the agreement was pre-negotiated with the European Parliament. It thus enables an early second reading adoption. The new Directive is, therefore, expected to enter into force before the end of the year. Member States then will have two years to transpose it.

II. THE COMMITTEE'S RECOMMENDATIONS

1. *Scope*

The Committee recognised that changes have taken place in the sector, and are continuing to take place, and accepted, as did all those who gave evidence, that reform of the Directive was needed. The Committee already welcomed the clarification of the scope in the revised proposal and the exclusion of electronic versions of newspapers and magazines. However, the Committee was concerned that identifying some media services as "television-like", may lead to the conclusion that "like-services" should be regulated in a "like-manner", i.e. a perfectly "level playing field". It was requested, that if these services were to be included at all, that they be regulated differently.

One of the main reasons for the revision of the Directive was to bring it into line with the changes in the media landscape and to give it a broader scope than the current framework. To be future proof, an amended Directive needs to take into account that audiovisual services will increasingly be delivered on-demand and therefore in a non-linear mode. The original definition in Article 1, with its six criteria, was designed to cover television and television-like services. The discussions in Council and in Parliament have led to a number of amendments which have clarified and improved this definition. The greater emphases given to "editorial responsibility" as well as the introduction of a definition of "programmes" ensure that there is no doubt about which television and which on demand services are covered. The new presentation of the Articles and the introduction of Chapters II.a and II.b headed, *Provisions applicable to all audiovisual media services* and *Provisions applicable only to on-demand services*, make it clear that on-demand services are only subject to a

basic tier of rules. These provisions concern fundamental transparency requirements, the protection of minors, incitement to hatred and some qualitative rules for commercial communication. Different, and more extensive, rules are provided in the specific sections of the Directive for television (ie broadcast) services.

2. *Country of Origin principle*

The Committee was worried about an “apparent dilution of the Country of Origin Principle” as the result of the concerns, expressed by some Member States, that the application of the Country of Origin principle could have some unwanted [sic]. The Commission considers that the procedural provisions in text agreed by Council and Parliament, while taking account of the concerns expressed, fully safeguard the “country of establishment” principle. As concerns stricter national rules (Art 3), the Audiovisual Media Services Directive provides a new procedure regarding broadcasters possibly circumventing the stricter rules of a Member State having availed itself of the faculty to adopt such rules that are compatible with Community law. The Commission is confident that the first stage of the procedure, consisting of cooperation between the Member States concerned on a “best endeavours” basis, will enable most difficulties to be solved at an early stage. Should the non-binding cooperation stage fail, a second, formal stage would begin, where the Commission would play its role according to the new procedure set in place, which is to examine the compatibility of the Member State’s proposed measures with Community law. If the proposed measures are deemed by the Commission not to be compatible with Community Law, the Member State concerned must refrain from taking them.

3. *Quantitative rules on advertising*

The Committee explained that in an increasingly competitive environment, consumers would be able to determine themselves the volume of advertising which they find acceptable. The Committee was concerned about some of the possible impacts of these rules, especially the proposed 30 minute rule, for free to air programming, particularly children’s programming. Technological progress together with changes in the market and user behaviours (increased choice and responsibility) necessitate greater flexibility with regards advertising rules while providing for a high level of consumer (ie viewer) protection. The AVMSD achieves this:

- Firstly, by relaxing rules on the insertion of advertising in TV programmes and daily advertising limits, while also providing flexibility for new forms of advertising such as split-screen, virtual or interactive advertising. This will benefit not only advertisers but the whole audiovisual industry in Europe, by strengthening its economic base.
- Secondly, providing a clear legal framework for product placement will secure new revenues for Europe’s audiovisual industry, help to boost Europe’s creative economy and thus reinforce cultural diversity. Product placement is a reality on European TV screens today, but operates essentially for the benefit of non-European production and without viewers being informed.

The Commission considers that the solution reached with respect to advertising during children’s programmes strikes the right balance between the protection of children and the need for broadcasters to obtain sufficient resources from advertising in order to finance these programmes.

4. *Self-regulation*

The Committee strongly welcomed the inclusion of co- and self-regulation in the body of the revised text of the Directive. This has been done in Art 3(3) of the political agreement with a view to a common position.

5. *Impact Assessment*

Though the Committee accepted the Commission’s argument that there are practical difficulties in quantifying how many companies will be affected by this Directive, partly because the proposal is designed to regulate according to the type of service, rather than the type of provider, the Committee asked to obtain cost estimates in respect of specific provisions within the proposal. As an example, the Committee referred to the quantitative rules governing the timing of advertising slots; the so called “35- (now 30-) minute rule”. These should have direct measurable consequences in terms of *a reduction in the amount of revenue* that can be expected to be obtained by broadcasters. (Para 178)

In the Commission's view it is difficult to imagine a case where the new Art 11(2) would have measurable consequences in terms of a *reduction* in the amount of revenue that can be expected to be obtained by a broadcaster. Not only do the new rules give greater flexibility to broadcasters as to when they are allowed to insert advertising during the programme, they also allow for more advertising breaks during a shorter scheduled duration. According to the current rules cinematographic works for instance may carry *three* advertising breaks up to a scheduled duration of 154 minutes. According to the new rules a scheduled duration of 150 minutes, however, allows *five* advertising breaks.

The last issue raised by the Committee concerns the fact that no impact assessment has been carried out on the revised texts emerging progressively from the co-decision procedure. Neither the Council nor the European Parliament have the obligation to carry out impact assessments on texts as they emerge from the successive stages of the co-decision procedure nor do they have such a practice. This is a horizontal issue where the potential advantages of additional procedures would have to be carefully balanced with the risk of unduly delaying the adoption of necessary legislation.

III. CONCLUSION

The agreement between European Parliament and Council, which is explicitly supported by the three largest political groups in the European Parliament and unanimously within the Council, takes account, to a large extent, of the Committee's recommendations.

9TH REPORT: SCHENGEN INFORMATION SYSTEM (SIS II)

Letter from Franco Frattini, Vice-President of the European Committee to the Chairman

Thank you for sending me a copy of the report of the House of Lords Select Committee on the European Union on the SIS II which reflects the detailed attention that the Sub-Committee on Home Affairs has paid to the development of the SIS II.

I note with particular interest the conclusions of the Sub-Committee as to the value of the SIS II in terms of combating serious cross-border crime. The fundamental purpose underlying the development of the SIS II by the Commission is to provide for a higher level of security in an area without internal borders. The SIS II, therefore, will function as an improved support in the fight against serious crime and terrorism while at the same time better facilitating border control and freedom of movement within the Schengen area.

You highlight as an issue of particular interest the possibility of enabling UK authorities to access certain immigration data which will be stored in the SIS II to which they will not have access given that the UK participates only to a limited extent in the Schengen *acquis*.

The current partial participation of the UK in Schengen is, of course, a matter of sovereign decision for the UK. However, I would point out that the full application by the UK of the Schengen *acquis*, which would include access to SIS immigration data, is the most straightforward way to guarantee such access. This would be of benefit to both the UK and the other Member States of the EU. Not only would the UK draw the maximum benefit for its own and other EU citizens in terms of free movement, but it would also be readily able to draw on the exchange of important information in supporting border controls and in counteracting potential threats to public or national security.

29 March 2007

Letter from Margot Wallstrom, Vice-President of the European Commission to the Chairman

Thank you for sending to the Commission the report of the EU Committee of the House of Lords on SIS which was published in March. It provides us with very valuable input to identify issues which are especially important for the United Kingdom in this field.

You ask in particular about the technical feasibility of differentiating between alerts on "unwanted aliens" for public policy, public security and national security purposes and those based solely on immigration. SIS II is not designed to make such a technical division within the alert category of refusing entry and the current technical specifications of the Central SIS II, which should be tested soon, do not provide for such a division either.

The Commission can implement technical solutions in the Central SIS II only when they are fully compliant with the rules establishing SIS II and those on the position of the UK's participation in the Schengen *acquis* as well.

In this context, I would refer to the letter sent by Jonathan Faull to the Committee on 15 December 2006 which provides its Members with further information regarding the access of UK authorities to SIS “immigration” data. Accordingly, if the UK wants to enlarge its access to SIS data, it should consider participating fully in the Community *acquis* related to the creation of an area without internal border controls. The full application of Schengen *acquis*, which includes access to SIS data for the control of external borders or the issuing of visas, would benefit both the rest of the EU and the UK.

26 June 2007

13TH REPORT: PROPOSAL TO ESTABLISH THE EUROPEAN INSTITUTE OF TECHNOLOGY: INTERIM REPORT

COMMISSION RESPONSE

The European Commission would like to thank the Social Policy and Consumer Affairs Sub-Committee of the House of Lords’ EU Select Committee for their comments on the proposal to establish the European Institute of Technology (EIT). The interest shown by the House of Lords in the EIT proposal is very welcome. The Commission attaches great importance to the proposal which it sees as an integral part of a broader strategy to harness Europe’s currently fragmented innovation potential.

The comments of the House of Lords’ EU Select Committee focus on the following issues:

- (a) The need to clearly identify the nature of the knowledge transfer problem in Europe and the merits of carrying out a Lambert style review across the EU.
- (b) The capacity of the EIT in the form proposed to encourage knowledge transfer within the EU and to provide incentives for the involvement of the business community in the EIT.
- (c) The relationship between the EIT, the 7th Research Framework Programme and the ERC.
- (d) The proposed budget of the EIT and the KICs, especially the use of the Structural Fund and the unallocated margins, the incentives for private companies to invest and the impact of the proposal EIT upon 7FP and national and regional budgets.
- (e) The proposed administrative structure of the EIT.
- (f) The issue of the degree-awarding powers of the EIT.

The Commission wishes to shed some light on these points:

- (a) *The need to clearly identify the nature of the knowledge transfer problem in Europe and the merits of carrying out a Lambert style review across the EU*

Knowledge is a critical factor for Europe to preserve its international competitive advantage. The European leaders made this explicit at the Hampton Court meeting in October 2005. They undertook to modernise higher education systems and to make them more responsive to global innovation challenges. The underlying vision is to ensure that our education systems regain lost ground and focus on becoming a force for growth and employment.

The challenge of addressing the innovation gap and promoting knowledge transfer in Europe is well documented. In the framework of the Lisbon Strategy for Growth and Jobs, the Commission has taken a comprehensive array of policies and initiatives to make Europe more innovation friendly. In particular, in October 2006 the Commission adopted a broad-based innovation strategy for Europe to translate investments in knowledge into products and services.

The Commission’s views on the nature of the innovation and knowledge transfer problem are very much at one with those expressed in Mr Lambert’s report on *Business-University Collaboration*. Indeed, the findings of the *Lambert Review* have been a source of inspiration for the Commission’s reflection on improving knowledge transfer between the public research base and industry across Europe. Equally, it has influenced the Commission’s Communication on how to modernise European universities, its Communication on knowledge transfer and the reflection leading to the establishment of the EIT.

(b) *The capacity of the EIT in the form proposed to encourage knowledge transfer within the EU and to provide incentives for the involvement of the business community in the EIT*

The in-depth review the Commission carried out before launching the EIT proposal encompassed consultation on the role of knowledge transfer. From Spring 2005 to Autumn 2006, the Commission carried out a wide-scale consultation process with all EU Member States as well as key stakeholder groupings. A public consultation exercise was conducted where more than 760 organizations and individuals participated. Various rounds of meetings were convened with more than 40 European organizations representing the business, research and innovation communities as well as with representatives from the Member States. More than 50 position papers were prepared, with an active involvement of the UK government and UK universities. The Commission issued two Communications in February and June 2006 which took stock of the feedback from the consultation process. The Commission's proposal has thus extensively drawn from the wide-ranging consultation process. This process led the Commission to adapt and adjust its initial concept for the EIT. The Commission's proposal is therefore not the outcome of Commission's internal reflection, but the result of carefully listening to the interested parties, taking advantage of fresh ideas and addressing the major concerns raised during the consultation.

As a result of this extensive consultation with the key stakeholders, the Commission has concluded that the best departure point for the EIT would be a network-building approach, and that this should be developed to lead to an EIT based on truly integrated partnerships. The EIT will provide a new, innovative model of collaboration between business, education and research. It will define long-term strategic priorities and invite the best resources from universities, research centres and businesses to pool their resources, to integrate their work and to meet pressing business and innovation challenges.

The EIT will be a university, a research centre and a centre for developing applied business solutions. It will be based on an enhanced partnership, at the intersection of private and public; of university and business; of education, research and innovation. It is an innovative experiment to encourage innovation through all pertinent forms of knowledge sharing, which could become model for many of tomorrow's ground breaking initiatives.

This innovative initiative is, it is clear from the consultations undertaken, appealing to the business community. The EIT will be an organization where business, research and universities will have an equal voice in setting a strategy and implementing it. Business leaders will be members of the Governing Board; companies will be integral parts of the KICs. In short, business has a unique opportunity to focus the EIT on emerging areas that have a potential of boosting growth and competitiveness. Moreover, the EIT will offer European companies a new relationship with education. It will make business culture and the entrepreneurial mindset part of the day to day educational activities. This has the potential to have a substantial impact on the provision of the skills needed in the knowledge economy.

(c) *The relationship between the EIT, the 7th Research Framework Programme and the ERC*

Community activities for research, development and demonstration are carried out under Title XVIII of the EC Treaty and funded from the Seventh Framework Research Programme (7FP) (Arts Art 163 & 166/EC). 7FP is thus the main funding mechanism at EU level targeted towards research and technological development in Europe. However, this does not prevent other Community funding sources, such as the Structural funds, from being used to finance eligible national or regional activities that relate to research, in the pursuit of other Community objectives. But such finance cannot be cumulative with 7FP funds. Further, EIT funding could not be targeted towards research activities, either in competition with, or in addition to, 7FP funds.

Support for **basic research** is a matter for the European Research Council (ERC). Clearly the EIT and the ERC have different mission and objectives.

The EIT system (through the KICs) will directly perform education, research and innovation activities. Its mission is to reinforce the innovation capacity of Europe. By integrating the **three elements of the knowledge triangle**, it will involve, on an equal footing, education, and research and business organisations. The EIT will pull together resources in the framework of integrated partnerships—the KICs. It is thus not targeted on projects but on integrated partnerships. Each KIC will develop a strategic work programme over a relatively long period (seven to 15 years).

The ERC is a funding mechanism within 7FP and it addresses only the research element of the knowledge triangle. It focuses on investigator-driven frontier research, not on innovation and is targeted on individual researchers and teams not on creating integrated partnerships. The Commission has had regular contacts with Professor Kafatos, Chairman of the ERC, to explore the potential for synergies and interaction between the EIT and the ERC.

(d) *The proposed budget of the EIT and the KICs, especially the use of the Structural Fund and the unallocated margins, the incentives for private companies to invest and the impact of the proposal EIT upon 7FP and national and regional budgets.*

The Commission's EIT proposal assumes that the activities of the EIT and the (KICs) will be financed from a combination of sources and that the Community contribution should essentially be a mechanism to mobilise external support. The proposal makes available new funding and also invites participants to draw on existing EU funding mechanisms. What matters most is the multiplier effect of the Community contribution—its capacity to draw forth the commitment from other sources—business, public authorities, and research and education institutions—that would not otherwise be available.

The Commission has proposed that a Community subsidy will be directly earmarked for the EIT. As no specific provisions were made for the financing of the EIT in the Multi-Annual Financial Framework for the period 2007–13, the Commission has therefore proposed that these monies will come from the unallocated margins of sub-heading 1A, up to an amount of €308 million.

In addition, Community funds from the Structural Funds and from the Community programmes are expected to flow directly—always—in accordance with their normal rules—to the partner organisations which are members of a KIC, and contribute to the funding of some activities.

The Commission has estimated that the main source of Community funding for the KICs or their partners will be the Structural Funds. This is for two reasons: first, because all possible activities to be undertaken by KICs are potentially eligible under the Structural Funds' rules. Second, because the requirement for national and regional authorities to invest Structural Fund contributions in innovation, research and education activities (60% of expenditure for the Convergence objective and 75% of expenditure for the Regional competitiveness and employment objective should be set aside for such activities) constitute an opportunity to foster the territorial interlinkage between the local business community and the local KIC participant to improve knowledge sharing and cluster development, which is particularly important for SMEs. Any structural fund support for KICs activities would have to be obtained through the normal national or regional multi-annual operational programmes, negotiated with the Commission. So clearly, there is no obligation for national and regional authorities to include in their programming documents the activities developed by the KICs.

The Commission has no intention to take money away from the Community programmes, namely 7FP, the Competitiveness and Innovation Programme or the Lifelong Learning programme, to finance the EIT. Furthermore, there will be no preferential treatment for the EIT within these programmes. The EIT and the KICs will be able to participate in these programmes, in accordance with their specific rules and procedures, with no privileged access. Financial support from industry will be the test case for success and credibility of the EIT. Contacts with leading industrialists as well as with European organisations (Eurochambres, Business Europe) have clearly shown that the business community is very favourable towards the EIT project. Fast access to new business-relevant knowledge and researchers trained in these domains with an entrepreneurial mindset count among the factors attracting business. However, at this point in time, it is difficult to make a robust estimation on the contribution of the private sector. This is understandable as negotiations on the EIT concept and its further development are still on-going within the Community institutions. Industry will only commit in a tangible way to the EIT when the priority domains and operating modalities are known. Furthermore it will be important that the EIT remains as independent, flexible and non-bureaucratic as possible if their interest is to be converted into real participation. In this respect, the proposed participation of business in the Governing Board of the EIT not only provides for business-relevance at the strategic level, yet also sends a clear message of business-relevance to industrialists.

(e) *The proposed administrative structure of the EIT*

The Commission fully shares the view of the Select Committee that the administrative arrangements for the EIT should be as light as possible. This is why the proposed support structure has been limited to what is deemed strictly necessary for the EIT to effectively fulfill its tasks. The number of staff employed by the EIT is estimated at a maximum of 60, consisting in equal proportions of scientific staff and support staff. Moreover, all the personnel directly employed by the EIT will be under fixed-term contracts.

(f) *The issue of the degree-awarding powers of the EIT*

The Commission has been attentive to ensure that the proposal respects Member States' competences in the field of education. The degrees will be awarded by universities and other higher education institutions which are members of a KIC, in accordance with national rules and accreditation procedures. Where appropriate, degrees and diplomas should be joint or multiple. This will foster trans-national cooperation between higher education institutions across the Union and promote the mobility of students and researchers. It will contribute to the development of a Higher Education Area as well as to the Bologna process.

These degrees and diplomas should also be clearly identified with the EIT. This will ensure that they have the prestige of clearly identified excellence. It will also help develop the attractiveness of the EIT. The EIT brand will be exclusively borne by new PhD and Master degrees and diplomas awarded in the framework of the KICs. These should be innovative in their content. The brand will not be extended to other degrees and diplomas awarded by the partner universities. Ensuring the high quality of EIT-branded degrees and diplomas and promoting them as a prestige layer of academic achievement will be a task of the Governing Board.

June 2007

14TH REPORT: "IMPROVING THE MENTAL HEALTH OF THE POPULATION": CAN THE EUROPEAN UNION HELP?

Letter from Margot Wallström, Vice-President of the European Commission to the Chairman

Thank you for your opinion on the Green Paper *Improving the mental health of the population* dated 25 April 2007.

In line with the Commission's decision to encourage national parliament to react to its proposals to improve the process of policy formulation, we welcome this opportunity to respond to your comments. I enclose the Commission's response. I hope you will find these a valuable contribution to your own deliberations.

I look forward to developing our policy dialogue further in the future.

12 September 2007

COMMISSIONS RESPONSE

The Commission would like to express its appreciation for the support expressed to its activities expressed in the House of Lords European Union Committee's Inquiry Report *Improving the mental health of the population: can the European Union help?*

Mental health problems have become a major public health challenge in Member States. They also impose significant burdens on the European economy and its social welfare systems. These challenges are increasingly recognised. Also increasing is the will to respond to these challenges and the interest in learning from good practice available across the EU.

The Commission welcomes the concluding statement in the House of Lords Inquiry Report that there is an important role for the EU for promoting better mental health and delivering better services.

The position of the House of Lords is in line with the general outcome of the consultation of the Commission's Green Paper *Improving the Mental Health of the Population. Towards a Strategy on Mental Health for the EU*.¹ For your information, please find attached a summary report about the open consultation. All contributions are publicly available on the Commission's public health website,² and the House of Lords Inquiry Report has been added to it.

As a follow-up to the consultation, the Commission is at present finalising a Communication, which will set out a strategy on mental health. In line with the House of Lords recommendations, this strategy will be designed in a way to allow Member States to cooperate in promoting mental health, preventing mental health problems and improving the situation of people with mental health problems, under involvement of the relevant policy areas which can make contributions.

As regards a possible role for the EU in delivering better services, matters of competence are indeed complex: Article 152 of the EC-Treaty states that Community action in the field of public health shall fully respect the responsibilities of the Member States for the organisation and delivery of health services and medical care. In their contributions to the Green Paper consultation, several Member States have stressed that a strategy on mental health for the EU would need to respect this existing distribution of responsibilities. This being said

¹ COM (2005) 484 final of 15 October 2005.

² http://ec.europa.eu/health/ph_determinants/life_style/mental/green_paper/consultation_en.htm

there are many supporting actions that the EU can take (such as facilitating comparison and cooperation, investing in health infrastructure and skills through the structural funds, facilitating networking and exchanges of best practice, research).

In following, please find more detailed responses by the Commission to the conclusions and recommendations presented in chapter 11 of the House of Lords Inquiry Report.

CHAPTER 2: DEFINING MENTAL WEN-BEING AND MENTAL HEALTH PROBLEMS

The extent of mental health problems

Point 339. The Commission supports the principle of the recommendation. At the same time it draws attention to the fact that Article 152 of the EC-Treaty states that Community action in the field of public health shall fully respect the responsibilities of the Member States for the organisation and delivery of health services and medical care.

Learning or intellectual disability

Point 340. The House of Lords' position is in line with the Green Paper consultation outcomes. The Commission's mental health strategy will not group together learning disability and mental health problems.

CHAPTER 3: THE SOCIAL AND ECONOMIC IMPACT OF MENTAL HEALTH PROBLEMS

Summary of impacts

Point 341. The comment by the House of Lords is in line with the Commission's approach. The Commission is, as part of the development of a Communication setting out a strategy on mental health, considering options to promote the wider public recognition of the social and economic impact of mental health problems. The Commission also supports the statements in the House of Lords' Report on the role of families and the need to give support to formal and informal carers. These issues will be integrated into future work with Governments and further stakeholders.

Point 342. The comment by the House of Lords is in line with the Commission's approach.

Point 343. The Commission confirms that the Green Paper consultation signalled much support for an inclusive, transparent and engaging way of cooperation on mental health involving policy areas, other relevant stakeholders and service users. The Commission's mental health strategy will include announcements to put such mechanisms in place.

How the EU's role differs from that of the WHO

Point 344. The Commission intends to design its mental health strategy as an inclusive one.

CHAPTER 5: HUMAN RIGHTS ISSUES

Deinstitutionalisation

Point 346. The comment by the House of Lords is in line with the Commission's approach.

Point 347. The comment by the House of Lords is in line with the Commission's approach.

Compulsory treatment

Point 348. The comment by the House of Lords is in line with the Commission's approach.

Community care

Point 349. The comment by the House of Lords is in line with the Commission's approach.

Point 350. The comment by the House of Lords is in line with the Commission's approach.

CHAPTER 6: SOCIAL EXCLUSION, STIGMA AND DISCRIMINATION*Social exclusion—need for action*

Point 351. The Commission will include into its mental health strategy actions to address social inclusion, building on the analysis that social exclusion can be both a cause or a consequence of mental health problems.

Point 352. The Commission intends to design its strategy in a way that it will allow concerted action by Member States as suggested by the House of Lords, based on identified best practice.

Point 353. The Commission is aware of the specific health challenges in prisons and addresses them through a number of initiatives. It will also consider these settings in its mental health activities. However, the provision of treatment and care services in prisons, like elsewhere, is a matter falling under the responsibility of Member States.

Action to tackle negative attitudes and discrimination

Point 354. The comment by the House of Lords is in line with the Commission's approach. The Commission is considering possible actions which could be suitable to raise public awareness about mental health and mental health problems.

Point 355. Commitment by Member States in the sense proposed by the House of Lords does already exist. It has been created, for instance, through Conclusions by the Council of Ministers of 2–3 June 2003 on mental health,³ and also by the WHO Mental Health Declaration for Europe, which was supported by Ministers of Health from all EU Member States. The role of the strategy will primarily be to strengthen the implementation of such commitment.

Point 356. Disability based on mental health problems comes within the scope of EC Directive 2000/78/EC, which aims to combat discrimination on the grounds of disability (and of religion or belief, age, and sexual orientation), as far as employment and occupation are concerned.

According to the European Court of Justice, for the purposes of the Directive, the concept of “disability” must be understood as referring to a limitation which results in particular from physical, **mental or psychological** impairments and which hinders the participation of the person concerned in professional life (judgment of the Court of 11 July 2006 in Case C-13/05, Chacon Navas, paragraph 48, emphasis added).

According to Article 5 of the Directive, employers shall take appropriate measures to enable a person with a disability to have access to, participate in, or advance in employment, or to undergo training, unless such measures would impose a disproportionate burden on the employer. This burden is not disproportionate when it is sufficiently remedied by measures existing within the framework of the disability policy of the Member State concerned, like appropriate state funding.

It should be stressed that, although the Directive aims at combating discrimination in employment and occupation; however, according to its recital 17, it does not require the recruitment, or maintenance in employment of an individual who is not capable to perform the essential functions of the post concerned. This is without prejudice to the obligation to provide reasonable accommodation for people with disabilities.

All 27 Member States of the European Union have adopted national legislation to transpose this Directive. Now the Commission is analysing whether the national laws transpose correctly and completely the Directive—notably as far as discrimination based on disability is concerned.

The Commission will engage infringement procedures against all Member States who have not done so. These procedures may end up in the European Court of Justice, which may judge that a Member State has made an incorrect or incomplete transposition of the Directive. If a Member State persists in its eventual lack of proper transposition, the European Court of Justice, at the request of the Commission, can impose a financial penalty.

Action to address employment problems

Point 357. The Commission intends to invite Social Partners to contribute to the implementation of the EU-mental health strategy.

Point 359. The Commission intends to develop together with Member States and partners a format which could be used to invite reports from them on their mental health activities (see also response on point 373).

³ http://ec.europa.eu/health/ph_determinants/life_style/mental-020603_en.pdf

CHAPTER 7: PROMOTION AND PREVENTION*Mental health promotion and prevention*

Point 360. The comment by the House of Lords is in line with the Commission's approach.

Point 361. The Commission's strategy will respect the responsibilities of Member States for the organisation and delivery of healthcare and medical services. It will put in place mechanisms to work together with Member State Governments, nongovernmental stakeholders and to coordinate work across Commission.

Examples of good practice

Point 362. The comment by the House of Lords is in line with the Commission's approach. The Commission is already identifying good examples and will increase its efforts to give more visibility to them.

Sharing good practice

Point 363. The response to point 362 applies.

CHAPTER 8: MENTAL HEALTH ISSUES FOR POPULATION SUBGROUPS*Children and adolescents*

Point 364. The Commission supports the principle of the recommendation and intends to make the needs of children and adolescents a priority of its mental health strategy. At the same time, it draws the attention of the House of Lords to the fact that Article 152 of the EC-Treaty states that Community action in the field of public health shall fully respect the responsibilities of the Member States for the organisation and delivery of health care and medical services.

Older people

Point 365. The Commission supports the principle of the recommendation and intends to make the needs of older people a priority of its mental health strategy. At the same time, it draws the attention of the House of Lords to the fact that Article 152 of the EC Treaty states that Community action in the field of public health shall fully respect the responsibilities of the Member States for the organisation and delivery of health care and medical services.

Ethnicity

Point 366. The comment by the House of Lords is in line with the Commission's approach.

Point 367. The comment by the House of Lords is in line with the Commission's approach.

Women

Point 368. The comment by the House of Lords is in line with the Commission's approach.

CHAPTER 9: SETTING MINIMUM STANDARDS OR PROMOTING PRINCIPLES*Sharing good practice*

Point 369. The comment by the House of Lords is in line with the Commission's approach.

Point 370. The Commission agrees that it could be useful to develop a set of "principles", which could also be described as "objectives", to guide mental health policy and practice in the EU.

Point 371. The WHO Mental Health Declaration for Europe does already establish an agreed set of principles. However, as the WHO's Declaration also covers aspects not falling under EU-competence, there could be value in developing a set of objectives, which a focus on areas of EU-competence.

CHAPTER 10: INFORMATION NEEDS

Statistics on mental health systems

Point 372. Together with Member States, the Commission is considering measures to improve the integration of mental health into the EU Health Information System, which includes information on health care systems (for the statistical information see Commission's response to point 373). The Commission draws the attention of the House of Lords to the fact that other international organisations such as the WHO or the OECD have been mandated to analyse health care systems and their outcomes.

Point 373. As already mentioned in the Commission's response to point 372, together with the Member States the Commission is considering measures to improve the integration of mental health into the EU Health Information System. In line with the mandate for action at EU level, the focus of these activities is on providing better and more comparable information about mental health in the EU. The statistical element of the EU Health Information System is being developed—as part of social statistics—through the Community Statistical Programme. Statistical indicators and data collections encompass the various aspects of health status, health determinants, such as including socio-economic aspects and life styles, and health care, whereby also attention is given to mental health and its determinants. Several indicators related to mental health are already part of the European Community Health Indicators (ECHI). As part of a mental health strategy, the Commission is considering the possibility of inviting periodic reports on mental health, which would provide information about the situation at EU-level and in Member States.

Information on policy and practice

Point 374. The Commission's response to point 373 applies.

Research

Point 375. The Commission is willing to take forward research on mental health. Mental health-related aspects have been already been addressed through a considerable number of research projects under the 5th and 6th Framework for Research. Also, the 7th Framework Programme for Research, Technological Development and Demonstration Activities (2007–13) includes a specific reference to mental health in a life-course perspective under its Health Theme.

Sharing good practice

Point 376. The comment by the House of Lords is in line with the Commission's approach.

17TH REPORT: MOBILE PHONE CHARGES IN THE EU: CURBING THE EXCESS

Letter from Margot Wallstrom, Vice-President of the European Commission to the Chairman

Thank you for your opinion on the Proposal for a regulation of the European Parliament and of the Council on roaming on public mobile networks within the Community and amending Directive 2002/21/EC on a common regulatory framework for electronic communication networks and services dated 12 March 2007.

In line with the Commission's decision to encourage national parliament to react to its proposals to improve the process of policy formulation, we welcome this opportunity to respond to your comments. I enclose the Commission's response. I hope you will find these a valuable contribution to your own deliberations.

I look forward to developing our policy dialogue further in the future.

30 May 2007

COMMISSION RESPONSE

The European Commission, would like to thank the House of Lords for its observations, which have retained our fullest attention.

We very much welcome the support you are signalling in your letter of 12 March 2007 with regard to wholesale regulation and the introduction of a consumer protection tariff at retail level. In addition, we would like to stress the following points.

First, on the relationship between the costs of the provision of roaming services and the prevailing price level, we agree with your view that the real costs of roaming are likely to be lower than the proposed wholesale caps based on a multiple of the average European mobile termination charge. It is probably true that quite a few mobile termination rates currently prevailing in the Community still over estimate the real costs involved in an act of termination—by extension, a regulated wholesale price cap for roaming services based on these rates might also be regarded as providing a generous proxy of the costs involved in originating and terminating a roamed call.

Moreover we also agree with your suggestion that the extent of the recently announced cuts in retail roaming prices by the mobile industry—under the threat of regulation—could be an indication of the existence of still very high and pervasive profit margins.

On another issue, we differ from you in our assessment of whether it would be appropriate for the regulation to expire automatically after a certain period of time, which you set at three years. In the Commission's view, the structural characteristics of the roaming market that have resulted in supra-competitive outcomes are unlikely to change in the immediate future in the absence of very significant technological change. We therefore believe that a simple review clause would be the wiser option.

Finally, we are interested in the anecdotal evidence you cite with regard to market abuses in the area of data roaming, and we will consider carefully your advice to extend regulation to this class of services.

18TH REPORT: PRÜM: AN EFFECTIVE WEAPON AGAINST TERRORISM AND CRIME?

Letter from Franco Frattini, Vice-President of the European Commission to the Chairman

Thank you for sending me the Select Committee's report, "*Prüm: an effective weapon against terrorism and crime?*" which has received my fullest attention.

I note the Committee's concerns surrounding the procedure followed by the Council Presidency to transpose essential parts of the Prüm Treaty into the Union framework without prior consultation, and without impact assessment and assessment of the costs.

The Commission is committed to an inclusive approach when developing and implementing EU policies, which means consulting and assessing as widely as possible on legislative proposals and major policy initiatives.

However, I am also aware of the momentum and I acknowledge that the legislation driven forward by the Presidency is an appropriate measure to encourage the further introduction of the Principle of Availability.

I agree with you that it is of the utmost importance that an adequate level of data protection should apply to the processing of personal data on the basis of this Council Decision. As a matter of principle, law enforcement cooperation must always go hand-in-hand with respect for fundamental rights. Enhancing law enforcement information exchange should be accompanied by an appropriate level of protection of the right to privacy and of personal data across the EU.

For that reason the Commission presented a proposal for a Framework Decision on Data Protection as an overarching data protection instrument in the third pillar stipulating a minimum standard of data protection and binding upon all Member States. The European Council of 21 and 22 June 2007 requested the Council to reach agreement before the end of the year on the Framework Decision on data protection, and the JHA Council of 12 June 2007 stated it intends to reach political agreement as regards this proposal before 1 January 2008. Thus a parallel adoption of the "*Prüm Decision*" and the Framework Decision on Data Protection can be anticipated.

Agreement on the Framework Decision on Data Protection and implementation of the "*Prüm Decision*" on the basis of decision-making procedures laid down in Article 34 of the Treaty on European Union would then be followed by further discussions on information exchange under the Principle of Availability.

18 July 2007

22ND REPORT: MODERNISING EUROPEAN LABOUR LAW: HAS THE UK
ANYTHING TO GAIN?

Letter from Margot Wallström Vice-President of the European Commission to the Chairman

Thank you for your opinion on the Green Paper *Modernising Labour law to meet the challenges of the 21st century*, dated 27 June 2007.

In line with the Commission's decision to encourage national parliament to react to its proposals to improve the process of policy formulation, we welcome this opportunity to respond to your comments. I enclose the Commission's response. I hope you will find these a valuable contribution to your own deliberations.

I look forward to developing our policy dialogue further in the future.

26 September 2007

COMMISSION RESPONSE

The Green Paper *Modernising labour law to meet the challenges of the 21st century* was adopted by the European Commission on 22 November 2006. A public consultation was conducted over the four month period ending 31 March 2007 on how labour law can be updated to meet the key challenge of greater adaptability of both workers and enterprises. This objective is in line with the calls by the European Council for action in response to the challenges stemming from the combined impact of globalisation and of the ageing of Europeans.

The Commission welcomes the report of the European Union Committee of the House of Lords as a contribution to a continuing debate at both national and EU levels on the issues raised in the Green Paper.

The European Union Committee of the House of Lords conducted an inquiry among a wide range of experts and representative organisations on the issues raised in the Commission's Green Paper from the perspective of their impact upon the UK labour market. It concluded that most of the issues raised in the Green Paper were adequately addressed within UK labour law where the UK labour market is relatively lightly regulated in comparison with some other EU Member States. It came to the conclusion that problems of social disadvantage and structural unemployment, where these exist in the UK, would be better addressed by measures aimed at tackling poor skills and social inequality and by enforcing existing labour law where this is being flouted rather than by changing labour law. The Committee also considered a number of specific issues relating to the UK labour market, including evidence of exploitation of vulnerable groups, especially migrant workers in the UK. It concluded that such abuses should be tackled where they occur and that vulnerable and migrant workers should be provided with information about their entitlements. Accordingly the Committee recommended that efforts at EU level to affect the broad frameworks of labour law within Member States should be planned to promote the sharing of experience and good practice, rather than to introduce new legislation.

The Commission welcomes that Committee's view that the Green Paper provides valuable insights into the role of labour law in promoting labour market flexibility and in enhancing the genuine employment security that comes from helping people to cope with structural change. In this regard, the House of Lords Committee commends the European Commission for starting, in the Green Paper and elsewhere, an important policy debate on how labour market flexibility and employment security might be combined and reinforced to the benefit of both employers and workers and in furtherance of the common good.

The Commission has noted the report and evidence of the House of Lords Committee and will take the report into account in the context of the preparation of a follow-up Communication which will address the main policy issues and options identified in all of the responses received. This work will complement the broader range of initiatives on the topic of flexicurity that the Commission is developing in close cooperation with the Member States.

23RD REPORT: THE COMMISSION'S ANNUAL POLICY STRATEGY FOR 2008**Letter from Margot Wallström, Vice-President of the European Commission to the Chairman**

Thank you for your opinion on the Annual Policy Strategy for 2008,⁴ dated 4 July 2007.

In line with the Commission's decision to encourage national parliament to react to its proposals to improve the process of policy formulation, we welcome this opportunity to respond to your comments. I enclose the Commission's response. I hope you will find these a valuable contribution to your own deliberations.

I look forward to developing our policy dialogue further in the future.

28 September 2007

COMMISSION RESPONSE

The Commission welcomes the Report from the House of Lords EU Committee on the Commission's Annual Policy Strategy (APS) for 2008 as a constructive contribution in view of the preparation of the Commission's Legislative and Work Programme (CLWP) for 2008.

The Commission takes note of the many clear and constructive ideas outlined in the report as to how the structure and presentation of the APS could be improved to make it more strategic and to allow a more focused and timely policy dialogue with the European Parliament, the Council and national parliaments in preparation of the CLWP.

The Commission agrees with the principle that the APS should as far as possible be focused on strategic priorities and provide a vision for the coming year. Nevertheless, it sees some tension in the report between this recommendation and the wish for a more detailed description of individual policy initiatives in the APS. Being more specific or detailed on individual policy proposals at such an early stage is difficult, not least since the Commission is fully committed to respect our better regulation agenda including proper consultation and impact assessment on all initiatives appearing on the CLWP later on in the year (except Green Papers, social partner consultation documents and regular reports). A choice, therefore, has to be made and the Commission is clearly in favour of the more strategic approach.

Presenting the annual policy strategy according to traditional policy areas (rather than following the Commission's strategic objectives) might facilitate a sectoral policy dialogue with other institutions. At the same time, such an approach could lead the debate away from a more strategic vision by focusing on sector-specific interests instead. The Commission considers the inclusion of a number of cross-cutting issues a positive element which should give a clear idea of the Commission's overarching priorities while allowing for sectoral expertise to become engaged in the debate.

The Commission agrees with the Committee that the APS should be construed around a set of clear strategic priorities defined at the political level around which operational services should provide their contributions. This, in fact, reflects rather well the process that is currently in place to prepare the document.

Like the Committee, the Commission attaches great importance to a constructive and politically anchored scrutiny process by the European Parliament, and also welcomes input from national parliaments, in view of preparing the CLWP. Time-wise, however, the input provided by these institutions should reach the Commission in the first semester of the year for it to be adequately taken into account by the Commission in the preparation of the CLWP. For information, the Commission services start preparing their input for the CLWP already in June/July.

Giving a justification, explaining the added value and discussing financial implications of each individual policy proposal in the APS would, the Commission believes, make the document rather difficult to read and would most likely change its character from a vision document to a rather detailed list of policy initiatives. Some of the disadvantages of such an approach are discussed above.

The Commission appreciates the need to explain more pedagogically in the APS the link between the APS and resources. The various initiatives proposed by the Commission in the APS for 2008 should be seen in the context of the very recently agreed spending programmes and political priorities that underpin the overall financial envelopes agreed for the 2007–13 Multi-Annual Financial Framework (MFF) in the Inter-Institutional Agreement of 17 May 2006. In terms of financial resources, the MFF indeed remains the framework for the APS and it has been fully taken into account when drawing up the APS. Section 3.2 of the APS only proposes marginal adjustments to the MFF.

⁴ COM(2007) 65.

With respect to the budgetary implications of the APS on an annual basis, the Commission considers that budget and policy should be seen as complementary. The purpose of the APS is precisely to set the political framework in which the annual budget is to be established. However, the institutional framework of the EU is such that there is seldom a direct link between the policy initiatives undertaken in a given year and their related expense in that same year. For instance, the 2008 Budget will finance actions which flow from legislative proposals presented in previous years, which the co-legislators have approved in 2007 or earlier. By the same token, the legislative proposals put forward in 2008 will have almost no budgetary implications for 2008, but will come on stream at the earliest in 2009. Furthermore, many initiatives from the Commission have little or no costs to the EU budget at all, such as the legislative actions in the area of the internal market or the application of EU competition rules.

The Commission's simplification work is programmed within the multi-annual Rolling Simplification Programme which has a horizon of two to three years and is up-dated every year (see COM(2006) 690), normally at the same time as the presentation of the CLWP. This medium-term forward planning is public and allows the other institutions and stakeholders to comment on the Commission's simplification priorities.

Whilst the Commission's Annual Report on Better Lawmaking is focused on progress during the preceding year (including key developments at the inter-institutional level), the Commission regularly undertakes strategic reviews on better regulation, setting out its priorities and policy initiatives for the following years. Such strategic reviews were presented in March 2005 (COM(2005) 97) and November 2006 (COM(2006) 689). The next review is planned for early 2008.

Following an external review of the impact assessment system, carried out between August 2006 and April 2007, the Commission is currently reviewing its impact assessment methodology and guidelines. In this context, the Commission is examining how the assessment of particular aspects such as competitiveness, social impact, and fundamental rights can be reinforced without jeopardising the overall balanced and proportionate approach to impact assessment.

Concerning the sometimes detailed comments on individual policy initiatives in the APS provided by the sectoral sub-committees of the House of Lords, the Commission will consider these when it draws up its CLWP for 2008. The Commission will also communicate these comments to the competent services which may decide to take them into account when developing the policy initiatives further.

July 2007

25TH REPORT: PROPOSAL TO ESTABLISH THE EUROPEAN INSTITUTE OF TECHNOLOGY

Letter from Margot Wallström Vice-President of the European Commission to the Chairman

Thankyou for your opinion on the European Commission's Proposal to establish a European Institute of Technology (EIT) dated 4 July 2007

I enclose the Commission's response. I hope you will find this a valuable contribution to your own deliberations.

I look forward to developing our policy dialogue further in the future.

26 September 2007

COMMISSION RESPONSE

The Commission would like to thank the House of Lords for its timely report on the proposal to establish the European Institute of Technology (EIT), which provides valuable information about the way in which the EIT should develop.

The conclusions of the House of Lords' report focus on the following issues:

- (a) the way in which the Commission has formulated the EIT proposal;
- (b) the budgetary provisions for the EIT;
- (c) the composition of the EIT Governing Board;
- (d) the priorities of the EIT; and
- (e) the monitoring and effectiveness of the EIT.

The Commission wishes to shed some light on these points:

(a) *The way in which the Commission has formulated the proposal*

In point 11 of the report, it is stated that “. . . and had the views of business expressed in it been similar to those expressed in the UK, the Commission might have been persuaded to put forward a different and more effective concept for the EIT”.

Since the inception of the EIT initiative, the Commission has had regular contacts with leading industrialists and European business organisations and has been particularly attentive to their views. As a result, the business community, as shown by their public statements, is favourable to the EIT project.

In particular, EUROCHAMBRES has appreciated “the successive rounds of information and consultation that have been taking place on a regular basis for one year” and it is pleased to see that the main concerns expressed throughout the maturation process have been addressed”.⁵ At their meeting of 29 May, the leaders of Europe’s Chamber network “endorsed the creation of the EIT, underscored the urgent need for a more innovative Europe and urged both public and private sectors to work quickly together to maximise the contribution of the EIT to the goals of growth and employment.”⁶

Business Europe has also publicly supported “the approach outlined in the Commission’s proposal of October 2006, which would see the EIT as a networking approach to innovation, research and education with clear and unambiguous links to existing community programmes and initiatives”. It supports the Commission’s idea “that the primary focus of the EIT should be innovation” and believes that “the proposed Knowledge and Innovation Communities (KICs) are the structure by which this could be achieved”.⁷

(b) *The budgetary provisions for the EIT*

As regards the overall amount of funding earmarked to the EIT for the period 2007–13, the House of Lords recommends that “the EU funding should be reduced to a level commensurate with the gradual approach which is now envisaged for its implementation”. On the sources of such funding, the House of Lords recommends that “the practice of funding such major project from a reserve budgetary source should not be considered as acceptable”.

The Competitiveness Council agreed on a general approach for the European Institute of Technology on 25 June, including a contribution directly from the Community budget of an amount of €308.7 million for the period 2008–13. This will cover the costs of the EIT’s governing structure and the European dimension of the project, notably the costs of coordination, knowledge transfer and mobility that are necessary to sustain the KICs.

The ITRE Committee of the European Parliament adopted the final report on the EIT by a large majority. ITRE has also proposed that the financial envelope for the implementation on the EIT during a period of six years as from 1 January 2008 should be set at EUR 308.7 million.

There is therefore broad agreement between Council and European Parliament on the EU direct contribution for the EIT for the period 2008–13. The suggested amount—EUR308.7 million—is deemed the minimum needed to make the EIT credible and viable as well as able to attract other sources of funding.

In its proposal, the Commission suggested that the EIT should be financed through the unallocated margins of heading 1a. As pointed out in the Lords’ report, this proposal has not so far been endorsed by the budgetary authority. Discussions are currently on-going between the two arms of the budgetary authority to find a solution that can be acceptable for both Council and the EP. The Commission is confident that this issue will be solved soon to enable the adoption of the proposal before the end of this year.

(c) *The composition of the EIT Governing Board*

The Commission fully supports the House of Lords’ recommendation of including in the Governing Board an appropriate representation of members with business experience. Article 1 of the Statutes of the text of the general approach clearly states that “the Governing Board shall consist of appointed members providing a balance between those with business experience and those with education/research experience”.

⁵ Eurochambers position paper on the European Institute of Technology 12 October 2006.

⁶ Eurochambers press release on 29 May 2007 “Enterprises urge positive, constructive, rapid approach to European Institute of Technology”.

⁷ Business Europe’s view on the European Institute of Technology, March 2007.

(d) The priorities of the EIT

On the priorities of the EIT, the House of Lords recommends that suggested topics for the EIT to work should not be included in the final text of the EIT Regulation, as it could undermine the autonomy of the Board in setting the priorities of the EIT.

Through the adoption of the Strategic Innovation Agenda, the Council and the European Parliament will provide long-term broad strategic guidance to the EIT. However, the Governing Board will define the strategy and specify the policy fields in which to establish Knowledge and Innovation Communities (KICs). For the establishment of the first KICs, the text of the general approach points to renewable energies and climate changes as, *inter alia*, potential fields for intervention. While these fields appear to be sensible areas for the EIT to focus in the first instance, it should be made it clear that it will be the Governing Board, with full autonomy, which will decide the policy areas in which to establish the first KICs. The Commission will not be involved in the selection of such priority fields.

(e) The monitoring and effectiveness of the EIT

Finally, the House of Lords' report stresses the importance of proper evaluation and monitoring mechanisms on the initial operation of the EIT, in order to properly address its long-term perspective.

The Commission shares the views of the House of Lords and believes that these concerns are fully addressed in the text of the general approach. An independent external evaluation of the EIT will be carried out at the Commission's initiative before end 2011. This evaluation will "cover all the activities of the EIT and the KICs and will assess the impact, effectiveness, sustainability, efficiency and relevance of the activities pursued as well as their relationship with Community policies". The evaluation will also take into account the views of the stakeholders, at both European and national level. The result of the evaluation will have to be taken into account in the drawing-up of the first Strategic Innovation agenda, which include *inter alia*, detailed arrangements for the operation of the EIT in the long-term.

Letter from the Chairman to Commissioner Figel, European Commission

Thank you very much for your letter of 26 September regarding the Proposal to establish the European Institute of Technology.

We were very interested to read the Commission's reaction to our Report on the Proposal and we are grateful to you for the helpful comments you make in relation to the points made in the Report.

You noted in your response that the Commission has been particularly attentive to the views of leading industrialists and European business organisations, and you go on to cite EUROCHAMBRES and Business Europe as specific organisations that have expressed support for the EIT.

We welcome this consultation, but would appreciate it if you could let us have further information about the extent to which business has expressed a will to provide the levels of private-sector investment that will be required to make the EIT a success. We would also be interested to know what level of contact you may have had with SMEs regarding the EIT proposal and what views they may have expressed about it.

We look forward with interest to your response.

16 October 2007

Letter from Margot Wallström, Vice President of the European Commission to the Chairman

Thank you for your opinion on the European Commission's Proposal to establish a European Institute of Technology (EIT) dated 16 October 2007.

I enclose the Commission's response. I hope you will find this a valuable contribution to your own deliberations.

I look forward to developing our policy dialogue further in the future.

19 December 2007

COMMISSION RESPONSE

The Commission would like to thank the House of Lords for its letter dated 16 October 2007 and for taking such a keen interest in the Commission's proposal to establish the European Institute of Technology (EIT).

The Commission would like to reply to the following queries raised by the House of Lords, namely:

- (a) The extent to which business has expressed commitment to provide adequate private-sector investment to the EIT;
- (b) The level of contact with SMEs on the EIT proposal and their expressed views.

First, the Commission has consulted widely with the business community regarding the EIT proposal. In particular it has held four Stakeholders conferences during the period from April 2006 until January 2007, where, among other groups, the representative bodies of business such as EUROCHAMBERS and Business-Europe have been extremely positive towards the creation of the EIT. Furthermore, there have been numerous direct contacts with individual companies which have expressed support for the proposal (Nestle, Nokia, Intel, Unilever, Microsoft, Pfizer, Alcoa) to name a few. While it is, of course, still to be seen that this interest will result in the type of financial input from business needed to make a success of the EIT, the level of interest shown to date is very positive.

The EIT should be set up by Community legislation in spring 2008. The Commission is confident that once the EIT established, concrete financial and other commitments will be forthcoming from the private sector.

Second, with regard to the SME dimension, it should be noted that the European Commission's consultations with business organizations/associations included UEAPME (the European Association of Craft, Small and Medium-Sized Enterprises). In a position paper (issued in September 2006) UEAPME expressed their support for the EIT project given that it "can provide added value for European craft, small and medium sized enterprises".

Following these extended consultations the Commission put forward its proposal for a regulation establishing the EIT in October 2006. The Competitiveness Council of 23 November 2007 reached a political agreement on the establishment of the EIT following the European Parliament's Resolution in September 2007.

The proposed regulation places a strong emphasis on the role SMEs should play in the EIT and on how their specific needs can be addressed. For example, to ensure that SMEs have access to and can involve themselves in EIT activities, it is proposed that the selection of Knowledge and Innovation Communities (KICs) should be based, among other things, on the partnership's capacity to demonstrate "*the involvement of and cooperation with the private sector, and in particular SMEs and the financial sector.*" Moreover, concerning Intellectual Property management, specific provisions are foreseen so that contributions from "small players" are managed appropriately.

In conclusion, the Commission is confident that, once established, the EIT will attract significant interest and investment from the private sector as well as providing attractive opportunities for small and medium-sized enterprises to participate in the Knowledge and Innovation Communities.

31ST REPORT: EUROPEAN SUPERVISION ORDER

Letter from Margot Wallström, Vice-President of the European Commission to the Chairman

Thank you for your opinion on the European Commission's Proposal for a Council Framework Decision on the European supervision order in pre-trial procedures between Member States of the European Union (COM(2006) 468) dated 25 July 2007.

I enclose the Commission's response. I hope you will find this a valuable contribution to your own deliberations.

I look forward to developing our policy dialogue further in the future.

8 January 2008

COMMISSION RESPONSE

The European Commission thanks the EU Committee of the House of Lords for its report of 25 July 2007 on the aforementioned proposal.

The EU Committee of the House of Lords considers that the European supervision order (ESO), whose aim is to enhance the right to liberty and the presumption of innocence, is a welcome measure. The European Commission's proposal addresses a serious issue affecting the liberty of the individual. It has the potential to reduce hardship for some thousands of EU citizens and is a proposal which, the EU Committee believes, deserves prompt attention from Member States. However, the Committee is of the opinion that the ESO needs to be improved in a number of respects if it is to be workable (paragraphs 18–19 of the aforementioned report).

The EU Committee of the House of Lords has analysed the text of the ESO in great detail, has drawn a number of conclusions⁸ and has made suggestions as to how the ESO could be improved.

The European Commission agrees, to a large extent, with the House of Lords EU committee's analysis.

As regards the choice between the ESO and Eurobail, the EU Committee prefers the ESO, which, in its view, might be usefully supplemented by allowing a greater role for the executing State than is currently envisaged in the ESO. The European Commission would like to emphasise that it considers essential that it be the issuing authority that has the final control over the pre-trial procedure as it is this authority that has the responsibility for the preliminary investigations and the question whether there is sufficient evidence to bring charges against the suspect. This aspect is also important for the confidence that the issuing authority will have in the ESO and finally whether it will be used on a larger scale in the future. In the long run, this will be for the benefit for the use of non-custodial supervision measures and their transfer to the home State of the suspects.

The report of the EU Committee contains further many useful comments on the possibilities for the executing State to take action against a suspect who is breaching his or her obligations. The European Commission welcomes the EU Committee's constructive analysis on all aspects of the proposal which clearly merits consideration. This meticulous analysis will no doubt prove useful in the discussions in Council under the Portuguese Presidency.

As regards the return of the suspected person to the issuing authority, there have been discussions among Member States about whether the return mechanism should be linked to the procedures under the Framework Decision on the European arrest warrant (EAW). The EU Committee has noted that this could be very difficult as the EAW only applies in the case of offences punishable by a minimum of one year's imprisonment whereas it is envisaged that the ESO would also be available for less serious offences. The European Commission also notes that the grounds for refusal of the EAW and of the ESO are not the same and that they would not be compatible.

Finally, the time limits in Articles 17(2) and 17(3) of the EAW do not seem to be compatible with a return mechanism adapted for the ESO, which aims to reduce pre-trial detention. Article 17(3) EAW allows explicitly that the final decision on the execution of the European arrest warrant should be taken within a period of 60 days after the arrest of the requested person. Even if Article 12 EAW allows that a person may be released provisionally at any time in conformity with the domestic law of the executing Member State, provided that the competent authority of the said Member State takes all measures it deems necessary to prevent the person absconding, it is not obvious that a return mechanism linked to the EAW is the best possible solution for the ESO. Therefore, the European Commission would like to see a separate return mechanism.

39TH REPORT: EUROPEAN WINE: A BETTER DEAL FOR ALL: FINAL REPORT WITH EVIDENCE

Letter from Margot Wallström, Vice-President of the European Commission to the Chairman

The Commission would like to congratulate the European Union Committee (Environment and Agriculture) of the House of Lords for the excellent and in depth contribution to the debate on the efforts to achieve a sustainable European wine sector. The Commission's proposal for a Council Regulation on the common organisation of the market in wine in COM(2007) 372 final of 4 July 2007 has been subjected to a thorough examination as well as the views of numerous witnesses from all spectrums of the administrations and stakeholders throughout the European Union on the wine sector in general.

The Commission welcomes:

- the broad support of the Committee for most of the Commission's ideas following the first reading of the Commission's proposal published on 23 July 2007 in "European Wine: A Better Deal for All Volume I: Report";
- the wide range of views collected by the Members of the European Union Committee of the House of Lords and published in "European Wine: A Better Deal for All" Volume II Evidence on 23 July 2007; and
- the broad support repeated in the Final Report With Evidence published on 30 October 2007, following the examination of witnesses from the Ministry for Sustainable Farming and Food on 25 July 2007.

The Portuguese Presidency of the Council obtained political agreement on its compromise package in the Council (Agriculture) on 19 December 2007 following receipt of the Opinion of the European Parliament.

⁸ In particular in paragraphs 48, 70, 76,84, 95-98, 102, 105, 111, 115, 122, 125, 129, 131, 133, 136, 144, 147, 151, 158, 166-168, 172, 179 and 182.

The Commission takes note of the emphasis placed by the Committee on the need for increased competitiveness in the EU wine sector and of need for change within the industry. It welcomes the support for the proposals for the abolition of distillation, national envelopes, grubbing-up, the transfer to the European Agricultural Fund for Rural Development, the changes in wine classification and labelling, on wine making practices and on the single farm payment even if in some cases the support is nuanced.

During the negotiations leading to the compromise reached by Ministers important concerns of the House of Lords as outlined in the final report such as the issue of enrichment of the alcoholic strength of wine using sucrose (chaptalisation) were taken into account. Increased flexibility for the UK wine sector to increase production without triggering negative regulatory provisions was also introduced in the context of the compromise on the ban on new plantings.

The Commission thanks the Committee for its substantial contribution and constructive approach to reforming the EU wine sector.

28 February 2008
