HOUSE OF LORDS

European Union Committee

24th Report of Session 2008-09

Government and Commission Responses Session 2007-08; Remaining Government Responses Session 2006-07

Ordered to be printed 3 November 2009 and published 10 November 2009

Published by the Authority of the House of Lords

London: The Stationery Office Limited

HL Paper 168

The European Union Committee

The European Union Committee of the House of Lords considers EU documents and other matters relating to the EU in advance of decisions being taken on them in Brussels. It does this in order to influence the Government's position in negotiations, and to hold them to account for their actions at EU level.

The Government are required to deposit EU documents in Parliament, and to produce within two weeks an Explanatory Memorandum setting out the implications for the UK. The Committee examines these documents, and 'holds under scrutiny' any about which it has concerns, entering into correspondence with the relevant Minister until satisfied. Letters must be answered within two weeks. Under the 'scrutiny reserve resolution', the Government may not agree in the EU Council of Ministers to any proposal still held under scrutiny; reasons must be given for any breach.

The Committee also conducts inquiries and makes reports. The Government are required to respond in writing to a report's recommendations within two months of publication. If the report is for debate, then there is a debate in the House of Lords, which a Minister attends and responds to.

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Internal Market (Sub-Committee B)
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Environment and Agriculture (Sub-Committee D)
Law and Institutions (Sub-Committee E)
Home Affairs (Sub-Committee F)
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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
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General correspondence should be addressed to the Clerk of the European Union Committee, Committee Office, House of Lords, London, SW1A 0PW
The telephone number for general enquiries is 020 7219 5791. The Committee's email address is euclords@parliament.uk

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GOVERNMENT AND COMMISSION RESPONSES FOR SESSION 2007-08

1. The Government have undertaken to respond in writing to all reports from the Committee (other than purely formal reports) within two months of publication.

2. The European Commission has likewise undertaken to respond in writing to opinions transmitted to them from national parliaments. This is part of the 'Barroso initiative', launched by the Commission in 2006 to "bring the EU closer to citizens". We send selected reports to the Commission for response on this basis.

3. This report makes available, for the information of the House, Government and Commission responses received to date to our reports from Session 2007-08. Also included are those responses not previously published to reports from Session 2006-07. A complete list of reports and responses for both sessions is annexed to this report.

4. Some Government responses are published as Command Papers. These responses are not printed in this report but are listed in Annexes A and B.

ANNEX A: 2007-08

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1st Report: Current Developments in European Trade Policy		No response required
2nd Report: Green Paper on Succession and Wills		No response required
3rd Report: Protecting the Consumers of Timeshare Products		Both Government and Commission responses printed in this report
4th Report: Current Developments in European Foreign Policy: the EU and Africa		No response required
5th Report: The Single Market: Wallflower or Dancing Partner? Inquiry into the European Commission's Review of the Single Market		Both Government and Commission responses printed in this report
6th Report: Solvency II		Government response printed in this report
7th Report: The Future of the Common Agricultural Policy		Both Government and Commission responses printed in this report
8th Report: Current Developments in European Defence Policy		No response required
9th Report: Frontex: The EU external borders agency		Both Government and Commission responses printed in this report
10th Report: The Treaty of Lisbon: An impact assessment		Government response published as Command Paper 7389 by the Foreign and Commonwealth Office, June 2008
11th Report: Priorities of the European Union: Evidence from the Minister for Europe and the Slovenian Ambassador		No response required
12th Report: Current Developments in European Foreign Policy		No response required
13th Report: The Euro		Government response printed in this report
14th Report: The European Union and Russia		Government response printed in this report
15th Report: Passenger Name Record (PNR) Framework Decision		Government response published as Command Paper 7461 by the Home Office, August 2008 Commission response printed in this report
16th Report: Current Developments in European Foreign Policy: Burma		No response required

Reports		
17th Report: Increasing the Supply of Donor Organs within the European Union		Government response published as Command Paper 7466 by the Department of Health, August 2008 Commission response printed in this report
18th Report: The 2009 EC Budget		Government response printed in this report
19th Report: The Future of EU Regional Policy		Both Government and Commission responses printed in this report
20th Report: Current Developments in European Defence Policy		No response required
21st Report: Progress of the Common Fisheries Policy		Both Government and Commission responses printed in this report
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23rd Report: The Commission's Annual Policy Strategy for 2009		Both Government and Commission responses printed in this report
24th Report: Priorities of the European Union: evidence from the Ambassador of France and the Minister of Europe		No response required
25th Report: Current Developments in European Foreign Policy		No response required
26th Report: Working time and temporary agency workers: towards EU agreement		No response required
27th Report: The EU's Target for Renewable Energy: 20% by 2020		Both Government and Commission responses printed in this report
28th Report: Evidence from the Minister for the June European Council		No response required
29th Report: EUROPOL: Coordinating the fight against serious and organised		Both Government and Commission responses printed in this report
30th Report: Correspondence with Minsters: October 2006 to April 2007		No response required
31st Report: Adapting the EU's approach to today's scrutiny challenges: The Review of the 2003 European Security Strategy		Government response printed in this report
32nd Report: Annual Report 2008		No response required
33rd Report: Revision of EU's Emissions Trading System		Both Government and Commission responses printed in this report

Reports		
34th Report: Government and Commission Responses 2006-07		No response required
35th Report: Developments in EU Trade Policy		Both Government and Commission responses printed in this report

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1st Report: Current Developments in European Defence Policy		No response required
2nd Report: Breaking the deadlock: What future for EU procedural rights?		Government response published in this report
3rd Report: Television Without Frontiers?		Both Government and Commission responses printed in 34th Report, 2007-08, HL Paper 199
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 34th Report, 2007-08, HL Paper 199
6th Report: Government Responses: Session 2004-05		No response required
7th Report: The Commission's 2007 Legislative and Work Programme		Government response printed in 34th Report, 2007-08, HL Paper 199
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 responses printed in 34th Report, 2007-08, HL Paper 199
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 34th Report, 2007-08, HL Paper 199
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 responses printed in 34th Report, 2007-08, HL Paper 199
15th Report: An EU Competition Court		Government response printed in 34th Report, 2007-08, HL Paper 199

Reports		
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 responses printed in 34th Report, 2007-08, HL Paper 199
18th Report: Prüm: An effective weapon against terrorism and crime?		Both Government and Commission responses printed in 34th Report, 2007-08, HL Paper 199
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 responses printed in 34th Report, 2007-08, HL Paper 199
21st Report: The EU/US Passenger Name Record (PNR) Agreement		Government responses printed in 34th Report, 2007-08, HL Paper 199
22nd Report: Modernising European Union Labour Law: Has the UK anything to gain?		Both Government and Commission responses printed in 34th Report, 2007-08, HL Paper 199
23rd Report: The Commission's Annual Policy Strategy for 2008		Government response printed in 23rd Report, 2007-08, HL Paper 151
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 responses printed in 34th Report, 2007-08, HL Paper 199
26th Report: The EU and the Middle East Peace Process		Government response printed in 34th Report, 2007-08, HL Paper 199
27th Report: Water Framework Directive: Making it work		Government response published in this report
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 included with response to 39th Report - see below
31st Report: European Supervision Order		Both Government and Commission responses printed in 34th Report, 2007-08,

Reports		
		HL Paper 199
32nd Report: Current Developments in European Foreign Policy: Kosovo		No response required
33rd Report: The 2008 EC Budget		Government response printed in 34th Report, 2007-08, HL Paper 199
34th Report: Current Developments in European Defence Policy		No response required
35th Report: EU Reform Treaty: Work in progress		Government response printed in 34th Report, 2007-08, HL Paper 199
36th Report: Annual Report 2007		Government response printed in 34th Report, 2007-08, HL Paper 199
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 responses printed in 34th Report, 2007-08, HL Paper 199
40th Report: Correspondence with Ministers: January to September 2006		No response required

Part I: Government Responses

GOVERNMENT RESPONSES SESSION 2007–08

3RD REPORT: PROTECTING THE CONSUMERS OF TIMESHARE PRODUCTS

Letter from Gareth Thomas MP, Parliamentary Under Secretary of State for Trade and Consumer Affairs, Department for Business Enterprise and Regulatory Reform and Department for International Development to the Chairman

I welcome this Report and am grateful to the Committee, in particular for its support for a proposal for which the UK had pressed.

I would like to thank the Committee for the rigour with which they have approached their examination of the evidence and the resultant thorough and well-researched report.

As the Committee clearly appreciated, the issues being addressed in this proposal adversely affect significant numbers of UK consumers. It is aimed at improving matters for consumers of timeshare and other long-term holiday products, particularly when they are approached by salespeople while on holiday elsewhere in the European Union. The Government continues to press in negotiations to ensure that the regime properly reflects and addresses the issues in a proportionate way to provide effective protection for consumers and to simplify and clarify obligations on business.

Negotiations are continuing on several of the matters to which the Committee's recommendations relate and I am sure you will understand that where we have already made progress and have been able to provide up to date information in our response, this is in the context that we do not yet have a final draft.

I am pleased therefore to refer you to the Government's response to the Committee's recommendations and conclusions in the attached annex to this letter and to thank the Committee again for its helpful report.

11 February 2008

Government Response

Paragraphs are numbered as in Chapter 14 of the Report: Summary of Conclusions and Recommendations (page 40)

Chapter 4: Regulatory Issues

192. We believe that the Commission has set out a good case for a new broader timeshare directive, and that existing horizontal EU consumer protection legislation including the Unfair Commercial Practices Directive is insufficient to deal with the specific problems associated with the timeshare and long-term holiday club sectors. (para 48)

The Government agrees.

193. We conclude that, while timeshare and holiday clubs have different characteristics, they have many similar features and are marketed in a similar way, in similar situations and often to similar target groups. Both exhibit characteristics which require the same type of consumer protection measures, and we see no major difficulties in regulating both within the one directive as proposed by the Commission. (para 49)

The Government agrees.

194. We believe that it would have been preferable for the Commission to have proposed a new timeshare directive together with other legislative proposals following from the review of the consumer acquis, but we recognise that changes to the Timeshare Directive are overdue and we urge the Council and the European Parliament to seek early agreement. (para 50)

The Government agrees.

195. We recommend that the Commission, in considering any new proposal in the field of consumer contract law, bear in mind the need to keep consequent amendments to the new timeshare directive to a minimum. (para 51)

The Government agrees.

196. We recommend that the Commission have regard to the issues arising in the timeshare and long-term holiday product markets during its review of the various elements of the consumer acquis. (para 52)

The Government accepts this recommendation and will work with the Commission to try and ensure that future work takes into account relevant issues exposed in the course of work on this proposal.

Chapter 5: Justification for Regulation

197. We are disappointed that a substantial part of the industry remains outside the self-regulatory system. We urge companies in the timeshare sector to do more to raise standards. We regretfully conclude that there appears to be no reasonable prospect of self-regulation in the long-term holiday club sector at present. (para 64)

The Government agrees with the Committee's conclusion in respect of long-term holiday club sector which currently has no apparent organised representation. The Government joins the Committee in urging businesses in the timeshare sector to further increase standards with a view to achieving higher levels of consumer confidence in their industry.

198. We recognise the motivation of those who suggest that compulsory membership of trade associations should be considered further but we think it unlikely that this would be practical and effective. We consider it more appropriate for the Commission to pursue the concept of licensing as we recommend in paragraph 160. (para 65)

The Government agrees with the Committee's assessment of the practicality and effectiveness of compulsory membership of trade associations. However, the Government does not favour licensing as a potential solution to consumer detriment in these sectors in addition to the range of provisions in the proposal.

As the Committee acknowledges, evidence suggests that the existing timeshare directive has proven substantially effective in curbing the activities of those who formerly exploited consumers of timeshare agreements. The proposal seeks to further improve the provisions of the existing directive with a view to addressing specific shortcomings which have been identified by stakeholders. The proposal also seeks to extend relevant provisions of the existing directive into new areas of activity, such as long-term holiday clubs. The Government believes that the suite of regulatory provisions which has proven successful in relation to timeshare agreements will prove equally successful in tackling rogue holiday club sales, which all stakeholders agree, have arisen in order to continue the dishonest trading practices formerly identified in relation to rogue timeshare sales by circumventing the provisions of the existing directive.

Extending the existing regime is in the Government's view the most practical and proportionate way of addressing these new areas of detriment. Given that we believe the revised directive as being negotiated will deal with all of the main issues of concern, formal licensing on a pan-European scale is not only likely to be costly, but in our view, would not necessarily provide consumers with any additional protection. Adding a licence requirement to what will be a tighter more clearly defined regime would therefore appear to carry little added value for consumers who, in any case, are unlikely to be in a position to be able to easily check whether a licence is genuine at the point at which they make their purchase decision. Furthermore, false licences can lend an air of legitimacy to the rogue trader's activities. There is a danger, therefore, that in introducing a licence, the regulation could—in the absence of very rigorous enforcement in Member States—be introducing a further weapon in the rogues' armoury.

199. We recommend that traders should be obliged, rather than encouraged, to inform consumers of their codes of conduct (Article 10.1). (para 66)

The Government agrees. As of the date of this response the latest Presidency draft of the proposal, for discussion in Council Working Group, requires disclosure of code membership.

200. We urge trade associations in these sectors to review and strengthen their codes of practice in relation to unfair, misleading and aggressive sales practices, and to increase compliance. (para 67)

The Government believes effective codes of practice can provide additional benefits for consumers and additional consumer confidence in business. To be effective, codes must address identified sources of consumer detriment and mistrust and must be rigorously enforced by code sponsors. The Government would therefore echo the Committee's advice to trade associations in this sector and to underline that high, proven, levels of compliance in a code is all important in relation to how a code and its members are perceived.

201. We conclude that national legislation cannot adequately deal with the problems associated with the timeshare market and that EU-level legislation is therefore appropriate. Inadequate enforcement of the current framework, however, does cause us some concerns and we have made some recommendations concerning future enforcement in Chapter 11. (para 68)

The Government agrees with the Committee's conclusion. Please see further comments on enforcement below in the section on Chapter 11.

Chapter 6: The Right of Withdrawal and the Cooling-Off Period

202. The introduction of rights of withdrawal and a cooling-off period have benefited purchasers of timeshares and the industry, and these rights should be maintained for timeshare and extended to cover long-term holiday clubs. (para 84)

The Government agrees.

203. Evidence that suggests that most consumers who cancel do so early in the cooling-off period gives only a partial picture. There may be many other consumers who return from their holiday and, on further consideration and perhaps advice, wish that they had cancelled but find that it is too late to do so. On this basis, we do not think that 14 days is an adequate period for reflection and obtaining independent advice and we therefore recommend that the cooling-off period be 21 days (Article 5.1). (para 85)

204. We recognise that as a consequence of a longer cooling-off period more consumers may cancel purchases of timeshares and long-term holiday products but we suggest that, if this occurs to a significant extent, the problems lie with the products and the way in which they are sold. (para 86)

The current proposal is for 14 calendar days which reflects the position in the UK and the period set by the Organisation for Timeshare in Europe in its code of practice.

The cooling-off period in this proposal not only provides consumers with the right to withdraw from a contract, with no penalty, but, uniquely, as the result of the ban on up-front payments or deposits, also denies the business access to any firm surety that the consumer is apparently committed to the deal in advance of the completion of the cooling-off period. The timeshare industry argues that this combination already instils distrust in consumers and perhaps either discourages potential buyers or prompts withdrawal.

While, as the Committee observes, the industry contention that the majority of consumers who decide to exercise their right of withdrawal within the current cooling-off period do so within a few days probably does not provide the whole picture, the Government has seen no evidence that substantial numbers of timeshare consumers do exercise their right to withdraw later, nor that they would have done had they had the chance. In considering its position on this issue the Government has taken note of the views of all stakeholders, has applied better regulatory principles and concluded that the burden of further extending the period of uncertainty for business is not justified in terms of substantive evidence of consequential consumer benefit.

Furthermore, it is the Government understanding that the success of the regime to date lays not so much in the ability of the consumer to withdraw from the contract, but that in addition the consumer is not obliged to seek the return of any deposit if they choose to withdraw. The proposal contains provisions to make clearer the ban on advance payments in order to overcome identified means of circumventing that requirement.

205. We recommend that in setting cooling-off periods, the definition of "day" as a working or calendar day should be clarified. (para 87)

The Government agrees. The current Presidency draft for Council Working Group discussion specifies calendar days and member States appear to be settled on that.

206. We conclude that there is scope for confusion, in the proposal that the cooling-off period be extended by one day, where the final day is a public holiday unless there is greater clarity for both parties about which public holidays apply. We recommend that the cooling-off period be extended by one day where the final day is a public holiday in the Member State of either of the contracting parties (Article 5.2). (para 88)

The issue of public holidays is no longer addressed in the latest Presidency draft for the Council Working Group. In the absence of a set rule on public holidays, Regulation No.1182/71 of the Council determining the rules applicable to periods, dates and time limits, referred to in paragraph 80 of the Report, would appear to apply. Article 3.4 of that Regulation states that where the last day of a period expressed otherwise than in hours is a public holiday, Sunday or Saturday, the period shall end with the expiry of the last hour of the following working day.

In respect of public holidays, the Regulation declares these to mean “all days designated as such in the member state or in the community institution in which action is to be taken.” In terms of exercising the right to withdraw which would be an action by the consumer, the “state” would appear to be that in which the consumer happened to be at the time.

The Government agrees that there remains some scope for confusion on this issue. The intention is that the consumer should have 14 calendar days during which they may withdraw. Clearly they should not be prevented from withdrawing on the fourteenth day if that falls on a public holiday wherever they are, and that prevents them from communicating their withdrawal by their chosen method. The Government undertakes to pursue this issue further during negotiations.

207. We recommend that the right of withdrawal should not expire after three months in the absence of the information provisions required in Annex I (Article 5.3). (para 89)

The Government has some sympathy with this recommendation and is concerned that the effect of the expiry of an extended cooling-off period in these circumstances is not always properly understood. In the Government’s view this does not necessarily mean that the consumer is tied to the contract after the withdrawal period has expired. We understand that the consumer’s ability to terminate the contract under national contract law would be for national courts to consider and is outside the scope of the Directive. In the UK the issue of misrepresentation might well feature in these circumstances, as it might be that the reason for the non-supply of the information is because it did not match what was said in the sales pitch which led to the sale. Clearly, because the ban on taking any payments is linked to the withdrawal period, including any extended withdrawal period, it is not in the immediate interest of the trader to withhold any information, although the dishonest trader might perceive it to be in his interest to wait out the three-month period in the longer term.

Some have argued that the extension of the withdrawal period should be open-ended in the event that the information is not provided. This would certainly increase the incentive for the trader to provide the information, as they would have no access to the payment. However it also raises the question as to whether absence of payment for an indefinite period means that a contract is never actually concluded and that the consumer does not have the right to the benefit of the contract if they want it. Others have argued that the contract should simply be void after three months if the information has not been provided.

We have seen no evidence of traders in the timeshare sector seeking to exploit the three-month expiry provision. Neither are we aware that any significant numbers of consumers have been tied to timeshare contracts against their will in these circumstances. Nevertheless, it seems inconsistent to, on the one hand, state that consumers must have specific information before they are able to make an informed decision on a purchase, and, on the other, to say that, in effect, three months later the consumer does not need this information.

The Government believes the consequences of not providing the required information should be clarified in the proposal and will be arguing for that in ongoing negotiations.

208. We recommend that information for consumers about rights of withdrawal be provided in a prominent and clear manner in the contract and in promotional material. (para 90)

The Government agrees. Article 4.3 of the draft proposal currently under discussion in the Council Working Group states that before the conclusion of the contract the trader shall explicitly draw the consumer’s attention to the existence of the right of withdrawal and the length of the withdrawal period and the ban on advance payment during the withdrawal period. It also stipulates that the corresponding contractual clause should be signed separately by the consumer. The Government supports these provisions. It is also proposed, although the Government is not yet convinced that it is strictly necessary, that there be a detachable form as part of the contract in order to facilitate withdrawal.

209. We recommend the deletion of the proposal that consumers reimburse expenses to traders where they cancel during the withdrawal period (Article 5.5). (para 91)

The Government agrees and would comment that deleting this element is perhaps more important in relation to the sale of other long-term holiday products, where the provision could well be cited by rogue traders as a means of circumventing the ban on advance payments. Consumers outside of their home territory will be unfamiliar with local national rules and formalities which might attract fees so they will not be able to tell whether a charge is genuine. We know of no reason why a trader should not factor in these costs in the price of the product or service, where they apply, and recoup the costs when payment is received following the cooling-off period.

This provision is deleted in the current Presidency draft proposal for discussion in the Council Working Group.

Chapter 7: Advance Payments During the Withdrawal Period

210. We conclude that the removal of the ban on deposits during the cooling-off period would be likely to lead to a recurrence of the problems that plagued the timeshare industry prior to the 1994 Directive. We therefore recommend the continuation of the ban on the taking of a deposit for a timeshare during the cooling-off period and its extension to holiday clubs, and we support the ban on demands for payments to be made to third parties, as proposed by the Commission. (para 98)

The Government agrees that the ban on payments in advance of the completion of the cooling-off period should continue in respect of timeshare sales. We believe lifting this provision would increase the potential for easy profit by rogue elements who might well be tempted back into that sector. This would not be good for consumers or for legitimate timeshare operators. In respect of extending the ban to the sale of other long-term holiday products, this appears to be where the aforementioned rogue elements have now concentrated their efforts. The Government therefore supports the extension of all the provisions of the directive to these products in order to provide powers to stop the rogue element and discourage its participation.

In the Government's view the current directive already bans payments during the cooling-off period to third parties, however, we too welcome clarification on this point. We have been making suggestions in Council Working Groups discussions to ensure that this provision does not contain any room for manoeuvre.

Chapter 8: Resale and Exchange

211. We support the proposed ban on requests for advance fees for resale. (para 117)

The Government agrees. The evidence of consumer detriment in relation to resale identifies the cause as being in almost all cases non-delivery of the service promised and charged for.

Notwithstanding advice to timeshare owners to be extremely vigilant when in receipt of an offer for their timeshare which appears to be too good to be true, the Government believes that a ban on any payment before a sale is completed, or the contract is otherwise terminated, is justified. It will provide timeshare owners with a clear indication of when they are dealing with someone who is operating outside of the law and it requires no more of legitimate timeshare resale agents than that they operate in accordance with normal agency arrangements in other fields, i.e. for a flat fee on completion of the contract, or on a percentage commission on completion of the contract.

212. We recommend that the objectives of the cooling-off provisions in relation to resale be clarified. We are particularly concerned that treating resales by timeshare traders and by independent intermediaries on a different basis could be confusing for consumers and could open up a loophole whereby rogue traders collaborate with, or pose as, intermediaries. (para 118)

It remains the Government's view that the application of a cooling-off period to resale arrangements, as defined (i.e. as an intermediary service and not a buying-to-sell business), is not justified and might work to the disadvantage of the consumer who is employing a legitimate resale agent.

The Government is content and hopes it can reassure the Committee that where a trader buys timeshare rights or, potentially, long-term holiday product contracts, on the second-hand market and then sells them to consumers they will be selling the timeshare or long-term holiday product and will be subject to the full range of provisions in the proposal.

The Government believes the issue of possible confusion has been adequately dealt with in Article 2 of the proposal where a resale contract is defined. A resale contract is an agency contract for the provision of a facilitative service. The trader is not a party to the contract of sale in these circumstances. From the purchaser perspective, the Government believes the scope for a seller to masquerade as a reseller acting on behalf of private individuals, when they are actually either selling a timeshare as a trader or seeking to arrange the sale of a timeshare owned by another trader is minimal. Wherever a trader is selling a timeshare contract or long-term holiday product contract (either himself or through a person acting on the trader's behalf), the full range of the provisions in the proposal will apply. The only circumstance where the provisions do not apply to the sale of timeshare or long-term holiday product contracts is where the contracting parties are both consumers, as defined in the proposal.

213. We believe that clarification is needed too in relation to the cancellation of exchange contracts (Articles 5 and 7). In that vein, we agree that consumers who pay to join an exchange scheme should be entitled to a refund of their fees if reasonable and timely requests for exchanges cannot be met and recommend that a right on these lines be added to the directive. (para 119)

The situation under the proposal is already that a failure to deliver the exchange service (a description of which is required under the proposal to be provided to the consumer before he enters the exchange contract and which will form part of that contract) may result in a breach of contract which the consumer may be able act on.

The Government is advised by both of the leading exchange companies, which account for more than 90 per cent of all exchanges, that they already provide a pro rata refund to consumers if they choose to discontinue their membership part way through a renewal period. The Committee will recall that fees for exchange membership, at around £70 to £100 per annum, are not on the scale of the cost of a timeshare, or a long-term holiday product.

The Government remains undecided on the Committee's recommendation, but continues to be concerned that the proposal currently applies the ban on up-front payments and a separate cooling-off period to exchange membership contracts. We view this as disproportionate and unnecessary. As an ancillary contract, within the terms of the proposal, the exchange membership contract would fall in the event of a consumer exercising their right to withdraw during the cooling-off period for a timeshare purchase. A separate cooling-off period based on the point of the conclusion of the contract would mean, because exchange membership contracts are not concluded before the end of the timeshare cooling-off period, that exchange contracts are in effect subject to double the cooling-off period. In the Government's view there is no justification for this, whether in terms of evidence of consumer detriment or consumer's potential exposure to detriment.

However, the Committee's proposal might prove to be an acceptable substitute for the application of the cooling-off period to exchange membership. The recommendation effectively mirrors what we understand is already established business practice and would therefore appear not to impose any significant added burdens on exchange companies. It would appear to provide reassurance for consumers and a degree of "future-proofing" for the proposal in respect of exchange membership.

The Government will continue to argue for proportionality in the way exchange is to be regulated and in doing so will propose the inclusion of a provision which reflects the current business practice of providing pro-rata refunds on membership fees where a member chooses to withdraw from membership.

214. We recommend that the definition of an exchange be amended to clarify that exchange allows consumers to use the timeshare rights of others, in exchange for others using their timeshare rights, without modification of the rights of the owners. (para 120)

The Government agrees and is pleased to report that our representations in the course of Council Working Group discussions have met with success on this point. The latest draft proposal from the Presidency defines an exchange contract as: "a contract of an ancillary nature by which a consumer for consideration joins an exchange system which allows him access to overnight accommodation or other services in exchange for granting temporary access to others to the benefits of his timeshare contract".

We believe this accurately describes the nature of these contracts. It will be noted that the exchange is not limited just to access to the timeshare rights of others, but to accommodation and other services more generally (which would include timeshare accommodation). Again, we believe this adequately reflects the wider choice open to those who deposit their timeshare rights into a system.

215. We support the suggestion by the Minister that the information requirements should also include details of restrictions on access to particular exchanges and that exchange operators should be obliged to inform the consumer about any additional charges for particular exchanges. (para 121)

The Government can report that its arguments in this respect have gained some purchase in the Council Working Group and that the current Presidency draft for discussion includes that information on limitations on consumer choice within an exchange system be provided. The information requirements as currently drafted also include, in respect of each exchange, that the exchange system informs the consumer in advance of any additional charges which taking a particular exchange might attract.

Chapter 9: Provision of Information to the Consumer

216. We conclude that the information requirements need to be reviewed to ensure that they address key consumer needs and are proportionate. (para 135)

The Government concurs with the Committee's conclusion and has been arguing, with success, in favour of such an approach within the Council Working Group.

217. We recommend that a clear hierarchy of information provisions be established, setting out the relative importance to the consumer of each type of information and based on objective and independent research into consumer understanding. We suggest that one way forward would be for the Council and Parliament to agree on the overall information objectives, which should then be defined more closely through the comitology[1] procedure. (para 136)

The Government notes the Committee's recommendation and believes there has been some progress in this direction. The current Presidency draft for discussion arranges the information requirements by type, for example "Information on the costs" and "Information about the right acquired" in order to make these clearer, for both the trade and consumers. The Council Working Group is also to discuss the possibility of information being presented in the form of a "standard" checklist for consumers. In relation to the content of the information, the Government's view has been informed by consumer experience as reported by stakeholder groups in the course of informal consultation.

218. We recommend that, in the case of timeshare, the information requirements give fuller information about the longer-term costs associated with ownership, rights of withdrawal and owner representation. (para 137)

The current Presidency draft of the information requirements for discussion in the Council working group includes:

the price to be paid by the consumer;

an indication of the amount to be paid by the consumer for the services (e.g. electricity, water, maintenance, refuse collection);

where applicable, an indication of the amount to be paid by the consumer for the common facilities, such as swimming pool or sauna, to which the consumer has or may have access;

an accurate description of all costs associated with the timeshare contract; how these costs will be allocated to the consumers and how and when such costs may be increased;

the method for the calculation of the amount of charges relating to occupation of the property, the mandatory statutory charges (for example, taxes and fees) and the administrative overheads (for example, management, maintenance and repairs);

where applicable, information on whether there are any charges, mortgages, encumbrances or any other liens recorded against title to the accommodation; and

a statement that the consumer shall not bear any other costs or obligations other than those specified in the contract.

The Government believes this is a very comprehensive list and should provide consumers, in advance and within the contract itself, with adequate information on which to assess their liability, both for the initial cost of a timeshare contract and for ongoing costs.

The Government has argued for clearer information on the right of withdrawal, and also on the ability to terminate the contract if desired. Again, to date, we have met with some success. The current draft for discussion includes a requirement for very clear statements as to the right of withdrawal and for separate acknowledgment by the consumer that he has seen that right.

The Government has also successfully argued for the inclusion of a requirement for information on conditions for terminating the contract (post cooling off period), the consequences of termination and information on any liability on the consumer for any costs which might arise from termination.

[1] The "comitology" procedure allows minor "implementing decisions" to be taken by the Commission, with the full involvement of the Member States, within the framework of broader legislation. It is governed by Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred upon the Commission. (L184, 17, 7, 1999, p 23–26)

On owner representation, the situation is not a simple one. Timeshare contracts take several forms and timeshare resorts are organised and operated in different ways, often depending on the precise nature of the rights obtained. The Government does not seek to regulate how resorts are operated day-to-day and that is not the objective of this proposal. However, we are aware of some issues, generally related to the ongoing costs associated with timeshare ownership, where the consumer feels they are unduly exposed to exploitation. It is partly with this in view that the Government has been arguing for fuller information on the price to be paid by the consumer, including liability for costs into the future, and for transparency in how such costs are to be calculated (all to be included in the contract). We believe the inclusion of this information in the contract will help to overcome the issues which have been identified.

The proposal does not seek to provide for consumer representation in the running of timeshare resorts, but there is a requirement for information on how maintenance and repairs of the property and its administration and management are arranged, including whether and how consumers may influence and participate in the decisions regarding these issues.

219. We recommend that, in the case of long-term holiday clubs, more information should be provided about the precise nature of the accommodation offered and of its ownership, and the identity of the company or companies that will be providing the services offered. (para 138)

The Government has been working with the Council Working Group to ensure that more accurate and relevant information about the rights obtained under long-term holiday product contracts is provided in advance and in the contract itself.

To that end, we believe the current wording under discussion relating to information about the product will be adequate to ensure that consumers are clear about what they are buying into and their entitlements under the contract, i.e. "the exact nature and content of the right which is the subject of the contract and an accurate description of the rights conferred on the consumer under the contract, including any restrictions on the consumer's ability to enjoy those rights (eg limited availability or offers provided on a first come first served basis, or time limits on particular discounts)".

In this context it is important to bear in mind that holiday clubs promise to offer access to discounts on a variety of arrangements provided by third parties. They do not provide the services direct. In the Government's view, therefore, the above wording is sufficiently broad to ensure that consumers are made aware in detail of the service on offer, and that any claims as to the availability of discounts on specific arrangements must be honoured if the contract is to be met.

Furthermore, this service is provided in the context of other EU legislation, for example, the unfair commercial practices directive which prohibits misleading commercial deceptive practices, and the package travel directive which will apply where as a result of a consumer's holiday club membership a holiday club undertakes to arrange for the consumer a combination of any two of transport, accommodation or other tourist services which form a significant part of the contract.

Chapter 10: Raising Public Awareness

220. Raising public awareness is not a substitute for adequate consumer protection. However, potential timeshare consumers do need to be better informed about their rights and about potential "scams", and to be much more wary when entering into major purchases of the nature discussed in this Report, particularly when doing so in another jurisdiction and in the absence of professional advice. (para 143)

221. We believe that the UK has made a good start in this area and commend the activities to date of the Office of Fair Trading. We consider, however, that a requirement on Member States merely to inform the public of the national law transposing the directive is not sufficient. We recommend that the Commission work with the Member States to draw up a strategy to improve consumer awareness of "scams", of aggressive and misleading selling practices in these sectors and of their rights in relation to withdrawal from the contract, focusing on key tourist destinations and encouraging regional and local authorities, local tourism associations, chambers of commerce and enforcement bodies to take part. (para 144)

My Department also acknowledges the good work of the Office of Fair Trading in this area and their ongoing campaign to provide advice and warnings to holiday makers about holiday clubs at UK airports. The Office of Fair Trading carries Government responsibility for consumer awareness campaigns.

My Department and the Office of Fair Trading would be happy to engage with the Commission and other Member States on improving consumer awareness of the issues the Committee has identified.

Chapter 11: Enforcement and Sanctions

222. We agree that the establishment of appropriate sanctions is properly the responsibility of the Member States, but recommend that the Government and the Commission act speedily where there is evidence that implementing measures are not effective, proportionate and dissuasive (Article 11). (para 157)

The Government accepts this recommendation and will actively encourage the Commission to be diligent in ensuring proper implementation of the new directive across the European Union. This is particularly important to the UK because it is when UK consumers are on holiday abroad that they are exposed to the bulk of detrimental practices in this sector.

223. We conclude that licensing could have merits. Although it may impose costs, these should be assessed in relation to the level of consumer detriment identified by the OFT. We recommend that the Commission study the costs and benefits of a licensing scheme for enforcement and redress. (para 158)

The Government has outlined its view on possible licensing in this sector under its response to paragraph 198 above.

224. We agree that, although enforcement is primarily a matter for the Member States where problems occur, there is a Europe-wide dimension and we recommend that further consideration be given to the idea of monitoring by the European Commission with a view to informing the actions taken by Member States to enforce the legislation. (para 159)

The Government agrees with the Committee that effective enforcement throughout the Member States is very important in relation to UK consumers and views effective monitoring of enforcement activity as a precursor to implementation of the recommendation at para 222 above. We would encourage the Commission to take full advantage of the opportunity to monitor activity provided by the European Consumer Centre Network (ECC-net), set up under the Consumer Protection Cooperation Regulation and for Member States to respond proactively in response to cross-border issues raised via that network.

225. We recommend that the Commission review and report on progress in the enforcement of the directive and on the adequacy of sanctions by 2010. (para 160)

The Government acknowledges the urgency which the Committee seeks to instil in the Commission in relation to monitoring the directive for effectiveness; however, we feel that a report on these matters by 2010 would be premature. Member States will generally have a period of two years from the adoption of a directive in which to implement it. In this case, this is likely to mean that Member States may still be in the course of implementing in 2010. We believe it would be appropriate for the Commission to include specific coverage of these issues in the course of a full review of the directive five years after the date of application of the national provisions transposing the directive, as proposed.

The Government shall continue to monitor application of regulation to the sector and any new developments. Where we believe there to be problems with implementation in practice, Ministers will take these up with the Commission.

226. We recommend that the Commission review the provisions of the Injunctions Directive in relation to the powers to act against individuals as well as traders. (para 161)

The Injunctions Directive (98/27/EC) provides for qualified entities in Member States to apply for enforcement orders in respect of infringements of listed Directives. Those Directives relate to the activities of traders vis-à-vis consumers. We consider that the traders who may be the subject of such proceedings may have legal persona, including sole traders. National implementing measures should therefore provide for action to be taken against traders whatever legal form they take, including individuals. Competent qualified authorities can also apply for an injunction in another Member State.

The UK transposition of the Directive is in Part 8 of the Enterprise Act 2002. The power to make enforcement orders under Part 8 against a trader also apply to "accessories" e.g. a director, manager, secretary or other similar officer of a body corporate. We consider that the ability to make orders against accessories is essential to ensure that the individuals who are responsible for infringements can be the subject of injunctions as well as the legal body such as a company. We believe that other Member States have taken a narrower view in implementing the Directive and not made provision for injunctions against accessories.

BERR have recently contacted the European Commission and brought this to their attention. We explained how unscrupulous individuals can easily sidestep injunctions by ceasing trading and setting up a new company. We told them that we believe it would be beneficial for the Directive to have similar provisions to the UK transposition (Part 8 Enterprise Act 2002) in that an injunction binding on a business can also apply to a director, manager, secretary and similar officers of the company. This would prevent those individuals creating a new company and avoiding the obligations of the injunction. We await a response to these representations.

Chapter 12: Redress

227. We conclude that the provisions on individual redress in the directive, although an advance on the 1994 Directive, are insufficiently robust. (para 167)

228. We recommend that the proposed directive be amended to entitle consumers to require that, in the first instance, an out-of-court settlement be sought through an independent arbitration or mediation scheme, without prejudice to the consumer's right of judicial action. (para 168)

The Government is committed to the promotion of Alternative Dispute Resolution (ADR) in order to provide the means by which consumer disputes can be settled without recourse to the courts. We encourage voluntary participation by business in such schemes through the Office of Fair Trading Consumer Codes Approval Scheme and, at the cross-border level, through participation in the European Consumer Centres Network (ECC-net) and the OECD. In some areas the Government favours compulsory participation by business in such schemes. For example, The Consumer Credit Act 2006, which came into force on 6 April 2007, includes the introduction of an ADR scheme to be provided by the Financial Ombudsman Service which covers all consumer credit businesses. OFT is also currently reviewing applications to run redress schemes for complaints against estate agents. This requirement for every estate agent to belong to a redress scheme was introduced in the 2007 Consumers, Estate Agents and Redress Act.

However, such schemes carry costs for business against which the benefits for consumers must be measured, and the Government must justify, in those terms, imposing added burdens on business. The Government is also aware that significant numbers of consumers of timeshare, and by far the majority of consumers of timeshare exchange, already have access to out of court independent arbitration as customers of members of the Organisation for Timeshare in Europe, albeit that the service has been little utilised to date.

While appreciating that the OTE scheme does not cover all timeshare businesses, and covers no non-timeshare long-term holiday product providers, we are also aware that the ECC-net, intended to provide easier access to cross-border redress for consumers, has been running only a short time. This and other developments which should also carry wider benefits for consumers in this sector, for example, the imminent implementation across Member States of the Unfair Commercial Practices Directive and possible proposals in respect of the wider consumer acquis lead us to the view that the compulsory provision by business of access to ADR in this sector may not be necessary. Nevertheless, we believe ADR should remain an option into the future the case for which should be informed by the proposed review of the directive by the Commission five years following implementation.

229. We recommend that the Commission report to the Council and Parliament in 2010 on progress in the development of out-of-court redress schemes in these sectors. (para 169)

As mentioned under paragraph 225 above, the Government believes that a report by 2010 would be unlikely to contain useful or conclusive data because by that time Member States may only just have implemented the new regime into national law. The Government accepts that any report on the impact and effects on the sector of the Directive should include an assessment of the role and utilisation of existing out-of-court redress systems.

Chapter 13: Other Issues

230. We welcome the proposed inclusion of non-fixed properties such as canal boats, caravans and cruise ships within the directive (Article 2.1(a)). (para 184)

The Government also welcomes the coverage of timeshare arrangements which relate to more than just timeshare contracts relating to fixed property. Timeshare agreements are essentially a means by which the aspirations of those who seek access to accommodation of various types which they might not otherwise be able or wish to purchase outright can be met. The timeshare industry appreciates that those aspirations extend wider than rights relating to the occupation of fixed property and have developed, and will continue to develop, timeshare contracts for other forms of accommodation accordingly. The Government believes consumers of those timeshare contracts are entitled to the same degree of protection as consumers of timeshare contracts which relate to fixed property.

231. We support the proposed reduction of the definition of a timeshare from 36 to 12 months (Article 2.1(a)). However, we note that some Member States set no minimum period for a timeshare and, provided that the removal of the minimum period does not lead to the application of the new timeshare directive to holidays more properly covered by the Package Travel Directive, we see no reason for any minimum period. (para 185)

232. We recommend that, if a timeshare is to be defined as one of 12 months or more, the new directive should include an anti-avoidance provision to deal with contracts purporting to be of a shorter duration. (para 186)

The Government supports defining timeshare for the purposes of the directive as being among other things a contract of more than 12 months' duration. In effect, were there to be timeshare agreements of less than 12 months they would amount to no more than pre-booked and paid-for stays in accommodation—something which consumers arrange regularly via internet sales of holiday accommodation (often also arranged direct with the accommodation provider abroad). There would appear to be no sound justification for applying the proposed regime in these circumstances.

However, the Government and the Council Working Group are aware of the danger that apparent single year contracts might in fact be contracts for longer periods, and the draft proposal currently under discussion includes in Article 2.2 "In order to calculate the duration of the contract…any time extension resulting from tacit renewal or prolongation shall be included". This has the effect of ensuring that any contract which would otherwise be considered a timeshare contract, or a long-term holiday product contract, but for the fact that it purports to cover less than 12 months will be subject to the requirements of the proposal if, in fact, it extends beyond 12 months.

233. We recommend that the definition of holiday clubs (Article 2(1) (b)) be amended to exclude arrangements not involving accommodation and those which are provided as an incidental benefit to their members rather than as their primary commercial purpose. (para 187)

The Government agrees that the availability of discounts on accommodation should be an integral part of this definition and is content with the definition as currently drafted by the Presidency for discussion in the Council Working Group, i.e. "'long-term holiday product contract' means a contract of a duration of more than one year by which a consumer acquires for consideration primarily the right to obtain discounts or other benefits on accommodation, in isolation or together with travel or other services;".

The Government believes that the use of the word "primarily" effectively excludes any contract which might provide for access to discounts as an incidental benefit.

234. We recommend that multi-annual hotel reservations be explicitly excluded from the scope of the new directive. (para 188)

The Government agrees, but is reassured by the results of additional informal consultation with the British Hospitality Association which has reported that sequential hotel reservations over a period of longer than 12 months are not only very rare, but are unlikely to be the subject of a single contract.

The current draft for discussion in the Council Working Group, presented by the Presidency includes a recital in the preamble which attempts to clarify the definition of a timeshare contract thus: "The definition of timeshare does not include in its scope multi-annual reservations of hotel room or ordinary lease contracts, even if prepaid and with a duration of more than one year."

It is arguable that rather than expanding on the meaning of the definition this seeks to explain that the definition is narrower than as expressed in the actual provision. It is our contention, therefore, that the exclusion of hotel accommodation should be expressed in the definition itself.

235. We agree that fair and balanced rights of termination and transfer of ownership must be central to the contract and recommend that the proposal be amended to provide them. (para 189)

As outlined in response to the recommendation at para 218 above, the current Presidency draft for discussion in the Council Working Group includes provision where relevant information on the conditions for terminating the contract, the consequences of termination, and any liabilities which might result from termination.

Transfer of ownership is an established practice in relation to timeshare and the Government questions whether requiring specific provisions in these contracts would necessarily add value. While we are aware of some examples of difficulties caused to owners by a lack of termination provisions, we have received no evidence of problems caused by provisions relating to transfer of rights. However, in relation to Long Term Holiday Products there is no history to reveal whether transfer of rights issues could cause problems for consumers. The Government therefore undertakes to ask the Commission whether in its preparatory work on the review of the Directive it found any evidence of difficulties in this area.

236. **We recommend that the Commission consider further the issues of timeshare owners' rights and representation and that, meanwhile, the industry itself address the need for improvements in these areas. (para 190)**

The Government supports the recommendation that the Commission should in due course give further consideration to the issue of timeshare owners' rights, and would suggest that this not be at the expense of progress on the current proposal. Timeshare rights vary according to the nature of the agreement and local national laws. They can range from rights in real property to a right simply to occupy or have access to one or more types of accommodation held in trust. Also, there is little evidence available on the desire of timeshare owners to be more actively involved in the management of timeshare properties. These are complicated matters which are likely to need further research by the Commission in order that informed conclusions can be drawn.

The Government echoes the Committee's call to the industry to ensure that owners' rights and obligations are not abused.

237. **We support the proposed review of the new directive five years after it comes into force (Article 13), but recommend earlier reviews in relation to enforcement and redress as discussed previously. (para 191)**

The proposal currently sets a date for review and report to the European Parliament and the Council no later than five years after the date of application of the national provisions transposing the Directive. The Government takes the view that this provides sufficient time by which the Commission should be able to achieve an accurate perception of the effectiveness of the new regime. On the issues of separate reviews in respect of enforcement and redress by 2010, as we have mentioned previously we believe this will be too soon, given the probable timetable for implementation in Member States, and that the full review should include a full assessment of these issues.

5TH REPORT: THE SINGLE MARKET: WALLFLOWER OR DANCING PARTNER? INQUIRY INTO THE EUROPEAN COMMISSION'S REVIEW OF THE SINGLE MARKET

Letter from Gareth Thomas MP, Parliamentary Under Secretary of State for Trade and Consumer Affairs, Department for Business Enterprise and Regulatory Reform to the Chairman of Sub-Committee B

Please find attached a joint Government response by BERR and HM Treasury to the above House of Lords report on the Single Market.

4 March 2008

Government Response

Conclusions and recommendations

The Government welcomes the Select Committee's report on the Single Market. In particular, we are pleased to note that the Committee's findings are very much in line with the evidence submitted to the Committee by the Government and broadly supportive of the EU Commission's conclusions set out in the Single Market Review and the Government policy on the Single Market.

The Government's response to each of the Committee's conclusions and recommendations (paragraphs 149 to 173 of the Report) is as follows:

149. **We believe that the Single Market has the potential to be of great benefit to the businesses, citizens and consumers of the European Union. The Commission's Review of the Single Market is a useful and timely exercise to refocus policy on how to secure those benefits (paragraph 5).**

The Government agrees that the Single Market is and continues to be of great benefit to consumers, businesses and citizens of the European Union. It has been an outstanding driver for growth and jobs, increasing EU GDP by 1.8 per cent and creating 2.75 million new jobs. New economic research shows that there are still major benefits to be gained by further liberalisation of the network industries which could further increase EU GDP by 1.3–1.7 per cent. The Government also agrees that the Single Market Review is a timely and useful exercise that acknowledges the need for the Single Market to adjust to new economic, social and environmental realities with a new approach aiming to foster flexibility in the Single Market, thereby providing an opportunity to further advance productivity and competitiveness in the EU.

150. We call on the Government and the Commission to instil a sense of urgency into the review of the Single Market (paragraph 59).

The Government strongly agrees with the Committee and the Commission that no time is to be lost in taking forward ideas presented in the Single Market Review. As the Prime Minister set out in October in the Government's vision for a Global Europe, the EU cannot stand still in the face of globalisation and challenges, but must lead in helping the people and businesses of Europe to take advantage of the opportunities it offers. The Review recognises the Single Market as a powerful means to meet challenges as climate or demographic change and sets out a set of flexible Single Market policies in order to equip it for the 21st century. The Review has strong backing from the President of the Commission and all Member States. The UK Government has been actively engaged in the Review and strongly supports it. In fact, the Review largely conforms with the policy measures set out in the DTI and HMT Joint Paper on the UK's vision for the future of the Single Market published in January 2007. The Government will now continue to work with the Commission, the European Parliament and other Member States in order to ensure that these ideas are consistently taken forward.

Policy making and implementation

151. The Committee strongly supports the Commission's commitment, made in the Single Market Review, to keep legislation simple, to roll back EU intervention where it is no longer appropriate, and to seek non-legislative solutions where possible (paragraph 60).

We warmly welcome the Committee's support for the EU Commission's new approach to Single Market policy-making that aims at keeping legislation simple and fully takes subsidiarity, proportionality and different national traditions fully into account. The Government has strongly supported the Commission's position that the best results can be achieved by using a mix of instruments. Taking into account that while key areas such as energy, postal or telecoms services still require legislative measures, we endorse the Commission's approach to combine or where appropriate replace binding instruments with soft instruments such as guidance, self-regulation, training or advocacy. We strongly believe that this will help achieve a more modern and less rigid EU, based on a thorough understanding of markets and assessment of impacts.

152. The Commission's Review rightly emphasises the importance of working in partnership with Member States and local authorities, but this Committee would place greater onus on the Member States to meet their commitments in order to achieve a fully functioning Single Market (paragraph 61).

We fully support the Committee's conclusion that Member States' fulfilment of their commitments is vital for achieving a fully functioning Single Market. As the EU Commission states in its Review, the benefits of the single market will not materialise if EU laws are not correctly applied. The Government therefore strongly backs the Commission's efforts to further improve the application of Community law and to ensure that citizens, consumers and businesses understand and fully benefit from the Single Market framework. A recent example of this is given by the Government's support for the draft Regulation on the Mutual Recognition of Goods. The Regulation aims to facilitate the free movement of non-harmonised goods across EU borders by improving the functioning of the principle of Mutual Recognition. Providing more legal certainty in the field of cross-border marketing will help businesses, particularly SMEs, to sell their goods in other Member States and equally lead to greater choice and value for consumers.

153. We believe effective policy-making underlies effective implementation. We welcome the Commission's proposals in its Review of the Single Market for better product and sector monitoring, consultation with a wider range of stakeholders and improved impact assessments (paragraph 62).

We welcome the Committee's endorsement of the Commission's proposals on a new system for a more evidence-based and impact-driven Single Market. The Government works closely with the Commission and other Member States to make certain that market and sector monitoring, improved impact assessment and stakeholder consultation will become central tools in ensuring the EU prioritises its action to those markets where there are considerable obstacles to competition and significant benefits from removing them.

154. More effort and resources should be devoted to providing practical assistance to Member States in the process of transposing legislation in order to avoid problems of interpretation, delayed implementation or failure to enforce later on (paragraph 63).

The Government agrees with the Committee's conclusion that practical assistance and close co-operation between the EU institutions and Member States are very valuable tools helping to further improve implementation of EU legislation. There have already been useful steps taken at EU level in this respect.

Best practice examples include the development of guidance on transposition, such as the Handbook on the implementation of the Services Directive, the organisation of transposition working groups or bilateral meetings to discuss transposition.

155. The focus on assisting Member States early on in the process of transposition must not come at the expense of effective enforcement when necessary (paragraph 64).

We fully support the Committee's view that effective enforcement is fundamental for a fully functioning Single Market. Apart from official infraction proceedings some of the existing soft tools have proved very useful in this respect. For example, the Internal Market Scoreboards and other similar instruments keep up peer pressure and have helped to significantly improve transposition records (according to the Commission's latest Internal Market Scoreboard, the average deficit rate has decreased to 1.2 per cent). The Government welcomes the Commission's current efforts to continuously support correct application of EU law and address infringements seeking to intervene as a matter of priority where risks are highest.

156. We welcome the Commission's proposals for a more proactive approach to prevent problems in the implementation of EU law, promoting best practice through a Member State working group and supporting the exchange of information and staff between national administrations, as well as using competition powers, such as sector inquiries (paragraph 65).

We agree with the Committee in its support for the Commission's proposals for a more proactive approach to further improve design of EU legislation and facilitate transposition and implementation for Member States. The Government welcomes the Commission's plans such as to supply early information and guidance, to work in close partnership with Member States to identify best practices, to broaden stakeholder involvement or to encourage cooperation networks between administrative authorities.

Regulatory Authorities

157. National Regulatory Authorities must be independent of government, especially where governments have financial interests in the major market operator or national incumbent (paragraph 66).

The Government believes that Member States should commit themselves to greater independence for national competition and regulatory authorities, and agree to regular independent evaluation, which could be undertaken by the Commission, to benchmark national competition regimes.

158. There is no need for a "super-regulator" at EU level in any of the sectors we considered in this inquiry, which were energy, telecommunications and financial services (paragraph 67).

Member States have a key role to play in supervising national markets. The current variations in the structures of national markets make the establishment of a single EU energy regulatory body impractical. The Government supports greater coordination of national energy regulators to improve cross-border cooperation and the removal of national governments from the operation of national regulators. The Government is currently considering recent EU proposals aimed at further liberalisation of the telecommunications sector, including strengthening powers of national regulators through actions at both Member State and EU level, and the introduction of an EU Advisory agency to help shape such actions. In determining the appropriateness of such actions, and the role of an EU advisory agency, the UK will wish to ensure the method is targeted to the areas where action and oversight are needed without resulting in disproportionate impacts to the 75 per cent of European telecommunications markets where the economy and citizens are already realising the full benefits of liberalisation.

On financial services, despite considerable progress being made to integrate the EU's financial markets, markets will remain characterised by differences in national cultures or consumer preferences. Given these differences, which cannot simply be regulated or legislated away, supervisory convergence cannot be forced or imposed. The UK authorities strongly believe that the Lamfalussy arrangements have made a major contribution to the EU's regulatory and supervisory framework since their introduction for securities in 2001 and banking and insurance and pensions in 2004.

159. The Committee is pleased to see that the Commission's recent proposals suggest more cooperation between National Regulatory Authorities; the need for operational independence of regulators; and strengthened powers for regulators to ensure that consumers and businesses can reap the benefits of the Single Market (paragraph 68).

The Government would like to see greater regulatory cooperation across the EU. A flexible regulatory framework will require greater regulatory coordination and consistency coupled with a robust process for reaching agreement on cross-border issues. Overall the governance will depend crucially on stronger and more independent national regulatory authorities.

Realising the benefits of the Single Market for businesses, citizens and consumers

160. We believe that more should be done to help SMEs participate actively in the Single Market (paragraph 69).

The Government supports the need to help SMEs participate actively in the Single Market. SMEs are a key pillar in the EU economy, representing 99 per cent of businesses in Europe. The Government, therefore, supports moves to make it easier for SMEs to operate in the Single Market. Whilst progress has been made in a number of areas, including a commitment to apply the "Think Small First" principle in Community policies and the recently launched "Enterprise Europe" support network, the Government agrees that more needs to be done. To this end the Small Business Act should focus on key barriers to SME growth and in particular better regulation, access to markets and access to finance. These are fundamental points in the EU's jobs and growth agenda, and issues that the UK Government will continue to focus on going forward in Europe.

161. Consumers and citizens need to be more fully persuaded of the benefits of the Single Market (paragraph 70).

The Government agrees that we need to continue convincing consumers and citizens of the benefits of the Single Market. For this reason, the Government actively supports the Commission's aim of empowering consumers through a more consistent consumer protection framework and having simpler rules for business who wish to sell in other Member States. Effective enforcement is also important in building confidence and the new Consumer Protection Co-operation Regulation will help enforcers to take action against unscrupulous traders operating in the EU.

162. We call for a renewed commitment to the importance of competition and the need to complete the Single Market for the benefit of consumers and businesses alike (paragraph 71).

The Single Market is an evolving set of markets that will never be complete. The Government believes that to respond to today's challenges a new approach is needed that moves beyond the goal of "completing" the Single Market and is more outcome-focussed, more effectively prioritised and which uses a wider range of more flexible policy tools in line with market developments. With much of the legislation required for an effective, well-functioning Single Market now in place, further benefits will depend on more effective implementation and enforcement of existing commitments and embedding better regulation principles and proactive competition policy into Single Market policy-making. We support the Review's commitment to increased competition for the benefit of business and consumers, both through increased use of existing competition policy tools and through new tools such as market monitoring analysis, taking a holistic approach to identifying barriers to markets.

Energy sector

163. The practice of some network operators to discriminate against third parties in favour of their own related supply interests must be addressed. In this regard the Committee welcomes the Commission's legislative proposals (paragraph 95).

The Government shares the views expressed in the Report on energy. We support the current proposals from the Commission for legislation to develop competition in the internal energy market and are negotiating them in the Council.

Energy regulation

164. We are of the opinion that full ownership unbundling more satisfactorily removes the incentives for discriminatory and uncompetitive behaviour by the network operator (paragraph 96).

165. We support the creation of an agency for the cooperation of National Regulatory Authorities but would reject calls for a European regulatory authority (paragraph 97).

166. We accept that security of supply is important but we are not convinced that the creation of a more comprehensive Single Market in energy would necessarily weaken international supply (paragraph 98).

The proposals include a requirement for ownership unbundling of transmission networks from vertically integrated groups. Although this is being resisted by certain Member States, we are working with others in the Council to ensure that unbundling measures as effective as the Commission's are adopted.

We support the Commission's proposed Agency for the Cooperation of Energy Regulators, although we would like it to have more decision-making powers on cross-border issues than has been suggested. We agree that establishing a single European energy regulator would not be appropriate: only Member State regulators have the detailed knowledge of their national markets required to regulate them effectively.

The Government also agrees with the Report's position on security of supply. As a properly functioning market would direct investment to where it is needed, the creation of a more comprehensive Single Market would improve security of supply.

Telecommunications regulation

167. The main concern continues to be failures by Member States in the implementation and enforcement of certain elements of their regulatory obligations. The Commission has recognised this in its reform proposals, with new measures designed to improve its oversight of the decisions of Member State National Regulatory Authorities, to ensure greater consistency in approach between Member States. We therefore welcome its reform proposals in this respect (paragraph 115).

The Government agrees with this conclusion. Where implemented effectively, the framework has helped realise significant economic and social gains (most notably in the UK, Netherlands and Danish markets). We welcome the proposals to strengthen the independence of NRAs (both independence from operators and political independence). We can see benefits from improving the oversight of NRAs' decisions, especially in cases of poor implementation, but are also aware of the importance of not stifling progress in those Member States which are towards the front of the pack and realising the economic benefits. We are currently working with likeminded Member States, and consulting our stakeholders, to ensure the right balance is struck.

168. The Commission should consider what steps can be taken to reduce further the market power of the national incumbents. The Committee supports the Commission's proposal to enable National Regulatory Authorities to impose functional separation as a remedy (paragraph 116).

The Government strongly supports the introduction of Functional Separation being available to NRAs, although we do not consider its introduction requires Commission approval, nor do we consider it should be reserved as a remedy of "last resort".

169. Despite the claims made by the Commission, the Committee believe that the creation of an EU regulator for the telecommunications sector is likely to increase regulatory complexity and uncertainty for market participants and bring insufficient benefits for the costs involved (paragraph 117).

We share this view, especially in view of the longer term objective to move from ex-ante to general competition powers. The proposed EU regulator (or Authority) is envisaged as an advisory body to help shape the Commission's oversight process. As with our response to paragraph 167, the Government is currently working closely with key Member States and all relevant stakeholders to consider if such a body in a different shape or form could significantly improve the implementation of the Framework, without increasing regulatory uncertainty or resulting in disproportionate costs.

Spectrum

170. We welcome the Commission's initiative on spectrum, including the facilitation of secondary trading; greater access to licence-free spectrum, and further co-ordination on the conditions applicable to spectrum authorisations (paragraph 118).

The Government strongly welcomes the Commission's proposals on Spectrum. It is a valuable resource, and important that our management of Spectrum maximises its value to society and the economy. The Commission's proposals for service- and technology-neutrality, and for secondary trading, are welcome steps in this direction. We are not, however, convinced that the Commission require a pro-active role in coordination of spectrum authorisations. Member States already have procedures, under the RSPG (Radio Spectrum Policy Group), to discuss need for common authorisation and the current co-decision process (currently being used for mobile satellite services) works well. The Commission have not identified any inefficiency in the current process, or any justification for granting themselves such a role.

Financial services

171. A desire for a regulatory pause in the wholesale banking sector was expressed. The Commission should use such a pause to focus on its monitoring role and encourage the timely and consistent implementation of EU directives (paragraph 146).

The Government agrees that the Financial Services Action Plan directives have created an important bedrock of legislation for wholesale banking and that further benefits will depend on more effective implementation and enforcement of existing commitments. We have also supported moves to embed better regulation principles in the European Commission to ensure that any additional proposals are more outcome-focused, more effectively prioritised and use a wider range of more flexible policy tools. Nevertheless many of the directives are currently under review and where the case can be made for improvements those should be considered.

172. It is important for any retail banking sector initiatives to have a consumer-oriented approach in order to deliver tangible benefits to end-users by opening access to national markets. As part of this approach, research and consultation must be the starting points before legislative proposals are launched (paragraph 147).

The Government strongly believes that the primary way to make the internal market work for the consumer must be to ensure the implementation and enforcement of the existing measures, supported if appropriate with action by EU and national competition or regulatory authorities to address specific issues in specific markets.

We have therefore welcomed the Commission's clear commitment to better regulation in the Green Paper and the emphasis on the need to base policies on solid economic evidence and to subject policy proposals to thorough impact assessments.

173. Following such research and consultation the Commission should be more willing to develop a combination of market-led and regulatory instruments to be pursued in order to further the integration of the EU retail banking sector (paragraph 148).

The Government believes that the primary objectives for any strategy for retail financial services must be to reduce the degree of market failure on the supply side and to secure increasing value for consumers over time, through improvements in the sales process, financial advice, product quality and/or lower prices, by securing greater useful choice for consumers between providers and by assisting consumers to become informed and confident players in retail financial services markets.

In the UK's view, the primary way to make the internal market work for the consumer must be to ensure the implementation and enforcement of the existing measures, supported if appropriate with action by EU and national competition or regulatory authorities to address specific issues in specific markets.

6TH REPORT: SOLVENCY II

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

I am writing to provide the Government's response to the report with evidence of the House of Lord's Select Committee ("the Committee") on the European Union, into the proposed Solvency II Directive on the prudential regulation of EU insurance and reinsurance business.

In its report the Committee entered a scrutiny reservation on the Solvency II Directive, pending further information on a number of points. These are summarised in chapter 3 of the Committee's report. This letter provides the Government's response to the Committee on these specific issues.

COMMITTEE REPORT—CHAPTER 3

The Government's response is provided below on a point-by-point basis. Issues where we agree and have no further comment are noted as "not applicable".

Paragraph 36

The Minimum Capital Requirement (MCR) is the main outstanding quantitative issue that needs to be resolved in the framework Directive but where there is currently no consensus. The MCR is the lower of the two capital requirements in Solvency II (the higher is the Solvency Capital Requirement—SCR) and if an insurer's capital falls below this level it will be prevented from writing new business. This is a severe step for the regulator to take and therefore it is essential that the MCR is set appropriately.

The two key elements are that the MCR needs to be a risk-based measure, reflecting the overall risk-based approach to Solvency II, and also that it is calibrated to ensure a sensible difference between the MCR and the SCR—a so-called "ladder of supervisory intervention"—which gives supervisors and firms time to act to address a breach in capital requirements.

There are several views on the best way to calibrate the MCR and there is likely to be further debate on this issue in Council to attempt to achieve a compromise. The results of the ongoing 4th Quantitative Impact Study (QIS 4), which is testing a newly devised separate calculation for the MCR, will be key in influencing the debate. The QIS 4 specification includes a proposal that where the MCR is calculated independently of the SCR the results should be subject to a "corridor" so that the MCR can never be less than X per cent or more than Y per cent of the SCR.

With regard to the higher capital requirement (the SCR), Solvency II includes, an amount of capital that must be set aside to cover risks inherent in holding a portfolio of shares. Under Solvency II insurers need to have enough capital to be able to withstand a loss that has a 1 in 200 probability of occurring over one year. This means that capital requirements are significantly higher for equity holdings than, for example, government bonds, because equities are much more volatile.

There has been debate over the level at which to set this equity stress test. There is some concern that if capital charges for equities are too high it will lead their insurers to sell equities in large quantities (potentially in times of falling equity markets) and buy bonds. On the other hand if the capital charge relating to equities is too low then insurers may not be sufficiently well capitalised to withstand a loss which has a probability of 1 in 200 over one year. Agreement has not yet been reached on this issue and further alternatives are being considered.

On the rules relating to admissible capital, there is an outstanding issue regarding surplus funds. These are a feature of with-profit life insurance policies used in some of the other Member States. Essentially they are bonus funds belonging to policyholders that can be used by the firm to meet general losses that could occur. The Directive allows these surplus funds to be used as capital (to meet capital requirements). This is inconsistent with the usual treatment of policyholder bonuses in Solvency II, which must under normal circumstances be treated as a liability (so not available to be used as capital).

The Solvency II Directive therefore includes a specific derogation given to the few Member States whose law allows the use of these surplus funds to meet general losses. We are continuing to explore this issue and consider possible caveats (for example, ensuring that surplus funds are limited to the jurisdictions in which they apply, and so cannot be used cross-border).

Paragraph 37

Not applicable

Paragraph 38

The current approach to supervising insurance groups in the EU involves supervising each company within the group as though it were a separate entity. Solvency II changes this with a new proposal that looks at the group as a whole, treating it as a single economic entity (that is, it treats insurance groups with subsidiaries akin to an insurance firm operating through branches).

The new proposal includes a streamlined approach to group supervision, led by a group supervisor who is given certain powers derogated from supervisors of subsidiaries. The proposal also allows groups to hold some regulatory capital centrally and transfer it to where needed across the group (known as group support). This allows a group to benefit from diversification between different risks, not just within a company, but across the companies in the group. This increases efficiency for no increase in risk.

The proposal developed by the Commission has to a large extent followed a proposal developed by HMT and FSA, which was outlined in a joint Discussion Paper published in November 2006. We are therefore strongly in favour of the Directive's approach, which is also supported by the industry and broadly by other Member States.

However, some concerns have been raised with regard to the proposal. Under the Directive proposal an insurance subsidiary might well be relying on group support from a parent company which is located in another Member State. This means that the subsidiary's supervisor is dependent on the group supervisor to a greater degree, in particular to ensure that capital flows into the subsidiary promptly when it is needed. It is important to ensure that the regime operates well in practice and that capital will flow cross-border. Due to the openness of UK financial markets the FSA will be the local supervisor i.e. the supervisor of the subsidiary—rather than the group supervisor—for many firms.

HM Treasury has recently published a Discussion Paper jointly with the FSA[2] which outlines how we see the group's regime operating in practice as well as proposing some limited changes to the Directive proposal to address directly some of the concerns raised. The proposals in this Discussion Paper do not change our overall policy on group supervision.

At the heart of the proposed changes is an enhanced role for the college of supervisors as the mechanism for supervising an EU insurance or reinsurance group. Mentioning colleges specifically, and outlining high-level, non-prescriptive requirements for their use would address the concern held by many of the smaller Member States that their supervisors will be excluded from the group supervision regime. Crucially, these proposals are consistent with the position set out by the Chancellor of the Exchequer in his non-paper to Ecofin colleagues on 3 March 2008,[3] in which the UK proposed mandating the use of supervisory colleagues for all cross-border financial institutions with a significant presence in more than one Member State.

Other proposals contained in the Discussion Paper also include provisions to address some of the perceived imbalance between the powers of the group supervisor and the supervisors of subsidiaries; and the introduction of "early-warning" systems to identify emerging risks in subsidiaries. We will continue to debate these issues in Council over the coming months, as we attempt to secure the compromises necessary to achieve political agreement on the Solvency II Directive.

Paragraph 39

Not applicable.

Paragraph 40

This relates to level 2 implementing measures and so is not applicable at this stage.

Paragraph 41

Under Pillar III, insurers will be required to submit a public report on their solvency and financial condition (an SFC report). There is likely to be some overlap with the requirements imposed on listed firms under the UKLA; for example, the requirement to disclose any proposed changes to the firm's capital structure.

It is possible that an insurer who breached its SCR would be required to provide notification of such an event under listings rules, especially since this could lead to capital restructuring by the firm to address the breach. This could potentially reduce the scope for firm and supervisory action (for example, any public notification of difficulty could make it harder for the firm to raise additional debt funding in the capital markets).

Insurers could potentially face this situation regardless of the listings rules. The Solvency II Directive allows firms six months to respond to an SCR breach, which can be extended to nine months at the discretion of the supervisor. However, firms are required to submit an SFC report on an annual basis, and so there is obviously a chance that this disclosure will occur during the six (or nine) month period given to firms to restore their capital position.

The type of information to be disclosed by insurers in their SFC report will be specified at level 2, where this issue should be addressed.

Paragraph 42

HM Treasury has published a partial impact assessment on the likely costs and benefits of implementing Solvency II in the UK.[4]

Paragraph 43

We refer to the likely impact of Solvency II capital requirements on smaller insurers in the impact assessment referred to above.

2 The Discussion Paper is available at: http://www.hm-treasury.gov.uk/media/9/8/solvencyii_enhancing_220408.pdf
3 The Chancellor's letter and the accompanying non-paper are available at: http://www.hm-treasury.gov.uk/media/3/D/ukchxletter_ecofin030308.pdf
4 The impact assessment is available at: http://www.hm-treasury.gov.uk/media/8/7/solvencyii_finalia_090608.pdf

Paragraph 44

Not applicable.

Paragraph 45

Not applicable.

Paragraph 46

This relates to level 2 implementing measures and so is not applicable at this stage.

Paragraph 47

Not applicable.

Paragraph 48

Not applicable.

I hope that these responses satisfy the Committee and enable it to clear its scrutiny reservation on the Solvency II Directive.

7 July 2008

7TH REPORT: THE FUTURE OF THE COMMON AGRICULTURAL POLICY

From Department for Environment, Food and Rural Affairs

Government Response

Introduction

The Government very much welcomes the Committee's report which offers a thorough analysis of the Common Agricultural Policy's (CAP's) strengths and weaknesses. As the detailed response below shows, we share the key planks of the Committee's conclusions on the direction of future policy.

The Government's vision for English farming is of an industry which by 2020 is: profitable in the marketplace, continuing to produce the majority of the food we consume; making a positive net environmental contribution, notably in respect of climate change, but also more widely; and managing the landscape and the natural assets that underlie it.

Further CAP reform is a key element of achieving that. Despite recent improvements, the CAP remains expensive, wasteful and inefficient at providing ongoing support to farmers. It distorts global markets, weighs farmers down with regulation and acts as a disincentive for farmers to improve their competitiveness. Our long-term vision is to see the elimination of Pillar I of the CAP altogether, leaving public subsidy targeted at specific public benefits such as environmental enhancement through a reshaped Pillar II.

We want the CAP "Health Check" negotiations this year to play an important part in the reform process by reducing regulatory burdens and giving farmers greater control over their business decisions, cutting further the trade and market distorting nature of the CAP and directing public spending more towards delivery of targeted public benefits.

In parallel, the EU Budget Review provides an important opportunity to examine how the CAP should be reshaped beyond 2013 to ensure it is fit for purpose, delivering maximum value for EU taxpayers' money.

The Committee's report offers a valuable contribution to both those debates.

Response to the Committee's specific conclusions

37. We share our witnesses' view that the "commonality" of the CAP should be its central feature. The regulation of the Single Market in agricultural commodities within the EU should therefore continue to be the primary role of a Common Agricultural Policy. However, we also note that there is a difficult balancing act to be struck between preserving the "commonality" of the CAP and responding to calls for greater flexibility in the way common goals are delivered in different Member States and indeed in different regions within each Member State.

Response:

The Government agrees that the CAP should continue to regulate a single market in agriculture, ensuring a common and fair competitive framework across the EU whilst still providing sufficient flexibility to meet the different needs of Member States and regions. A suitably level playing field can be achieved without all Member States running the same schemes in exactly the same way, though we are concerned that the Commission's proposals for expanding the use of "national envelopes" could lead to significant new distortions between Member States.

We believe that it is important that UK farmers are not disadvantaged by farmers in other parts of the EU either being allowed to meet lower regulatory standards (other than on a transitional basis) or benefiting from measures which improve relative competitiveness which are not available to the UK. Flexibility in delivering our common goals should not be a back door to reintroducing those trade-distorting elements of the CAP that have been, or we wish to see, abolished.

48. We believe that the drive towards a more market-oriented agriculture should continue. In the long term, the CAP should aim to foster a farming sector that is capable of standing on its own feet, competing in open international markets without subsidy or special protection. We acknowledge the likelihood of greater demand for agricultural commodities in future, and believe that this presents an opportunity for the European farming industry. The distorting effect of subsidies will in our view hinder the EU agriculture sector's ability to respond to, and profit from, the expected increase in global demand for agricultural products. The CAP should instead aim to steer the industry towards a position from which it can take full advantage of a future boom in commodities prices. In our view, this means moving away from the distortions that a managed and protected internal market for agricultural commodities creates and sustains.

Response:

The Government shares the Committee's vision of a market oriented European agricultural sector, where our farms produce profitably for a global market without subsidy or protectionism, making the most of opportunities offered by booming global demand but without detriment to the natural environment.

49. We were not persuaded by the argument that the risk of future food shortages should be hedged against by freezing current production patterns. In our judgement, food scarcity is likely to be a function of income rather than of production capacity. If the supply shortages anticipated by some witnesses do materialise, those most at risk are consumers on low incomes in the developing world.

Response:

The Government agrees with the Committee. The key elements of food security are accessibility, stability, affordability and nutritional quality. These are delivered through a whole range of measures, from the supply chain to the social security system. Europe should also play its part in alleviating global poverty, as a means of improving global food security. The trade distorting nature of many CAP policies has a negative impact on the world's poor by distorting world markets and hindering the poorer countries' abilities to trade themselves out of poverty.

58. We recognize that many Member States are currently relying on CAP funds—and particularly on direct payments under Pillar I—to secure social policy goals. However, we believe that many of the problems being addressed—such as the lack of employment opportunities in remote rural areas, or the fragility of rural communities—deserve to be tackled in their own right. Direct payments to farmers and landowners are an indirect, and in our view poorly focused, instrument with which to address these challenges. Agricultural interests should not be equated with rural interests: channelling financial support through the agriculture sector may not be the most efficient and effective way of sustaining rural communities.

59. The needs of rural communities are likely to be very different across different Member States and across different regions within each country. Agriculture may or may not have a role to play in meeting those needs, and different Member States will wish to give varying levels of prominence to the agriculture sector in their

overall rural development strategy. For this reason too, we believe that uniform direct payments to farmers under Pillar I of the CAP are not the appropriate vehicle for the implementation of a diverse set of national rural policies.

60. We believe that some of these goals—such as the diversification of the rural economy—would be better pursued through Pillar II of the CAP (and indeed provision is already made for such actions under the EAFRD), while others—such as the structural problems in the rural areas of the new Member States—would be better tackled through other EU programmes (eg Structural and Cohesion Funds). Social and cultural objectives, however, are in our view too numerous and too diverse to be pursued exclusively through EU-level programmes. They should be addressed primarily at a national, or even subnational level, at domestic taxpayers' expense.

Response:

> The Government agrees with the Committee's analysis that direct payments to farmers are a poorly focused way of addressing the wide range of social policy goals in rural areas, particularly as needs and priorities vary considerably within and across EU Member States. That analysis underpins the call in our CAP Vision to phase out all such payments.
>
> Farming accounts for around 4.5 per cent of employment in rural areas in England, but this average disguises the much greater significance of agricultural employment in some parts of the country, particularly in sparse hamlets, where employment in farming is 19 per cent of the local workforce. Beyond this, farming also has a major indirect contribution to the rural economy through managing much of the landscape and natural resources upon which many rural businesses, in particular those in the countryside leisure and tourism sectors, depend. Defra therefore sees a strong link between its vision for the future of farming and its work on Strong Rural Communities.
>
> Beyond support for the farming sector there is a range of mechanisms in place to ensure that the Government delivers on its aspirations for both social and economic development in rural areas. Some of these have been designed exclusively to support development in a rural context (for example the socio-economic aspects of the Rural Development Plan for England) whilst others are in place to support all areas of the country, rural and urban. The social and economic support structures required by people living and working in rural areas are, to a great extent, addressed by the same parts of the public sector that work for the country as a whole. For that reason, rural development should be tackled directly through wider socio-economic policy, rather than indirectly through the CAP.

65. We recognise that certain types of farming activity can generate environmental benefits that are valued by society at large but whose value is not reflected in market prices for agricultural products. It does not automatically follow, however, that farmers should receive financial rewards for the environmental public goods that their activity helps to provide.

71. We believe that the CAP should continue to promote farming methods and practices that will result in environmental benefits. Given limited public resources, we see merit in drawing a distinction between environmental outcomes that can be secured through regulation—such as the control of emissions and pollution—and those that are unlikely to be delivered without financial incentives—such as the positive management of a wildlife habitat.

73. We recognise the inherent difficulty in determining which environmental goods and services should be paid for from the public purse, and in putting a price on their value to society. We expect that these valuations may change over time, notably in the event of food price inflation. We consequently recommend that these decisions should be taken at a national level wherever possible, albeit on the basis of a menu of admissible uses for CAP funds defined at the EU level.

Response:

> The Government's vision is for a farming sector which makes a net positive contribution to the environment, maintains and enhances the landscape and tackles pollution. Much of this can be achieved through the rewards of the market itself for the high quality of production of European farmers. But we agree that farmers should be rewarded from the public purse for providing those environmental benefits that the market does not provide. EU spending on agriculture should, therefore, be based on the current Pillar II. Regulation has also helped deliver environmental and other public benefits, though we believe there is scope for further simplification.

75. Climate change considerations will clearly have to figure prominently among the future environmental objectives of the CAP. The EU's agriculture sector will need to improve its impact on the environment, but climate change also presents a business opportunity for the industry, which it must be encouraged to seize. In the long run, the best way to secure progress towards both goals may be to integrate agriculture in an EU-wide greenhouse gas emissions trading scheme. We consequently recommend that this possibility be given further consideration as a matter of urgency.

Response:

The Government agrees that the CAP needs to play a greater role in climate change mitigation and adaptation. We welcome, therefore, the European Commission's intention as part of the CAP Health Check to strengthen the role of Pillar II.

We also agree that the agriculture sector needs to improve its environmental impact, take action on climate change and seize the opportunities that this presents. Defra's Agriculture and Climate Change Project aims to help the sector to fulfil its potential in contributing to climate change mitigation and adapt in order to manage the impacts and make the most of the opportunities which climate change presents. This project includes exploring the potential scope and feasibility of a market mechanism to enable the trading of greenhouse gas reductions from agriculture, forestry and land management.

We commissioned a study on this last year (the report of which is available at http://statistics.defra.gov.uk/esg/reports/ghgemissions/default.asp), which looked at two possible models for such a mechanism: a cap-and-trade and a project-based scheme. It included an initial cost/benefit analysis of each model, and concluded that:

- a cap-and-trade scheme for the sector is—at present—unlikely to be a cost-effective option as the administrative and abatement costs could outweigh the emission reductions benefits.
- a project-based scheme might be more promising and could provide a starting point for a mandatory scheme in the future.

Whilst the study was necessarily based on a number of assumptions and the available data at the time, it does highlight that the characteristics of the agriculture, forestry and land management sector make emissions trading more challenging for this sector than for others, and does suggest that the sector is *not* yet ready to be brought into the EU Emissions Trading Scheme (EU ETS). This view is shared by the European Commission, whose draft amended Directive on the EU ETS (from 2013) does not propose the inclusion of agriculture, forestry and land management in the scheme, at this stage.

Defra is now considering the conclusions of this study and what further analysis might be needed to build a clearer picture of possible options for the potential development of a cost-effective emissions trading scheme for the sector.

81. The logic of the Commission's argument for moving away from historic payment models is compelling, and we therefore support its proposal to encourage Member States to move towards a "flatter" and, in our view, more rational and transparent payments system. We note that the language used by the Commission is permissive, and that it intends to allow Member States to decide "whether to move to flatter rates, at which scale (Member Statewide, regional…) and to which extent." We believe that this very substantial degree of flexibility should go some way towards meeting the concerns raised.

82. In the longer term, however, we are not convinced of the justification for maintaining direct payments under Pillar I, as the market and environmental objectives that we regard as the appropriate long-term aims of the CAP can in our view be pursued adequately with the instruments available under Pillar II. We therefore recommend that a progressive flattening of payments systems in the aftermath of the Health Check should in due course be accompanied by a phased reduction in direct payments over the course of the next financial perspective.

Response:

We share the Committee's view that for as long as direct payments exist, an area based model for the Single Payment Scheme is preferable. England is already well advanced on a transition to such a model and we support the Commission's encouragement for others in the EU to move in that direction.

However, the Government shares the Committee's scepticism about the justification for direct payments under Pillar I. Our vision for the CAP calls for the complete elimination of Pillar I—including both direct payments and market intervention—by 2015–20, leaving public subsidy solely targeted at specific public benefits such as environmental enhancement along the lines of Pillar II.

89. While we understand the Commission's desire to bring about a fairer distribution of subsidies by tapering off subsidies at the top end, this approach rests on an implicit assumption about what the purpose of the CAP should be that we do not share. If the Common Agricultural Policy is to target social goals—and among them, a fair income for farmers—it might indeed make sense to set up a fair, and possibly even means-tested, system of allocating subsidies. But if as we have argued, the CAP should aim to promote a competitive, market oriented agriculture industry, then it does not make sense to introduce a measure that will penalize those who undertake the restructuring that efficiency may require. We therefore do not support the introduction of thresholds above which subsidies are progressively reduced.

Response:

The Government shares the Committee's opposition to introducing payment limits. Our vision for the CAP calls for all direct farm payments to be phased out, but while they persist, the introduction of limits on higher levels of payment would be particularly complex and distorting. In order to compete successfully in a globalising market, farmers need to make their own decisions about the size and structure of their business. Imposing limits on payments to particular farms might discourage them from expanding to become more competitive and encourage larger farms to break up their businesses. That would be costly and of no commercial benefit to the farms themselves, while bringing no public benefit.

90. By contrast, we do support the introduction of minimum thresholds for payments, as we are persuaded by the Commission's argument that it makes no sense to create subsidy entitlements that cost more to administer than the amounts being awarded. If Member States are given the flexibility to set their own minimum thresholds in the context of the structure of their farming industry, the new Member States will not be penalised.

Response:

The Government agrees that minimum payment thresholds should be increased to cut administrative costs and make payments to farmers quicker and more efficient. We believe that Member States and regions within them should be given the option to increase minimum farm payment levels up to a threshold of 5 hectares or 5 SPS entitlements.

101. We welcome the Commission's intention to review the scope of cross compliance by examining and amending the list of SMR and GAEC requirements. The evidence we have received suggests that while cross compliance has helped to deliver environmental benefits, and has been valuable in raising awareness of environmental issues among land managers, the administrative obligations associated with the regime are in some instances out of proportion to the benefits delivered. We therefore recommend that the Commission should focus on withdrawing elements from the current list of cross compliance conditions, rather than adding to it.

102. This is not a task for the Commission alone: Member States too need to consider whether they are trying to pack too much into cross compliance, as this is not only likely to reduce the effectiveness of the tool and sap morale among land managers, but may also lead to competitive distortions. However, we recognise that while Pillar I continues to absorb such a significant proportion of CAP spending, the environmental benefits delivered by cross compliance are an important part of the justification for public expenditure on direct payments.

103. In the medium term, we believe that it would be appropriate to consider whether the SMR element of cross compliance needs to be included at all. We were persuaded in this respect by Natural England's contention that financial incentives should be guarded closely, and offered only in return for environmental practices that go over and beyond what is required by law—a criterion that Statutory Management Requirements fall foul of. The lever that cross compliance offers might therefore be used more sparingly, but to better effect.

Response:

As part of the 2003 reforms, we supported the introduction of cross compliance which linked a farmer's CAP payments to compliance with a range of environmental, public, plant and animal health and welfare requirements. Cross compliance has led to worthwhile environmental improvements but we believe there is scope for simplification and rationalisation of measures, for example by removing those statutory management requirements which appear to have had little beneficial effect. In particular, we believe that:

- there should be policy coherence rather than a miscellaneous assortment of requirements;
- standards should add value by focusing on issues where there is a need to improve farmer performance; and

— measures should be under the direct control of farmers.

We are continuing to assess, with our stakeholders, what specific changes we would like to see to improve the scope of cross compliance in those respects.

In England we have disaggregated our Good Agricultural and Environmental Condition requirements into a set of individual standards, however, over half of these are existing requirements. We see cross compliance as an additional means of enforcing legislation in a proportionate and effective way that avoids farmers facing the stigma of criminal penalties, and expensive court proceedings. We believe it can be an effective means of improving compliance with legislation.

Whilst we agree that cross compliance should be used sparingly and in a focused way, we are doubtful that the Statutory Management Requirement element should be deleted whilst substantial public payments continue to be made to farmers. The Commission's communication on the Health Check published last November noted that these EU standards are, and will remain, an essential element of CAP.

109. We strongly support the Commission's proposal to eliminate partial coupling wherever possible. Coupled payments result in the misallocation of resources and distort both trade and competition. For those reasons, we consider that full decoupling in all sectors should be the ultimate objective of policy in this area. However, we recognise that progress towards this objective will require considerable adjustment in some sectors. Article 69 funds could temporarily be used to facilitate such adjustment.

Response:

The Government agrees that it is very important that the legacy of production linked payments which remained from the 2003 reforms are all now fully decoupled from production. Mandatory coupled payments still apply in a number of sectors including energy crops, protein crops, nuts, rice and durum wheat. Many Member States have also taken up options to retain significant amounts of coupled payments for cereal and livestock production. Retaining that legacy of coupled support prolongs trade and market distortions to all EU farmers. Fully decoupled payments on the other hand free farmers to determine their business activities on the basis of market and consumer demand.

We believe that the Health Check must also avoid introducing new distortions via the use of so-called "national envelopes" under Article 69 of the 2003 legislation. Article 69 allowed direct farm payments to be reduced by up to 10 per cent and the money redistributed to specific types of farming which are considered important for the protection or enhancement of the environment or for improving the quality and marketing of agricultural products. While we are interested in examining ways in which the use of Article 69 could bring greater public benefits from the CAP, it is important that criteria are put in place which prevent it leading to new market distortions or an uneven playing field for farmers across the EU.

110. While we accept that for social or environmental reasons, it may be considered desirable to sustain particular types of farming activity in fragile rural areas, we believe that such support should not be channelled exclusively through agriculture, but should instead be part of a broader rural development strategy delivered through Pillar II.

Due to the need to preserve the WTO credentials of Pillar II, this implies that support for vulnerable rural areas should not be linked to particular types of production, but should instead directly target the desired environmental or economic externalities. An additional reason to avoid links to particular products is that as the effects of climate change set in, it may become increasingly expensive or altogether impossible to sustain traditional patterns of production.

Response:

The Government shares the Committee's view that where the market alone will not support certain types of farming which deliver wider public benefits, then targeted, decoupled public support through Pillar II type measures is appropriate.

Farmers need to determine how they can best obtain a viable market return by, for example, considering where they could gain a comparative advantage and how they might diversify their income. That may include providing environmental benefits which qualify for public money.

118. Like many of our witnesses, we take the view that compulsory set-aside has no place in the market-driven framework of the reformed CAP. We consequently support the Commission's proposal to abolish compulsory set-aside for good.

119. We recognise that this could lead to the loss of the environmental benefits associated with set-aside—although we also note that both the scale of such benefits, and the likelihood that they will be lost, varies across farms. As with partial coupling, however, we believe that the environmental benefits that have now become set-aside's raison d'être should be targeted directly via Pillar II.

Response:

We support the Commission's proposal to end the system of compulsory set-aside, thereby simplifying the operation of the Single Payment Scheme and leaving farmers free to take their own production decisions based on market circumstances. However, there is clear evidence that set-aside has brought a range of environmental benefits. We support, therefore, the Commission's intention to take steps at EU level to enable the retention of the key attributes, but it seems unlikely that relying on an incentive-based approach alone will be sufficient to ensure the level of environmental protection required, particularly in the light of current market incentives to increase production. We are investigating with stakeholders what the balance between incentive and obligation should be.

128. The principle that market forces should be allowed to determine production decisions is inconsistent with all types of market intervention and supply management. We consequently support the Commission's intention to reform the cereals intervention system and would urge that the same approach be extended to other sectors and for that matter, to bread wheat. Exceptions will in our view only serve to exacerbate distortions, by creating an incentive for producers to gravitate towards those commodities for which a safety-net remains in place.

Response:

In line with our CAP vision and as part of the move towards competitive global markets, we agree with the Committee that there is no role for market intervention and supply controls. The Government believes that a clear timetable must be set for phasing out all CAP market support mechanisms including the use of intervention, production controls, export refunds and subsidies for usage.

129. For the same reasons, we welcome the Commission's intention gradually to increase milk quotas with a view to their eventual elimination. We agree that the areas worst affected by the removal of quotas may need targeted support, but are concerned that wherever possible, such support should not be linked to the production of specific commodities. During a transitional period, compensatory measures funded through Article 69 may be necessary. In the medium term, however, we favour the rural development route over the Article 69 route for such compensatory action.

Response:

The Government also welcomes the Commission's intention that milk quotas will not be renewed when they expire in 2015. In order to ensure the dairy sector faces a smooth transition it is important to have a simple phase out mechanism which gives as much planning certainty as possible. In parallel with the removal of quotas, it is essential as well to phase out the use of other elements of the dairy price support system including intervention and export refunds, otherwise the increase in production as quotas disappear could lead to a costly increase in intervention purchasing and subsidised exports. There are also a number of obsolete schemes subsidising the usage of dairy products, which should be abolished. The dairy sector needs to have clarity well in advance about the timetable for ending the use of intervention and export refunds.

142. We commend the European Union's decision to commit itself to the removal of export subsidies, and strongly support the Commission's intention to ensure that subsidised sales do not form part of the CAP in future. We recognise the logic of the argument put to us by the Food and Drink Federation in respect of export subsidies for Non-Annex 1 products, but view it as a reason to cut import tariffs rather than keep export refunds.

Response:

Export subsidies have been particularly detrimental to the agriculture sector in developing countries and the Government is strongly committed to ending them. It is important as well to cut import tariffs, not only to reduce the price of food for EU consumers, and offer new market opportunities for developing country producers, but so that our food processing sector can compete fairly in the global market without the need for artificial aids such as export refunds or production aids.

143. The plight of manufacturers who use agricultural raw materials serves to highlight the broader redistributive impact of import tariffs, which protect producers of agricultural goods at the expense of consumers of those goods—be they households or large multinationals. In our view, this aspect of the CAP is without justification, and we therefore support further reductions in tariffs on all types of agricultural goods, including sensitive products. Current market conditions and the medium-term outlook for agricultural commodities could, moreover, help to provide a soft landing for most sectors in the event of tariff reductions.

Response:

Cutting import tariffs is a central part of our CAP Vision and a key means of achieving a globally competitive agricultural sector. Such market protection not only significantly distorts trade and hampers the ability of EU processors to be competitive in world markets—it considerably weakens the ability of developing country farmers to trade their own way out of poverty. Whatever the market conditions, there is no justification for such trade distorting protection—but we agree that current market conditions will no doubt ease the structural transformation necessary in some sectors that require reform.

144. With respect to the production standards imposed on agricultural producers in the EU, we recognise the frustration felt by farmers who resent being exposed to competition while forced to observe rules that they regard as a competitive handicap. In our view, the demands placed on farmers are partly a consequence of the need to find a justification for the maintenance of direct subsidies. If direct payments are withdrawn and import tariffs reduced—as the UK Government advocates—then the production standards that EU producers of agricultural goods are obliged to respect should be re-examined. EU farmers might in future be asked to produce to SPS standards, with targeted financial incentives on offer through Pillar II for the provision of specific public benefits (e.g. high standards of animal welfare) that are not delivered by these production processes.

Response:

Many issues affect the competitiveness of farmers including the macro environment. It is true that this includes regulation, but also infrastructure, education, taxation, the natural environment and labour costs. We do not believe that a limited number of animal health or environmental standards should be separated out, particularly since the order of magnitude of costs is very small compared to other issues. In general, our evidence suggests that the costs associated with EU producers complying with these types of regulations are relatively small and in some cases there are benefits both directly, through for example lower disease risks, and indirectly through the ability to market higher quality produce for higher returns. Independent studies too suggest that while many legislative requirements do give rise to increased costs for farmers, these are not necessarily greater than those experienced by other economic sectors or producers outside the Union.[5]

145. While supporting efforts to encourage other countries to adhere to production standards similar to those currently in force in the EU, we would not welcome attempts to impose such standards on other countries, nor the prospect of their being used as non-tariff barriers on imports. Agricultural products that meet the SPS standards stipulated by the EU should be allowed to enter. Consumers should then be allowed to choose among products produced to different standards above that basic threshold. Labelling will take on great importance if consumers are to make informed choices. Labelling should, however, be based on a comprehensive assessment of environmental impact and welfare standards, rather than relying on crude indicators such as whether a product has been air-freighted.

Response:

The Government agrees that barriers to products from other countries beyond the base level of sanitary and phytosanitary standards should not be imposed. High quality production within the EU that is labelled as such will always attract a premium over goods produced to lower standards. We should not impose such a system of labelling on third country producers—but instead encourage producers that meet such standards to take advantage of the price that the market will pay for voluntarily adhering to these labelling schemes. We look forward to the European Commission's intention to bring forward a green paper on the marketing and promotion of EU produce.

154. We support the Commission's plans to increase compulsory modulation, on the basis that funds invested in Pillar II of the CAP offer better value for the taxpayer than funds allocated to Pillar I. We share the view articulated by some of our witnesses that the high level of voluntary modulation applied by the UK can be traced back to its low share of rural development funds overall. If a historic allocation system for Single Farm

[5] Brouwer, F. & Ervin, D. (eds.) (2002) Public Concerns, Environmental Standards and agricultural trade, CABI, Wallingford.

Payments is considered indefensible—as the Commission has indicated, and as we believe—then a similar system for allocating rural development funds, based on a reference period even further in the past, cannot be justified. We therefore recommend that the distribution key for rural development funding be reviewed at the earliest opportunity.

Response:

> The Government shares the Committee's view that the historic allocation of rural development funding, which has required the UK to introduce additional voluntary modulation to fund our rural development programmes, is inequitable and should be revisited. As part of the Health Check, we believe that greater modulation of funding from Pillar I to Pillar II of the CAP across the EU will help to step up activity on meeting environmental challenges over the next few years.

155. In the meantime, we support the Commission's intention to secure like for like reductions in voluntary modulation in return for increases in compulsory modulation. We recognise that environmental groups in the UK rely heavily on funds from voluntary modulation to support their activities. In our view, however, the preservation of a level playing field across the Single Market in agricultural goods must be the overriding purpose of the CAP. We therefore share the farmers' unions' concern that the high levels of voluntary modulation being applied in the UK may result in competitive distortions.

Response:

> Voluntary modulation involves shifting resources from one WTO Green Box compliant measure (decoupled direct payments) to another (rural development), so it is difficult to see how the application of voluntary modulation can cause competitive distortions. However, increases in compulsory modulation should allow the UK to reduce the rates of voluntary modulation applied, which we would like to do in order to create greater parity between our farmers and those in other Member States. Before we can determine the extent to which voluntary modulation can be reduced, we need more information about how the Commission's proposals to increase compulsory modulation will work. Due to the UK's unfairly low allocation of core European rural development funds, voluntary modulation has been crucial to maintain effective, adequately funded rural development programmes which deliver important economic, social and environmental public benefits. We need to ensure that funding is enhanced to meet the growing environmental challenges which the Commission identifies.

161. We share the Government's view that risk management is a normal feature of any commercial activity, and should therefore take place within the industry to the maximum degree possible. However, we recognise that state intervention through the CAP over the years has impeded the development of industry-based solutions, and that private sector insurance and hedging instruments are not available in all sectors, nor necessarily adapted to the distinctive risks faced by farmers. As the agriculture sector becomes more market-oriented, and farmers are increasingly exposed to market risks, we therefore do see a role for the CAP in promoting the development of non-trade distorting, industry-based risk management methods. This may involve providing information (for example on the expected impact of climate change in a particular region), facilitating structural change (for example where risk is pooled through cooperatives, or through vertical integration in the supply chain), or co-financing insurance premiums as the Commission envisages—although the latter measure should in our view be time-limited rather than permanent. The ultimate aim would be to shift a greater share of market risk onto the agriculture industry. However, we recognise that the state is unlikely to be able to withdraw from this area altogether, notably where a private insurance market is unlikely to emerge—as may be the case with respect to risks posed by animal diseases or climate change, for example.

Response:

> As the old system of price support is removed, it will become increasingly important for farmers and the wider agriculture sector to manage the price risks which they face, as other sectors of the economy do. However, it is important that farmers take responsibility for putting in place measures most appropriate to their circumstances. Farmers can already choose from the many non-distorting, market-based measures available. Those include diversification of income, private insurance, mutual funds, credit and futures and options markets. Unless there is a market failure in the provision of private sector risk management, then we do not see a justification for using public money to provide risk management for farmers. The guiding principle must be for public authorities to help farmers to manage risk effectively themselves, not to manage it for them.

177. We support the Commission's intention to review whether the strategic guidelines for rural development in the period 2007–13 offer appropriate incentives for farmers and land managers to address the challenges and exploit the opportunities posed by climate change, including research and development, sustainable water management and the protection of biodiversity. We note, however, that because rural development programmes are drawn up by the Member States themselves, the onus is also on them to review whether their rural development and climate change agendas are suitably aligned. The Commission's review should therefore be complemented by equivalent reviews at the national level. Particular attention should be given to whether the right measure of flexibility is available to support measures that cut across the EAFRD axes, notably where there is both a business development and an environmental aspect to a particular project.

Response:

The Community Strategic Guidelines for Axis 2 of the Rural Development Regulation 2007–13 already focus on biodiversity, water and climate change as priorities for the programmes and Member States will already have had to take these into account in drawing up their programmes for the current period. We agree that the way in which Member States have implemented these guidelines has varied considerably in line with national strategies and the 'menu' approach of the rural development regulation. In its programmes the UK has placed the highest priority on Axis 2, devoting near to the maximum permitted share of overall budgets to it, and the four UK programmes have already been designed to contribute significantly to the new challenges, though it is acknowledged that there is more to be done. For example, the recent review of progress with Environmental Stewardship which will report shortly has looked in particular at how best to incorporate further climate change objectives into the scheme.

We agree that changes to the Rural Development Regulation will require Member States to review their programmes for the 2007–13 period; and that this will also provide an opportunity to address any barriers to the achievement of environmental outcomes which the current rules impose.

178. We would not support moves to incorporate climate change and water management objectives in cross-compliance. This would in our view add to the administrative burden faced by farmers, while duplicating policy objectives that are already addressed in Pillar II and in the Water Framework Directive.

Response:

The Government believes that we should carefully assess the full impact of possible new cross compliance measures and focus on those anticipated to deliver a key environmental or other public benefits. We consider it may be appropriate to alter the scope of the framework for Good Agricultural and Environmental Condition (GAEC) to include water quality, so that cross compliance plays more of a contributory role in helping meet the significant challenge of the Water Framework Directive. We anticipate that this will require changes to the regulatory baseline as well as the deployment of other policy mechanisms including incentives. We agree that climate change may be better addressed through pillar II measures, although we will need to keep this under review. The Government intends to consult on changes to cross compliance in England which result from the CAP Health Check.

179. We concur with the Agriculture Commissioner's verdict that market developments have removed the justification for subsidising biofuel production. Production-linked subsidies run counter to the principle behind the 2003 CAP reform—support schemes for energy crops should be no exception.

Response:

We agree that there should be no exceptions to the principle of full decoupling and bioenergy policy should be consistent with that.

180. We support the Commission's call for funds to be transferred from Pillar I to Pillar II so that adequate resources are available to implement the climate change agenda for agriculture. We note, however, the risk that the climate change agenda may be seized upon to resist calls for cuts to the overall CAP budget—a position that may be implicit in the evidence given to us by the Agriculture Commissioner.

Response:

The Government also believes that as part of the Health Check more funding should be transferred from Pillar I to Pillar II of the CAP in order to meet increasing environmental challenges over the next few years, not least climate change. However, levels of EU spending should not be based on the legacy of previous policies, but must be proportionate, based on objective criteria and add value beyond spending at national level.

190. The market and environmental objectives that we regard as the appropriate long-term aims of the CAP can in our view be pursued adequately with Pillar II instruments. We are therefore not convinced of the justification for maintaining direct payments under Pillar I in the long term. We would instead advocate a phased reduction in direct payments over the course of the next financial perspective. Periodic impact assessments should be used to determine the pace at which subsidies are withdrawn.

Response:

The Government agrees that Pillar I of the CAP should be phased out by 2015–20. That needs to be done in a way which enables the agricultural sector to make a smooth transition. While it is important to monitor the process, the extent to which changes are made to the process needs to be balanced carefully with the need to provide the farming sector with planning certainty.

191. A significant proportion of the funds released by the progressive reduction in direct payments should in our view be transferred to Pillar II of the CAP for the duration of the next financial perspective, thus allowing for an orderly transition. While this course of action may not result in significant savings in the overall CAP budget, we consider it to be the only viable way of re-orienting the CAP, as it would avoid the upheaval involved in attempting to transfer budget lines and responsibilities away from the European Commission's DG Agriculture and national agriculture ministries.

Response:

As part of the forthcoming EU budget review, the size and shape of the future CAP budget should be examined through a principled approach. EU expenditure should advance the national interest and EU public interest together and add-value beyond that which would accrue from Member States acting independently. Where EU-level action is appropriate, the policy response should be proportionate and flexible.

206. Like the UK Government, we believe that the future of the CAP lies in the present Pillar II. A recast Pillar II could in our view form the basis for an EU-level framework for rural policy. For the reasons outlined by the NFU, the framework we envisage would not be a "common" rural policy in the sense of prescribing common solutions to common problems. Instead, the framework should specify a menu of actions that Pillar II funds can legitimately be used for. The main role for the EU would lie in defining the contents of that menu, ruling out measures that might lead to market distortions. Expenditure on R&D for example, might qualify for support, while countercyclical income safety nets would not. Each Member State would then be able to channel funds as it saw fit, in accordance with national priorities for rural development. We envisage that this system would differ from the existing policy framework in three main respects.

207. First, the types of admissible actions—currently organised around the three axes of the EAFRD—should in our view be recast more broadly to include more non-agricultural measures. Funds might thus be used to improve communications, infrastructure, and amenities in rural areas so as to ensure that rural communities are not disadvantaged by their rurality. The ultimate aim would be to ensure that non-agricultural economic activities are genuinely available and viable as the agriculture sector adapts and restructures in response to market signals. However, investment designed to improve the competitiveness of farming businesses should continue, and will become even more critical if agricultural trade is liberalised further.

208. Second, there should be no prescriptions for fixed percentages of Pillar II funding to be spent on different types of actions. Regulation at the EU-level should be limited to identifying the types of actions that are admissible, based on whether they might interfere with the operation of the Single Market.

209. Lastly, the distribution key for Pillar II funds should in our view be reassessed. We have already recommended that the current historical allocation system should be reviewed at the earliest opportunity. We believe that an element of co-financing should be preserved, as it provides Member States with incentives to ensure that funds are spent efficiently. Co-financing requirements should, however, be determined on a needs basis, so that a smaller proportion of co-financing is required from poorer Member States. This will become particularly important if Pillar I funds are progressively transferred to Pillar II. Co-financing should nevertheless continue to be compulsory, in order to prevent distortions of competition.

210. A recast Pillar II such as we have described could in our view be used to tackle the relative deprivation of rural areas compared to urban areas even in relatively rich Member States, and to target pockets of deprivation in otherwise wealthy rural areas—needs that are overlooked by other EU policies that allocate funds on the basis of absolute and average measures of deprivation. In practice, this would mean that all Member States would continue to benefit from access to CAP funds. Rather than duplicating what is being carried out through other EU programmes and funds—notably Structural and Cohesion Funds—the framework we have outlined should therefore close a gap exposed by these existing programmes.

Response:

The Government's position, as described in our Vision for the Common Agricultural Policy is that Pillar II should increase as an overall proportion of CAP spending as Pillar I declines, and that it should be focused on public goods delivered by farmers, in the form of environmental benefits. We are at an early stage in analysing exactly what form a future Pillar II should take and in that context welcome the useful contribution to the debate provided by this report.

We agree that the basis for the future of Pillar II should be an objective and fair distribution of funding between Member States, and that it should be designed in a way which offers best value for money for the European taxpayer, and does not distort competition.

Analysis suggests that the type of issues facing rural areas of England and the outcomes sought are in the main little different from urban areas. Tackling those issues requires a holistic approach across the breadth of socio-economic policy and across the spatial spectrum (so-called "mainstreaming") rather than necessarily using specific rural instruments such as Pillar II of the CAP.

The Government will be consulting further with stakeholders on its approach to the future of Pillar II in the coming months.

May 2008

9TH REPORT: FRONTEX: THE EU EXTERNAL BORDERS AGENCY

Letter from Liam Byrne MP, Minister of State, the Home Office to the Chairman

I am writing in response to the European Union Committee's 9th Report of Session 2007–08, entitled 'Frontex: the EU External Borders Agency'. I apologise for the delay in responding to you.

I welcome this report and am pleased that the Committee shares the Government's view of the importance of Frontex; the benefits derived from our contribution to it; and its achievements in better securing the external border of the European Union. I have enclosed the Government's response to the report which addresses the Committee's recommendations and conclusions and thank the Committee for its interest in this matter.

Significantly, our planned support for at least 12 Frontex operations and initiatives in 2008 builds on our previous operational commitment to the Agency; this will continue to strengthen our relationship at a time of increased focus across Europe on its role and potential. Together with the Committee, I recognise the importance of cementing this relationship in view of our exclusion from full participation in the Frontex Regulation, especially in the context of the formation of the UK Border Agency.

13 June 2008

13TH REPORT: THE EURO

Letter from Kitty Ussher MP, Economic Secretary, HM Treasury to the Chairman of Sub-Committee A

I have noted with interest the Committee's report on the Euro. As ever, the work of the Committee makes a very valuable contribution to this ongoing debate. The impact of the single currency is an important topic not just for the member countries.

As the report does not make specific policy recommendations for Her Majesty's Government, I have not sought to make a detailed formal response (although the Treasury submitted evidence to the Committee as part of the evidence gathering process, which I trust you found useful). We of course stand ready to assist your further enquiries in any way that we can.

3 July 2008

14TH REPORT: THE EUROPEAN UNION AND RUSSIA

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

I am writing following the publication of your Committee's report on *The European Union and Russia* on 22 May.

The Government welcomes the rigorous analysis in your report, much of which is in line with our own analysis. I enclose a note responding to the key recommendations the report made.

15 July 2008

Government Response

Russia remains an important international partner. The EU and Russia share many common interests and face many common challenges. As the Committee recognises, this is a significant time in EU-Russia relations as negotiations begin on a new agreement between the EU and Russia.

This exchange of views between the Government and the Committee is also well timed in terms of UK-Russia relations. The Prime Minister and President Medvedev met in the margins of the G8 Summit on 7 July. The two leaders covered pressing international issues such as Zimbabwe, and global challenges, such as energy and climate change. The Prime Minister did not shy away from raising difficult bilateral issues. But neither he nor the President let those difficulties obscure the fact that there is plenty for the UK and Russia to talk about, and substantial common ground between us, which deserves to be developed through contacts at the highest level.

The Government welcomes this report and believes it makes an important contribution to our understanding of EU-Russia relations. The Committee's report makes clear the importance of the EU-Russia relationship and identifies some of the key challenges that face EU-Russia relations. The Government response to some of the key recommendations in this report is set out below. For ease of reference, the relevant recommendation is re-printed above the Government's response.

Chapter 2: Russia today

290. The Russian economy is currently growing, buoyed up by high energy prices, but the prospect for the medium and long term is uncertain. Many questions remain about potential weaknesses and the threats these hold for its future prospects. Among these are demographic decline, which has implications for both Russian economic and security policy; the failure so far to diversify away from reliance on natural resources; and the failure to press ahead with market reform. The EU should continue to support Russian reforms in the economic sphere, which should be of benefit to both Russian and EU firms.

291. The Russians are unlikely to change their views on the need for substantial state involvement in the economy in the near or medium term. They seem, however, to accept that large parts of the private sector should operate free from state control. Both of these aspects of Russian policy have implications for EU policy and they are important for European business, which has largely and enthusiastically invested in the private sector of the Russian economy, and is generally making large profits as a result. The EU should where possible encourage further Russian steps towards improving the climate for foreign investment to provide the best environment for continued investment by European businesses in Russia.

There is a strong and rapidly growing trade relationship between the UK and Russia, and between Russia and other EU Member States. Whilst undoubtedly UK companies do face difficulties in doing business in Russia, this should not be allowed to overshadow the success stories. As the Committee rightly notes elsewhere, the EU, and the UK in particular, are important trading partners and EU companies invest heavily in Russia.

The Government agrees with the Committee's recommendation that the EU should continue to support Russian economic reforms. President Medvedev has identified rule of law, tackling corruption, improving the regulatory environment for Small and Medium Enterprises (SMEs) and energy efficiency as priorities. The Government is looking for opportunities to work with the Russians on these priorities, including through the EU and alongside other international institutions such as the World Bank. These reform priorities will form an important part of discussion of the successor agreement to the Partnership and Co-operation Agreement (PCA) between the EU and Russia.

The Committee recognises that the state will continue to play a substantial role in the Russian economy. Whilst-the Government understands how the Committee reached its conclusion, since the Committee's report, First Deputy Prime Minister Shuvalov and others have talked about the need for the state to limit and reduce its role. The new Strategic Sectors Law, although not ideal, does at least provide more clarity and certainty for foreign investors. The Government hopes that it will be implemented transparently and efficiently, so as not to cause a disruption to foreign investment flows.

The on-going process of Russia's accession to the WTO, its accession talks with the OECD and the negotiations on the successor to the EU-Russia PCA all provide good opportunities for the international community to encourage Russia to move in the right direction on trade and investment rules. The Inter-Governmental Steering Committee on Trade and Investment will provide a good forum to pursue a bilateral dialogue.

Chapter 3: The institutional framework for Russia-EU relations

292. We agree with our witnesses in both the Council Secretariat in Brussels and the Commission Office in Moscow that the passage of the Lisbon Treaty should make it easier to co-ordinate and execute the Union's policies towards Russia, and therefore make them more effective. A modest increase in numbers in the Moscow office would provide the additional skills needed. In addition, the mechanisms for cooperation between the Council Secretariat, the Commission, and the Member States missions in Brussels should be strengthened.

The Government agrees that a ratified Lisbon Treaty would enhance the EU's ability to negotiate a new EU-Russia agreement, by ensuring the EU has coherent priorities lasting right through the negotiations, rather than having priorities revisited by each incoming Presidency for each period. But it will be important to make progress on a new agreement, negotiation of which will considerably enhance the EU's ability to deliver for its citizens, whatever the status of the Lisbon Treaty.

293. It is not clear to us how much interest the Russians will have in negotiating a new legally binding agreement similar to the current PCA with normative aspects on human rights. Although it will not be easy, we believe that negotiations on a replacement Partnership and Cooperation Agreement should be started in 2008. An attempt should be made to enshrine the principles of the Energy Charter Treaty and the Transit Protocol in the new agreement or as a Protocol to it (See Chapter 5). Meanwhile the present PCA should continue to be rolled over.

The EU and Russia launched negotiations on a new agreement at the EU-Russia Summit on 26–27 June. They also announced that their aim was to conclude a strategic agreement that will provide a comprehensive framework for EU-Russia relations for the foreseeable future, helping to develop the potential of the relationship. It should provide for a strengthened legal basis and legally binding commitments covering all main areas of the relationship. This is very good news, both for the EU and for the UK. The mandate is ambitious and comprehensive and covers a range of issues important to the UK such as terrorism, climate change and energy, trade and human rights.

The Russians have said they believe the agreement should be legally binding. This is important and we agree with them. There have been some suggestions that Russia would prefer a framework agreement with less specific detail. The Government believes that it is in both the EU's and Russia's interests to negotiate an ambitious, deep and wide-ranging agreement, covering the full range of issues in the relationship, to reflect the scope and importance of EU-Russia relations. The EU negotiating mandate points to such an agreement.

A comprehensive, binding agreement will help the EU and Russia build a stable and strong long-term partnership, based on mutual understanding and shared goals, with both parties having confidence that any disagreements can be settled within a transparent, rules-based framework. This will bring consistency and predictability to the relationship and benefit both the EU and Russia.

Chapter 4: Building closer cooperation through the common spaces

294. The European Union should actively promote the widest possible engagement of Russia in international and multilateral institutions; it should resist any attempt to remove Russia from the G8; it should call for the early entry of Russia into the WTO. Any remaining minor disputes can be dealt with under the WTO's dispute resolution mechanisms after Russia has joined the WTO. The European Union should in due course promote Russia's membership of the Organisation for Economic Cooperation and Development (OECD).

Russia remains an important partner in international institutions such as the UN Security Council and the G8. Russia's status as a global player means that it must abide by international commitments. Russia's membership of a wide range of international organisations comes with obligations.

Russia is a key member of these international organisations. The world's most serious challenges cannot be addressed without Russia's involvement. We welcome President Medvedev's statement in St Petersburg on 7 June 2008 that Russia has a responsibility to contribute to global solutions and that it wants to play a leading role in the reform of international institutions.

The Government has been, and continues to be, a strong supporter of Russian accession to the WTO. We look forward to Russia completing the necessary processes as soon as possible. A Russia in the WTO can only strengthen the governance of world trade and add to global prosperity.

The Government similarly supports Russia's accession to the OECD once Russia has acceded to the WTO and has met the necessary technical and political conditions. The Government is looking forward to seeing the five accession candidates' responses to the OECD road-maps. Accession candidates need to be aware that the political aspects of like-mindedness will also be raised.

295. *It is in the interests of the EU to engage the Russians on climate change to a greater degree than at present, despite the Russian reluctance to engage fully.*

The Government agrees that the EU should increase its engagement with Russia on climate change. Government action at the EU level contributed to the issues featuring at the EU/Russia Summit in late June. The Government is continuing to work closely with EU colleagues to co-ordinate approaches, raise awareness of the subject and identify future projects. An example of this collaborative approach is the workshop taking place on 10 July in Moscow to publicise and discuss the Inter-Governmental Panel on Climate Change's (IPCC) 4th Assessment Report. This has been organised jointly by the British Embassy and EU Delegation in Moscow alongside Roshydromet, the Russian Federal Service for Hydrometeorology and Environmental Monitoring. As part of the EU/Russia Energy Dialogue, the EU is specifically looking to fund energy efficiency projects which will also have benefits for tackling climate change using Technical Aid to the Commonwealth of Independent States (TACIS) financing.

As well as working through the EU, the UK is sharing its experience on energy efficiency. This is mutually beneficial as energy efficiency can help relieve Russia's domestic gas supply difficulties and free more gas for export, as well as promoting climate security. In particular, the Government will seek to share experience on gas flaring through the UK-Russia Energy Forum. The Government is also looking at ways of increasing our dialogue with Russians ahead of the UN Framework Convention on Climate Change (UNFCCC) negotiations which are preparing for discussions in Copenhagen in 2009 on a successor agreement to Kyoto post 2012.

296. *The European Union can help to ensure that ethnic Russians living in the Baltic States are given equal treatment under both national and EU law. The EU can help to manage these understandable sensitivities.*

The Government agrees with the Committee. We believe these issues relate more to Estonia and Latvia than Lithuania.

The Government considers that both Estonia and Latvia have made significant progress in the treatment and integration of their Russian minorities, often acting on recommendations by the OSCE High Commissioner for National Minorities (HCNM). Both the HCNM and Council of Europe's Commissioner for Human Rights continue to recommend measures to help speed up the naturalisation process.

Through our Embassies, the UK Government has supported the work of the Estonian and Latvian governments on projects to encourage further integration.

297. *We welcome the solidarity that the EU has shown with the UK on the question of the extradition of Andrei Lugavoi.*

The Government is pleased that the Committee welcomes the EU's stance on this issue. The EU reacted firmly because the case raised serious issues of common concern to Member States. Russia wants its people, goods and services to move freely within the EU. But its failure throughout this dispute to act like a responsible partner and demonstrate a readiness to live up to the judicial responsibilities that come with free movement raised considerable concerns across the EU. These go wider than the narrow matter of UK-Russia judicial co-operation. It was this that prompted the EU to respond so firmly. Many Member States also made their concerns felt individually.

298. *In the last few years, progress has been made in several areas of EU-Russia cooperation on justice and home affairs issues. However, serious questions remain about the commitment of the Russian authorities to the rule of law and the independence of the judiciary, especially in politically sensitive cases. The EU should*

continue in its efforts to promote Council of Europe, OSCE and other relevant standards with regard to the rule of law, the independence of the judiciary, and judicial processes in Russia. These are standards which Russia has accepted and is committed to upholding.

The Government agrees with the Committee that the EU should continue to promote Council of Europe, OSCE and other relevant standards with regard to the rule of law. Indeed, respect for international law and international commitments should lie at the heart of the conversation between the EU and Russia. Framing EU-Russia discussions in terms of the importance of Russia keeping its commitments, including those to the Council of Europe and the OSCE, allows the EU to talk credibly to Russia about a wide range of issues.

The Government is encouraged by President Medvedev's avowed support for the rule of law and believes individual Member States and the EU should encourage him to put his words into practice.

299. We deplore the attacks on the British Council and its staff and consider that they are not motivated by its activities, but are a part of a wider political strategy to pressurise the UK and the EU into giving ground on other, unrelated issues. Russia's approach is unacceptable and violates several bilateral and multilateral agreements that Russia has ratified. It is moreover not consistent with a desire to make genuine progress under the Fourth Common Space. The Russian position that this is a purely bilateral matter between them and the UK is neither convincing nor sustainable. The EU should continue to support British efforts to find an early solution over the status of the British Council.

The Government is grateful to the EU for its support over the difficulties faced by the British Council in Russia. Presidency Statements in December 2007 and January 2008 called on Russia not to carry out its threats to close the British Council's offices in St Petersburg and Yekaterinburg. EU representatives have also privately raised the British Council with Russia. The European Commission, for example, expressed its concerns to Russia at the first ever EU-Russia Ministerial meeting on Culture, in October 2007. We expect the EU to continue to raise this issue with Russia, including at meetings on the Cultural dimension of a new EU-Russia agreement.

300. We welcome the efforts by the EU and Russia to further research cooperation under the Fourth Common Space. The European Union should continue actively to facilitate all forms of contact with the Russian people, including the provision of scholarships and exchanges and the further simplification of visa procedures for students, EU Member States, and in particular the UK, should encourage the teaching of the Russian language in its schools and universities.

We support the development of EU-Russian research, education and cultural links under the Fourth Common Space of the EU-Russia Partnership and Cooperation Agreement.

We have made clear to Russia that, despite its stance on the British Council, we would welcome the establishment of Russian Cultural Centres in the UK, to promote people-to-people contacts, exchanges and language training. The Government does not believe that cultural and human relations should be damaged by this unrelated political dispute. This view lay behind our decision to offer our full support to the recent "From Russia" exhibition of paintings by French and Russian masters at the Royal Academy and to the Turner exhibition taking place in Russia later this year.

The Government is taking significant steps to improve our visa service for the hundreds of thousands of visitors to the UK. Business travellers enjoy an express visa service. And an online application service is now operating to speed up the visa application process. More Russians than ever are receiving visas to the UK. The Government is reinforcing the visa operation in Russia in response to the growing demand.

Chapter 5: Energy

301. There are serious concerns about whether Russia can supply sufficient gas and oil to meet its current and foreseeable domestic demand and international commitments. In the face of this probable shortfall Russia will need greater efficiency and foreign capital. It is unlikely however that these needs will force the Russians to change their ways and there is little chance at present that foreign companies will be allowed by the Russians to acquire ownership of Russia's strategic oil and gas resources. However, this has not deterred, and should not deter, European companies from seeking opportunities to invest in the country.

The Commission will publish its second Strategic Energy Review in October this year. It will focus on security of supply and external energy policy, including relations with energy suppliers such as Russia. The Government will be setting out to the Commission our views on what the Review should consider on security of supply, arguing that a fully functioning internal market must be central and that EU level action adds value externally through its combined weight and economic power.

302. In the current situation it is uncertain whether Russian policy is the action of a country simply pursuing its economic and commercial interests in an old-fashioned and mercantilist way, or whether Russia intends to use its energy exports as a political weapon to impose its will on neighbours and partners. Since a number of gas pipelines run through countries such as Ukraine whose bilateral relations with Russia can affect supplies to Western countries, the EU Member States should therefore take active and coherent measures, involving common funding where necessary, to diversify both sources of supply and transportation routes, including pipelines such as Nabucco, even where these are not obviously commercial (though recognising that Nabucco will not on its own solve the problems).

303. The market will sort out many problems for the supply of gas, as it did after the first two oil shocks. However, on its own the market will not rapidly produce the right results, and considerations of security of supply need to enter into the equation.

304. For the EU as a whole secure and competitive energy supplies are a highly desirable objective. The EU should further formulate its own energy policy, using the Commission's proposals on energy liberalisation as its basis. There are ways in which security can and should be improved, notably by having a better internal market in energy, with grid inter-connections and storage, so that if one country has an energy problem with Russia or another country, there are alternative sources for electricity or gas.

The Government strongly agrees that the EU needs to diversify both sources of supply and supply routes. The UK believes that EU level action is best focused on removing regulatory and other barriers to commercial investment and recognises the risk of distorting the market by introducing public sector financing. Generally, infrastructure should be built and paid for by the private sector under market conditions, with only limited public funding required to help get projects off the ground.

But until the single market is fully functioning, there may be a case for greater intervention in very exceptional cases, generally recognised to be those of particular importance to EU internal security of supply, and where genuine market failure can be identified. There are various possibilities for such intervention—ranging from a requirement for interested parties to report on why specific infrastructure has not been put in place to, ultimately, assistance with funding. Careful consideration would need to be given to any such intervention to ensure that it does not act as a disincentive to commercial investment. We understand that the question of interconnection and infrastructure more generally will be the subject of further consideration in the context of the Commission's Strategic Energy Review later this year and will take an active part in that discussion.

305. The creation of genuinely competitive energy markets within Europe and the creation of Europe-wide energy grid should be a primary objective of EU policy. Even those countries (including the UK) that do not import significant quantities of Russian gas directly are vulnerable if supplies to their continental partners are interrupted, or if there is a prolonged period of cold weather. Exposure to a volatile spot market, without adequate storage facilities, and without long-term contracts, mean that they could find themselves with soaring energy prices and gas supplies severely curtailed. Alternative supplies from Norway, even when they are available in sufficient quantity, will not be price competitive. Germany may be reluctant to surrender the competitive advantage it receives from its well-developed gas and electrical systems and long-term contracts, or France its relative security arising from the scale of its nuclear industry, but agreement between the UK, France and Germany will be a pre-requisite for a genuinely effective market combined with grids and storage systems.

306. Implementing the Commission proposals on the Third Energy Liberalisation Package will not be easy, given the diversity of view among Member States. The collective negotiating strength of the Member States is at present seriously undermined by the willingness of each of them to go their own way. A degree of structured cohesion is necessary if EU energy policy towards Russia is to be effective.

While the UK's need for gas to generate electricity will increase in the future, the Government disagrees that the UK is "terribly exposed" as suggested in paragraph 155. Nuclear is not unreliable—Sizewell B's performance has been world class. We expect to retain a sizeable, albeit diminished, coal fleet for the foreseeable future. About half the gas supplied in the UK is under long-term contract. The diversity of import sources and supply routes and increasing levels of gas storage facilities do mean the UK has a good and improving range of options available for gas supply.

The report describes some of the disagreements there have been over the Third Energy Liberalisation Package. Since the Committee reported, there have been significant steps forward in developing the internal energy market. The Energy Council on 6 June agreed a general approach on the Third Energy Liberalisation Package, based on an alternative option on unbundling proposed by the Presidency and the Commission. We hope to conclude agreement on the legal text in the European Council and European Parliament under the French Presidency.

The Government agrees with the recommendation that the primary objective of EU policy should be the creation of competitive energy markets within Europe and the creation of Europe-wide energy grids. Development of the internal market will provide incentives for integration of networks across Europe. Action is being taken to promote this.

We agree that countries which do not import directly from any supplier including Russia are still not immune to the effects of supply interruptions from that source. However, if the EU internal energy market functions correctly, the impact of such supply interruptions is diminished. Supplies from elsewhere in the EU would be more readily available to fill the gap in response to price signals.

307. We doubt whether the ECT and the Transit protocol are the right vehicles to achieve the EU's objectives because of Russian objections. There seems little point in expending further political capital on trying to persuade the Russians to ratify the Energy Charter Treaty and the Transit Protocol as they stand; they are not going to do so.

308. If negotiations get under way later this year for a new PCA the EU should be prepared to explore with Russia whether that instrument could provide a legally binding framework for incorporating energy provisions such as those contained in the ECT.

The Energy Charter Treaty remains the only multilateral instrument providing a rules-based framework for trade, investment and transit of energy, backed up by legally binding dispute resolution mechanisms. Although the lack of Russian ratification of the ECT to date is disappointing, the ECT is in active use in Eurasia, and particularly in the Caspian region. Several on-going dispute resolution cases demonstrate the value of the Treaty to investors, and the ECT is frequently referenced in inter-governmental agreements on cross-border energy trade and pipeline construction. As such the Government continues to support the ECT as a valuable instrument in promoting open, competitive energy markets internationally.

Although we recognise that Russian concerns about transit provisions of the Treaty have been a factor in preventing Russian ratification to date, there are clear benefits to Russia of ratification, including protection for Russian energy investments overseas and regulation of energy transit. Multilateral consultations on the Transit Protocol are now underway in the Energy Charter process. Discussions are also in progress about whether and how the Charter process can respond to the changing context of international energy markets. These processes could provide an opportunity to address barriers to Russian ratification. But the onus will be on Russia to convince the other contracting parties that the political will to reach an agreement exists.

The EU has made clear that energy aspects of the successor to the EU Russia Partnership and Co-operation Agreement should reflect the key principles of the Energy Charter and be backed up by legally binding dispute resolution mechanisms. The UK will continue to stress these principles throughout the negotiating process.

Chapter 6: The common neighbourhood and international security

309. The official Russian view of the international developments of the last two decades is very different from the West's. Russians draw the conclusion that Russia's interests do not necessarily coincide with those of the West. They believe that it is up to them to defend their interests, as they understand them, by the best means at their disposal. Most Russians no longer accept that Western countries represent a valid model to follow, both in terms of Russia's domestic affairs and in terms of its foreign policy.

The Government believes there is considerable convergence between Russian and Western interests, and that these should form the basis of stable and predictable partnerships. For example, even narrowly defined, Russia's interests and those of the EU coincide considerably. The EU and Russia are interdependent in energy. Some 25 per cent of the EU's gas comes from Russia. Some 25 per cent of Russia's GDP comes from oil and gas sales to the EU.

Ever growing numbers of Russians want to live, study and do business in the EU. Russia is the EU's third largest trade partner; the EU is Russia's largest, by some distance. Russian business leaders look to global financial centres like London to float their companies and to raise capital. Surveys identifying the concerns of Russia's business people reflect closely those of their counter-parts across the EU.

The EU, NATO and Russia also face a range of common global and security challenges, ranging from climate change, to illegal migration, to proliferation, to organised crime. The EU cooperates with Russia on various international issues. The Middle East Peace Process stands out. On Iran, the EU and Russia share the aim of avoiding a nuclear-armed Iran and Russia has played an important role in the E3 + 3. Former President Putin also observed at the NATO Summit at Bucharest that Afghanistan was a shared interest for Russia and the Alliance, on which the two could do more together.

313. We believe the EU should consult in depth with the Russians over all aspects of the European Neighbourhood Policy with regard to countries which were formerly part of the territory of the USSR, but should not give them a right of veto over EU policy.

314. While Russia may see the EU merely as an unwelcome newcomer and rival in Central Asia, the EU should take account of Russia's interests and concerns in the formulation of its policies towards the Central Asian countries. Beyond this the EU should seek to engage the Russians in a constructive dialogue about the mutual relationship with the Central Asian countries, and persuade Russia that democracy and prosperity in these countries—which are likely to be strengthened by their relationship with the EU—are also in Russia's interest.

The Government agrees that the EU should frequently have discussions with Russia over the common neighbourhood. Russia should also make efforts to consult frequently with the EU over its own actions in the region.

There is already considerable scope for the EU to work with Russia. The neighbourhood is a frequent topic for discussion at EU-Russia Summits. Ministerial meetings also allow for consultation. For example, at the end of April at the EU-Russia Justice and Home Affairs Partnership Council the EU and Russia discussed drug trafficking from Afghanistan through Central Asia. The EU Special Representatives for the South Caucasus, Central Asia and Moldova also consult regularly with Russia. Other formats, such as the Friends of the Secretary-General for Georgia, which features a number of EU Member States, also allow consultation to take place. We strongly supported the recent visit by Javier Solana to Georgia, including Abkhazia, which could lead to a greater EU role in conflict prevention in the region, and which gives the EU a better foundation for engaging Russia on the conflicts.

315. Russia's steadfast backing for Serbia, including in the UN Security Council, contributed to Serbia's intransigence over the final status of Kosovo. This was one of the factors leading to the failure of the Serbs and Kosovars to reach an agreement through the UN-brokered process in 2007. The EU should recognise that Russia has expressed concerns about separatist movements in Russia and in countries near Russia. The EU should seek to persuade Russia to moderate its position and to encourage the Serbian authorities to show greater flexibility on the status of Kosovo.

316. The Russians may regard the lack of unity between EU Member States on the question of recognition of Kosovo as some justification for their position, despite the decision to proceed with the EU mission to Kosovo. The sooner this disunity is ended or is reduced, therefore, the better.

317. The Russians can be co-operative where there is an identifiable common objective: to some extent this is true in Iran where the negotiations are perhaps the most striking example of the CFSP machinery at work with the Russians. There has also been good co-operation with the Russians over anti-terrorism, and this needs to continue in the future. In general, however, the Russians have not been much impressed by the CFSP. Over Kosovo, the best that can be hoped for is an agreement to disagree which does not spill over into other areas.

The Government broadly agrees. Russia was closely involved in the development of policy on Kosovo through the Contact Group (France, Germany, Italy, Russia, US, UK). A Russian diplomat was a member, with the EU and US, of the Troika in the autumn of 2007 which attempted to identify a compromise acceptable to both Pristina and Belgrade. Although the Troika acknowledged that the *status quo* in Kosovo was unsustainable, Russia was not prepared to accept that the Comprehensive Settlement proposal of the UN Secretary General's Special Envoy (Martti Ahtisaari) represented the best way forward, which protected the rights of all Kosovo's minorities. Whilst acknowledging that there are differences over Kosovan independence, and that these are not likely to be bridged soon, we should look ahead and work with the Russians on our common interests for the region: preserving peace and fostering regional stability and economic growth.

On Iran, the Government believes that Russia shares the wish of the E3 not to see a nuclear-armed Iran. We continue to work with Russia through the E3 + 3 process, including on the recent offer to Iran.

Chapter 7: Managing the EU's strategy towards Russia

318. Progress on democracy and human rights in Russia will be slow. Meanwhile the European Union has no choice but to deal with Russia as it currently is, imperfect though it may be in many ways which the EU considers of fundamental importance. Criticism may well be necessary from time to time if the Russian

government falls short of the standards which both sides have accepted, for example in the Council of Europe and the OSCE. However, the European Union should consider carefully before issuing strongly critical public statements about Russian actions of which it disapproves, as it would do with any other country.

> The Government, and the EU, would like to see democracy in Russia deliver political pluralism and all its associated freedoms. An open and democratic Russia will provide better opportunities for the Russian people and consolidate Russia as a stable and reliable international partner for the global community. However, Russia's membership of a wide range of international organisations comes with obligations, and Russia's status internationally means that it must abide by international commitments and operate from the same international rule-book. Where appropriate, the EU should be prepared to be critical, particularly if Russia has failed to live up to these voluntarily assumed commitments. The EU should also continue to engage with civil society in Russia.

> We welcome President Medvedev's focus on the need to strengthen the rule of law in Russia. This would significantly enhance Russia's ability to meet the standards it set itself when it joined these international organisations.

319. The EU does have considerable leverage in its dealings with Russia deriving from its position as Russia's largest trading partner with a market of almost 500 million people. Other links, particularly in the economic and investment field, but also through human and social ties, add weight to the EU's hand. The mutual dependence in energy (as supplier and customer) is an additional important factor, as we have noted.

320. The EU will always be more effective when it can agree a united approach in its dealings with Russia. This particularly applies when it is negotiating on a basis laid down in Community law (e.g. the common trade provisions of TEC Article 133). When the EU's leaders stand together, as Chancellor Merkel and President Barroso did at the Summit with Russia in Samara in May 2007, the EU can make maximum impact. Too often, however, Member States act in a way which allows the Russians to drive wedges between them. In future the Member States need to give a much higher priority to standing together than they have done in the past. Once they have drawn up a new strategy for relations with Russia, they should be consistent in applying it.

> The Government agrees. In March, the Foreign Secretary and Bernard Kouchner, the Foreign Minister of France, set down in a private joint letter to EU partners some thoughts on how the EU should engage with Russia. The letter covered the rule of law and human rights, energy policy and security cooperation and set out the importance of engaging where possible, but taking a firm, united and principled stance where necessary. Partners' views converged around this thinking. The Government believes the principles set out in that letter form a basis for a firm, united and principled engagement with Russia by the EU.

321. Without allowing any one state or group of states to dominate EU attitudes towards Russia, the European Union and its members have a duty to support vigorously and by all diplomatic means any Member State which Russia chooses to pressurise in an unreasonable and overbearing way.

322. We consider that the importance of building a stable and strong long-term relationship between the EU and Russia based on mutual trust and understanding is greater than ever. This, combined with a hard-headed and unsentimental approach by the European Union, can help to ensure that the relationship is productive rather than the opposite. The Russians should thus be able to see that it is in their own interests to work productively with the EU.

> The Government agrees. It is particularly important to resist any attempts to sow division among EU partners on matters of common concern or to single out individual Member States for unusual treatment in areas of community competence, such as trade.

323. The EU's attitudes and policies towards Russia have an unco-ordinated character. In order to better design and coordinate its overall strategy towards Russia, the European Union should rethink its current policy towards Russia as a matter of priority. An updated approach should be drafted as a collaborative project between the Commission and the Council Secretariat and approved by the Council of Ministers. It should be discussed by the European Council at one of its forthcoming meetings.

> Following a proposal in the Miliband-Kouchner letter, the French Presidency will hold a seminar involving independent experts on EU-Russia relations and officials from Member States in July. This will then form the basis of a report on the EU's approach to Russia for Ministers, drafted by the institutions and agreed by Member States. The EU should also continue to discuss and test its strategic approach at regular intervals.

325. The sensible approach for the EU is to situate its relationship with Russia in a long-term perspective. The European Union is not facing a new Cold War but EU-Russia relations are perhaps in a negative phase in a long process of transition which could last for some time. Despite the difficulties, Russia cannot avoid dealing with the European Union on trade, on competition, on customs and frontier controls, and on a variety of other

issues involving the European Union's common standards and regulatory procedures. Even when either side loses sight of it, they are bound by an inescapable common interest.

326. In an increasingly interconnected world, both Russia and the EU have an interest in co-operating on long-term global issues, such as the environment and climate change, as well as on key foreign policy issues, such as Iran, which have a direct impact on their interests.

The Government agrees. The EU and Russia are bound by an inescapable common interest. Cooperation benefits both Russia and the EU, and can make a significant contribution to tackling the most pressing global challenges, both now and in the long term.

18TH REPORT: THE 2009 EC BUDGET

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

I am writing in response to Baroness Cohen's letter dated 15 July 2008 on the Commission's 2009 Preliminary Draft Budget for the European Communities (PDB 09) which asked two additional questions on the impact of inflation on the EC Budget. I would also like to take this opportunity to update you on the outcome of the Council's first reading and 2009 Draft Budget agreed at ECOFIN Budget on 17 July 2008.

I was grateful for the opportunity to give evidence to members of your committee in June and for their valuable input both during the session and in its report. I am pleased your Committee is able to support the Government's position and I take note of its recommendations.

Inflation and the Budget

In your letter you asked two supplementary questions on inflation and how it affects the EC Budget. Specifically you queried whether:

— the Financial Framework (FF) ceilings for commitments might bind more tightly than intended should inflation run higher than 2%; and

— whether there is more flexibility with respect to administrative expenditure and whether this is bound by Financial Framework ceilings.

Financial Framework ceilings on commitment appropriations should not bind EC Budget expenditure more tightly than intended should inflation run higher than 2%, the rate assumed when setting the ceilings of the Financial Framework. This is because the level of commitment appropriations programmed into the Financial Perspective under each Budget Heading is lower than the Financial Perspective ceilings. This allows for margins of unallocated commitments under each heading. These can be used to cater for unforeseen needs of existing programmes, including inflationary pressures above 2%.

The Commission is able to reflect inflationary pressures in its estimates for the coming year's expenditure in its Preliminary Draft Budget. During the course of annual Budget negotiations, the Commission is also able to update its estimates through Amending Letters. Should additional needs arise in year—including inflationary pressures—once the EC Budget is adopted, the Commission is able to present the Budget Authority with an Amending Budget.

It should be noted that while the Government believes it is important to maintain sufficient margins to ensure that existing programmes are not jeopardised by unforeseen needs, it takes the view that unforeseen calls on resources should as far as possible be met through reprioritisation of allocated expenditure. The UK always works with like-minded Member States to ensure any additional calls on resources are fully justified and all other alternatives to increases in expenditure are explored. The Government considers Financial Framework ceilings, which simply represent an upper limit on EC Budget Expenditure, as critical to maintaining budget discipline.

Council's First Reading

ECOFIN Budget Council agreed the 2009 Draft Budget (DB09) unanimously on 17 July 2008. As outlined in the Explanatory Memorandum of 2 June 2008 on the Commission's Preliminary Draft Budget, the Government's key priorities for negotiations over the DB09 have been to ensure: that payment levels better reflect implementation capacity to avoid budgetary surpluses; that the margins under the FF ceilings for commitments are adequate; and enhanced efficiency from administration expenditure and expenditure on agencies.

The Government considers that the DB09 and the statements agreed alongside Council's first reading go a considerable way to achieving the Government's objectives, in particular through:

- an overall reduction of €1,771 million (£1,398 million),[6] or 1.5%, in payment levels compared to the PDB, to €114,965 million (£90,707 million), bringing the budget more into line with implementation capacity and anticipated requirements;
- an overall reduction of €470 million (£370 million), or 0.3%, in commitments compared to the PDB, to €133,926 million (£105,668 million), substantially increasing the margins under the FF ceilings;
- targeted reductions in administration expenditure based on implementation rates, staff number requirements, and vacancy rates; and
- targeted reductions to the budgets for regulatory agencies to ensure that these more accurately reflect requirements[7] and a statement by the Council calling on the Commission to focus on the impact, effectiveness, and efficiency in its upcoming evaluation of agencies.

The summary of the overall commitment and payment levels in the DB09 by heading is contained in Annex. A heading-by-heading breakdown of the DB09 follows.

Under *sub-Heading 1a (Competitiveness for growth and employment)*, the DB09 reduces commitments and payment appropriations by €78 million (£62 million) and €471 million (£372 million) respectively, compared to the PDB. The margin under the FF ceiling for commitments was increased to €160 million (£127 million). The reductions largely reflect targeted reductions in the following areas: a €47 million (£37 million) reduction in commitments and payments for administrative management, management, and staff costs; a €47 million (£37 million) reduction in payments for "People"; and a €39 million (£31 million) reduction in relation to "Financial Support for projects of common interest in the trans-European energy network". A reduction of €9 million (£7 million) in commitment and payment levels for decentralised agencies was also agreed, bringing the PDB more into line with the actual requirements.[8]

Under *sub-heading 1b (Cohesion for growth and employment)*, the DB09 reduces payment appropriations by €250 million (£197 million) compared to the PDB. There were no changes to commitment appropriations and the margin under the FF ceiling for commitments remained €14 million (£11 million). The reductions in payments were intended to ensure that allocations for Regional Competitiveness and Employment programmes more accurately represented implementation capacity, with specific reductions of €170 million (£134 million) and €130 million (£103 million) respective reductions to the European Social Fund (ESF) and European Regional Development Fund (ERDF) for the purposes of regional competitiveness and employment. These reductions were partially offset by a €50 million (£40 million) increase in payments for the convergence objective of the ERDF.

Under *Heading 2 (Preservation and Management of Natural Resources)* the DB09 reduces commitment and payment appropriations by €382 million (£301 million) and €497 million (£392 million) respectively, compared to the PDB. The margin under the financial framework ceiling for commitments was increased to €2,515 million (£1,985 million). These reductions reflect:

- a €230 million (£182 million) reduction in accounting clearance of previous years' accounts with regard to shared management expenditure under the European Agriculture Guidance and Guarantee Fund (EAGGF), and European Agriculture Guarantee Fund (EAGF);[9]
- an across-the-board reduction of €150 million (£118 million) in commitments and payments in relation to Market Interventions, in light of rising food prices;
- a €115 million (£91 million) reduction in payments to Rural Development programmes, in light of implementation rates; and
- a €2 million (£2 million) reduction to proposed increases in commitments and payments for decentralised agencies to better reflect agency estimated agency requirements, based on the stage in their development.[10]

[6] This and subsequent sterling figures calculated at 31 July exchange rate: €1 = £0.7890.

[7] Agency requirements were estimated based on stage of development: For "agencies flagged in the Council guidelines" the PDB and all new posts were accepted; for "agencies in start-up phase" the maximum increase of Community contributions was capped at 12% and 75% of new post requests were accepted; for "agencies in extension" the maximum increase of Community contributions were capped at 5% and 50% of new post requests were accepted; and for "agencies at cruising speed" the maximum increase of Community contributions were capped at 2% and no new post requests were accepted.

[8] See footnote 7.

[9] This represents EC budget resources accruing from allocations returned from Member States as a result of accounting clearance decisions by the Commission on the extent to which Member States have complied with the payment and control conditions.

[10] See footnote 7.

Under *sub-heading 3a (Freedom, Security, and Justice)*, the DB09 reduces commitment and payment appropriations by €6 million (£5 million) and €24 million (£19 million) respectively, compared to the PDB. The margin under the financial framework ceiling for commitments was increased to €39 million (£31 million). The reductions were met by targeted reductions to bring allocations more into line with implementation rates, in particular: reductions of €2 million (£1 million) and €5 million (£4 million) in respective commitments and payments for the Visa Information System (VIS); a €4 million (£3 million) reduction in payments in relation to Criminal Justice; and a €3 million (£2 million) reduction in payments for the prevention, preparedness and consequence management of terrorism.

Under sub-heading 3b (Citizenship), the DB09 reduces commitment and payment appropriations by €14 million (£11 million) and €34 million (£27 million) respectively, compared to the PDB. The margin under the FF ceiling for commitments was increased to €36 million (£29 million). The reductions were primarily met from a €8 million (£6 million) cut to decentralised agency budgets according to need[11] and targeted reductions to bring allocations more into line with implementation rates, with the largest reductions being found from: €1 million (£1 million) and €5 million (£4 million) reductions in respective Civil Protection Financial Instrument commitments and payments; €3 million (£2 million) reductions in payments for Europe for Citizens programmes; and €2 million (£1 million) and €3 million (£2 million) reductions in Multimedia actions commitments and payments respectively.

Under *Heading 4 (The European Union as a Global Partner)*, DB09 reduces payment appropriations by €393 (£310 million). The largest decreases in payments were: a €244 million (£193 million) reduction for the emergency aid reserve; a €27 million (£22 million) reduction in Human resources development aspects of the Instrument for Pre-Accession Assistance (IPA); and a €16 million (£13 million) reduction in payments for the Financial Support for encouraging the economic development of the Turkish Cypriot Community. Commitments were increased by €114 million (£90 million) compared to the PDB, but these remained within the FF, with a margin of €130 million (£102 million) under the FF ceilings. The increase in commitments relate to the provision of additional commitments in the reserve to provide an additional €100 million (£79 million) for assistance and the peace process in Palestine, and €60 million (£47 million) in for Transition and institution-building assistance to potential candidate countries.

Under *Heading 5 (Administration)*, the DB09 reduces both commitment and payment appropriations by €102 million (£81 million), compared to the PDB. The margin under the FF ceiling for commitments was increased to €232 million (£183 million). The reduction in Heading 5 was enabled by targeted reductions to the requests made by each institution, achieved primarily through: cutting areas of expenditure in which the institutions show low implementation rates; accepting only necessary new staff requests; clipping excessive increases in the PDB; and increasing the standard flat rate abatement on salaries for institutions, based on vacancy rates.

There were no changes to the PDB proposal for Heading 6 (Compensations).

During the conciliation meeting that followed the Council's first reading, attended by the Commission, the Council and the European Parliament agreed six Joint Statements. These concerned:

- the smooth implementation of the operational programmes and projects presented by Member States in relation to Structural and Cohesion Funds and rural development programmes for the 2007–13 period;
- the importance of full recruitment in relation to the 2004 and 2007 enlargement posts;
- the importance of the separation of future EU Solidarity Fund mobilisations from other budgetary amendments;
- the importance of ensuring a rapid procedure for adoption of decisions relating to the European Globalisation Adjustment Fund and of the use of Emergency Aid Reserve;
- procedures for dealing with any difficulties relating to the approval of transfers and amending budgets deriving from the end of the European Parliament's current term and the recess for Parliamentary elections; and
- an invitation to all institutions to present an updated report on the financial programming of administration expenditure under Heading 5 (Administration).

[11] See footnote 7.

The Council also agreed a unilateral declaration relating to the Commission's evaluation of regulatory agencies, calling on the Commission to focus on the impact, effectiveness, and efficiency of the agencies' work in its upcoming evaluation.

Although the Government would have welcomed additional reductions in relation to interventions in agricultural markets in light of reduced need for this expenditure in the context of recent increases in food prices, it considers that the Council's first reading package represents a balanced compromise that goes a considerable way to achieving the UK interests. The Government will continue to pursue its key objectives in the subsequent stages of the 2009 budget process.

16 August 2009

Annex

SUMMARY OF COUNCIL'S FIRST READING POSITION

€ million	*FF Ceiling*	*PDB 2009*		*Council's Draft Budget*		*Difference*	
Heading		*CA(1)*	*PA (2)*	*CA*	*PA*	*CA*	*PA*
1a Competitiveness for growth and Employment	11,272	11,690	10,285	11,612	9,814	− 78	− 471
—*Margin*[12]		*82*		*160*			
1b Cohesion for Growth and Employment	48,428	48,414	34,914	48,414	34,664	0	− 250
—*Margin*		*14*		*14*			
2 Preservation and Management of Natural Resources	59,639	57,526	54,835	57,144	54,338	− 382	− 497
—*Margin*		*2,133*		*2,515*			
3a Freedom, Security and Justice	872	839	597	833	573	− 6	− 24
—*Margin*		*33*		*39*			
3b Citizenship	651	629	669	615	635	− 14	− 34
—*Margin*		*22*		*36*			
4 European Union as a Global Partner	7,440	7,440	7,579	7,554	7,186	+ 114	− 393
—*Margin*[13]		*244*		*130*			
5 Administration	7,699	7,648	7,648	7,546	7,546	− 102	− 102
—*Margin*[14]		*129*		*232*			
6 Compensation	210	209	209	209	209	0	0
—*Margin*		*1*		*1*			
TOTAL (3)		**134,395**	**116,736**	**133,926**	**114,965**	**− 470**	**− 1,771**

Notes:
(1) CA = Commitment Appropriations
(2) PA = Payment Appropriations
(3) Due to rounding, the sum of the lines may not equal the total

£ million	*FF Ceiling*	*PDB 2009*		*Council's Draft Budget*		*Difference*	
Heading		*CA (1)*	*PA (2)*	*CA*	*PA*	*CA*	*PA*
1a Competitiveness for growth and Employment	8,894	9,223	8,115	9,162	7,743	− 62	− 372
—*Margin*[15]		*65*		*127*			
1b Cohesion for Growth and Employment	38,210	38,199	27,547	38,199	27,350	0	− 197
—*Margin*		*11*		*11*			
2 Preservation and Management of Natural Resources	47,055	45,388	43,265	45,087	42,873	− 301	− 392
—*Margin*		*1,683*		*1,985*			
3a Freedom, Security and Justice	688	662	471	657	452	− 5	− 19
—*Margin*		*26*		*31*			
3b Citizenship	514	496	528	485	501	− 11	− 27
—*Margin*		*18*		*29*			
4 European Union as a Global Partner	5,870	5,870	5,980	5,960	5,670	90	− 310
—*Margin*[16]		*192*		*102*			
5 Administration	6,075	6,034	6,034	5,954	5,954	− 81	− 81
—*Margin*[17]		*102*		*183*			

[12] The margin for heading 1 (sub-heading 1a) does not take into account the appropriations related to the European Globalisation Adjustment Fund (EUR 500 million).
[13] The present margin for heading 4 does not take into account the appropriations related to Emergency Aid Reserve (EUR 244 million), as foreseen in the 11A of May 2006.
[14] For calculating the margin under the ceiling for heading 5, account is taken of the footnote (1) of the financial framework 2007–13 for an amount of EUR 78 million for the staff contributions to the pension scheme.
[15] The margin for heading 1 (sub-heading 1a) does not take into account the appropriations related to the European Globalisation Adjustment Fund (EUR 500 million).
[16] The present margin for heading 4 does not take into account the appropriations related to Emergency Aid Reserve (EUR 244 million), as foreseen in the 11A of May 2006.
[17] For calculating the margin under the ceiling for heading 5, account is taken of the footnote (1) of the financial framework 2007–13 for an amount of EUR 78 million for the staff contributions to the pension scheme.

£ million	FF Ceiling	PDB 2009		Council's Draft Budget		Difference	
Heading		CA (1)	PA (2)	CA	PA	CA	PA
6 Compensation	166	165	165	165	165	0	0
—*Margin*		*1*		*1*			
TOTAL(3)		**106,038**	**92,105**	**105,668**	**90,707**	**−370**	**−1,398**

Notes:
(1) CA = Commitment Appropriations
(2) PA = Payment Appropriations
(3) Due to rounding, the sum of the lines may not equal the total

19TH REPORT: THE FUTURE OF EU REGIONAL POLICY

From Department for Business, Enterprise and Regulatory Reform

Government Response

The Government welcomes the Committee's Report and its backing for our position in calling for the reform of the EU Regional Policy.

Since giving evidence to the Committee the Government further developed its position on the Funds. In June 2008 the Government published *"Global Europe: Vision for a 21st Century Budget"* as a response to the Commission consultation on the EU Budget Review. The UK Government position in that document with regard to the Funds was that they should be focussed on the poorer Member States and that they should be phased out in the richer Member States.

91. We start this report from the stance of agreement with the European Union's Treaty-based aims to increase growth and to reduce disparities between regions, and we support the use of economic and knowledge transfer from rich to poor regions as a means to undertake this. EU economic growth is not a zero-sum game: the stronger and more competitive the EU economy as a whole, the better for all Member States. But the benefits and costs of the single market are not distributed evenly and we support intervention in the market to counter both unemployment and under-utilisation of resources in poorer regions, and costs arising from issues such as congestion and overpopulation in richer regions. (paragraph 6)

The Government agrees with the Treaty aim to address economic and social disparities across the Union and believes that this can best be achieved by focussing on the drivers of growth as set out in the Lisbon Integrated Guidelines. This need to concentrate on a Jobs and Growth Agenda was emphasised in the Government written and oral evidence to this inquiry and also in its response to the European Commission Consultation on the future of Cohesion Policy.

The Government's position as stated in the response to the Commission consultation on the EU Budget Review was that the Structural and Cohesion Funds should be targeted towards the less prosperous Member States to help them invest in measures to increase their productivity and adjust to the economic challenges of globalisation, from furthering research and development capacity, to investing in skills development, to building basic institutions and infrastructure which are essential to their future growth. These investments can provide EU added value by contributing to the economic prosperity of the EU as a whole. The primary aim of Cohesion Policy should remain addressing disparities in economic development.

The response went on to say that:

1. Where Member States have the institutional structures and financial strength to develop and pursue their own regional policies, they should be enabled to do so within a common EU strategic framework.

2. Consequently, Structural Funds in the richer Member States should be phased out.

92. We would welcome increased use of loans and invite the Government, in their response, to outline what steps they are taking to encourage their use. (paragraph 37)

In the context of the debate on the future of Cohesion Policy and the EU Budget the Government is actively promoting the use of loans as an alternative to grants. The EU budget is only one element of EU-level finance. Other important elements are the loans and procurement expertise provided by the European Investment Bank. In some instances, loans or blended grant/loan instruments may achieve more efficient outcomes than grants. The European Commission and European Investment Bank should work together to ensure coherence, avoid duplication and to consider where increased use of innovative financing would be appropriate.

In the context of EU Cohesion Policy in the UK each region is best placed to decide how to prioritise its own allocation. That being said, and taking account of other business support policies, several of the UK ERDF programmes for the 2007-13 period will set aside some of their allocation to loan funds allowing for the recycling of grants.

In this context, consideration is being given to whether it would be appropriate to utilise the JEREMIE and JESSICA initiatives.

93. We agree with those witnesses who argue that the Funds have helped to reduce disparities in Europe. We welcome work to measure the impact of European regional policy on levels of private inward investment. (paragraph 47)

The Government also welcomes the Commission research. Of course European regional policy is not the only factor in attracting private inward investment. The UK is Europe's leading investment destination for companies relocating and developing their global business. Amongst the factors contributing to this are that the UK is the easiest place to set up and run a business in Europe and the UK also has one of the most flexible labour markets in Europe.

94. We believe that allowing the regions to draw up regional spending plans, emphasising local infrastructure or education priorities, reflects the fact that one policy does not fit all. (paragraph 51)

Europe is made up of Member States with very different structures and traditions. There is no 'one-size-fits-all' approach—to be effective policies need to be tailored to National and regional circumstances.

The Integrated Guidelines for Jobs and Growth and National Reform Programmes (NRP) should continue to drive Cohesion Policy. The strategic approach to Cohesion Policy and the link to the Integrated Guidelines should ensure an integrated approach.

The link to NRPs should provide the flexibility for Cohesion Policy to add value to the policies relevant to each Member State and to allow Regions to focus on their specific priorities, within the overall framework to promote growth.

95. While the reduction in discrepancies in citizens' prosperity should be the policy's primary focus, we welcome integration with the Lisbon Strategy. Given the importance of innovation and human capital in the knowledge economy, if lagging regions and Member States are to accelerate their growth, improvements in these areas will be important. We are encouraged to learn that new Member States are also taking account of the strategy in their regional plans. However, the major impetus for the implementation of the Lisbon Agenda must come at the Member State level—the contribution to the Agenda under the Competitiveness Objective is marginal when compared with national public expenditure but can attract project finance from other sources. The problem of increasing the competitiveness of the European Union is of course greater than can be addressed solely by regional policy. (paragraph 52)

The Government agrees that the competitiveness of the European Union cannot be dealt with solely, or even largely, through EU regional policy. Cohesion Policy at European level is not the only or main means of addressing these Agendas. They are supported in large measure by funding and actions at National, regional, local and neighbourhood levels. Even at the European level, as stated in our recent publication "Global Europe: Meeting Economic and Security Challenges", other contributing factors in achieving high levels of growth and employment are a new, modern and more flexible approach to Single Market policies that focuses less on legislation and more on promoting competition, reducing the burden of regulation, as well as encouraging innovation. These actions will benefit the EU as a whole and by creating the right environment for the Lisbon Growth and Jobs Agenda play a valuable role in reducing disparities between Regions.

There is scope for further alignment between Cohesion Policy and the Lisbon Strategy. Looking at the strategic architecture as a whole, the Integrated Guidelines for Jobs and Growth and National Reform Programmes (NRPs) set out the key challenges that the EU, Member States and Regions face. We doubt whether there is a need to identify a separate set of challenges for Cohesion Policy. Instead, the task is to identify how Cohesion Policy can support Member States' policies (at National and regional level) to address the Integrated Guidelines and recommendations agreed by the European Council. The Integrated Guidelines and NRPs should therefore drive Cohesion Policy and Structural Fund programmes. In doing so we need to ensure that unnecessary duplication between the NRPs and National Strategic Reference Frameworks is avoided.

96. On broader issues such as climate change, we agree with the Government that the Structural and Cohesion Funds should not be used other than for reducing regional disparities. (paragraph 53)

There is a need for clarity of objectives, and a continued economic focus for the Structural and Cohesion Funds. However, there should also be consistency and complementarity between policy areas so that EU spending programmes do not hinder the achievement of EU policy objectives, such as climate change and environment.

97. We support assistance with, and expenditure on, raising administrative capacity which will lead to long-term benefits. (paragraph 58)

The Government agrees that this is an important and useful intervention, particularly for the Cohesion countries.

98. We agree that co-financing should continue. (paragraph 59)

The Government agrees.

99. We consider that no pressure should be placed on the Own Resources or the budget ceiling. (paragraph 62)

"Global Europe: Vision for a 21st Century Budget" clearly states the Government view that there should be continued budget discipline.

100. We hope that the 2008–09 Budget Review will result in a reduction of spending on agricultural price support and increased support for the EAFRD, and at the same time increased coordination between European regional policy and rural development policy. (paragraph 64)

In the UK response to the EU Budget Review the Government sets out its view that spending on Pillar 1 of the Common Agricultural Policy (CAP) should be phased out. And against the backdrop of climate change, payments under a reshaped Pillar 2 of the CAP should be focused on delivering environmental benefits to society that would not otherwise be secured from the market.

The strategic approach established under the current period of the Funds actively encourages the coordination of actions between various EU Funds and local, regional and national funding streams and strategies.

101. The cost of administering Structural Funds in the richer countries is not by itself a compelling argument in favour of ending Structural Fund programmes in richer Member States. (paragraph 69)

"Global Europe: Vision for a 21st Century Budget" identifies the recycling of money through Brussels as inefficient and also restates the Government's Budgetary principles. According to these principles, the highest EU added value comes from supporting the poorer Member States. The EU added value of Structural Funds spending in richer Member States can still be maintained through a separation of means from aims.

102. The political reasons advanced are not by themselves compelling enough to agree with the concept of distributing EU funds within Member States which are net contributors to the EU budget. In principle, we agree with the Government: funding should be concentrated in the poorest regions and should reflect the principle of subsidiarity. The sums involved in the Competitiveness Objective are too small to have significant behavioural and financial leverage effects. (paragraph 75)

103. We recognise that some Member States, including the United Kingdom, would as a consequence lose much of their income from the Structural and Cohesion Funds. Such a significant change would arouse opposition even in the wealthier Member States but it is a change that should be explored in the context of a satisfactory outcome (involving substantial CAP Reform) to the imminent strategic review of the EU Budget and of EU policies on Economic and Social Cohesion. (paragraph 76)

In the UK Government's view, the European Union (EU) budget needs fundamental reform to address the key challenges that matter to citizens in the 21st century. Resources should be re-oriented towards EU action in three priority areas; spending on agricultural support should be reduced.

(i) building a prosperous Europe within a strong global economy;

(ii) addressing the challenges of climate change; and

(iii) ensuring security, stability and poverty reduction.

Spending on Pillar 1 of the Common Agricultural Policy (CAP) should be phased out. And against the backdrop of climate change, payments under a reshaped Pillar 2 of the CAP should be focused on delivering environmental benefits to society that would not otherwise be secured from the market.

Structural and Cohesion Funds will continue to be an important mechanism for targeted redistribution towards less prosperous Member States. The Government's position as stated in the response to the Commission consultation on the EU Budget Review was that the Structural Funds in the richer Member States should be phased out.

Consistent with the budgetary principles, EU policies in the fields of transport, natural resource protection, civil justice and citizenship should continue to receive targeted EU budget support.

Improvements to the design and administration of spending programmes should be considered to ensure that outcomes are achieved effectively and efficiently. The highest standards of financial control and independent audit are necessary, alongside continuing budget discipline.

104. The eligibility criterion for the convergence objective is suitable and the overall split in funding between the objectives is, on balance, appropriate. We continue to expect that richer Member States should remain responsible for the majority of their own regional funding. In addition, as we have already outlined, an expanded EAFRD could work alongside the Structural and Cohesion funds to tackle deprivation in rural areas in all Member States. (paragraph 77)

The Government position as set out in *"Global Europe: Vision for a 21st Century Budget"* was that Structural and Cohesion Funds will continue to be an important mechanism for targeted redistribution towards less prosperous Member States and that Structural Funds in the richer Member States should be phased out.

105. We support continuation of the principle of phasing in and phasing out payments for regions around the boundary rather than a simple line between full eligibility and none. (paragraph 78)

As already stated above the Government view is that Structural and Cohesion Funds will continue to be an important mechanism for targeted redistribution towards less prosperous Member States and that Structural Funds in the richer Member States should be phased out.

106. Some redesignation is needed in the definition of regions to ensure, as far as possible, that regions at each level of the NUTS hierarchy have broadly similar characteristics. When the quality of the statistics allows, we would support an improvement in the methodology used for calculating a region's prosperity in order better to reflect the impact of the funds. We do not support the creation of additional levels of bureaucracy, but we recognise the need for enhanced cooperation between urban areas and their rural peripheries to promote sustainable and balanced economic growth. (paragraph 81)

The NUTS classification is the subject of an EU regulation. Some variation between NUTS areas, both within and between Member States, is inevitable given the need for them to reflect administrative structures or reflect economic, social, historical, cultural, geographic or environmental circumstances. The Regulations set specific criteria for how NUTS areas can be changed which raise practical restraints to the redesignation of the NUTS hierarchy. The next formal review of the NUTS structure is scheduled for 2010.

As stated in our written evidence the main aim of Cohesion Policy is to focus on disparities in development. Therefore, it is right that the focus of eligibility be based on economic indicators. However, a distinction should be made between statistics which are used to determine eligibility for support and those used to measure the effectiveness of interventions. As we have argued above, the Structural and Cohesion Funds should be targeted towards the less prosperous Member States.

The National Strategic Reference Framework recognises that both urban and rural areas contribute to regional prosperity, in particular the vibrancy of city regions, and harnessing the benefits of both is a clear Government objective.

Furthermore, as already stated above, the strategic approach for the current funding period actively encourages the coordination of actions between various EU Funds and local, regional and national funding streams and strategies.

107. An underlying theme in the evidence we received was the tension between reducing administrative cost, and maintaining high quality financial management. The evidence we received did not demonstrate that the cost of administration, relative to the total size of the budget, is significant in the United Kingdom. Extrapolation to countries receiving larger contributions from the funds might suggest further efficiencies and we dismiss witnesses' claims that the regional policies are beset by a costly bureaucracy. (paragraph 89)

There is clearly an additional cost in administering EU Funds. The Government has tried to ensure these are kept to a minimum whilst continuing to work within the regulations. For example, the rationale for moving the administration of the ERDF in England to the RDAs was to ensure better strategic fit and co-ordination of investments, the opportunity to streamline processes, and opportunities to secure significant efficiencies.

The Devolved Administrations are responsible for delivery of the Funds within their territories. For the current round of Funding all have taken measures to significantly reduce the administrative burden involved. For example:

— In Northern Ireland, the ERDF and ESF programmes have concentrated on a smaller number of focused activities than in previous funding rounds. In doing so the number of implementation bodies has been significantly reduced, allowing for a more efficient delivery structure.

— In Scotland, the number of delivery bodies has been reduced from five Programme Management Executives for the 2000–06 programmes to two Intermediate Administration Bodies for 2007–13.

— In Wales WEFO staff manage both the Convergence and Regional Competitiveness and Employment programmes and therefore associated efficiencies are shared across the programmes.

108. We welcome the trend towards the Commission taking a strategic view of policy and the regions drawing up the local spending plans. There does appear to be significant bureaucracy for applicants to the funds; while some clarification is needed, we are content that it is not excessive. We note that the Commission is aware of the balance it needs to strike between control and ease of distribution and that it is actively seeking ways to address the bureaucracy. We support their invitation for suggestions of how the administrative burden can be alleviated, at each of the EU, national and regional level. (paragraph 90)

The managing authorities and their intermediate bodies are addressing the bureaucratic burden for applicants by improving processes and providing practical support to ensure it is kept to a minimum.

The simplification of the financial management, control and audit systems for 2007-13 is welcome but they remain complex and there are still opportunities for further improvements. Current systems should be subject to further review with the aim of identifying further simplification that maintains a high standard of financial control while minimising the administrative burden. The Commission should ensure that there is a uniform approach to the conduct of financial/audit controls and consider greater use of quality assuring Member States' audit arrangements.

Actions that would improve the delivery of the EU Budget include:

— *Greater focus on outcomes*. All EU spending programmes need measurable—and where possible, single—objectives. Evaluations should focus on measuring outputs and outcomes from spending, with efforts made to identify the added value that accrued more widely to the EU not just to the funding recipient.

— *Changes to audit procedures* ensuring that external audit of EU budget spending focuses more on identifying the source of systemic weaknesses rather than errors in sample transactions; and that national audit institutions have an enhanced role in ensuring that Member States take adequate responsibility for funds that are managed jointly with the European Commission.

The Government will continue to work with other MS and the EU institutions to explore ways in which the administrative burden of the Funds can be minimised whilst maintaining high quality financial management.

14 October 2008

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

Thank you for your response to the EU Select Committee's Report on The Future of EU Regional Policy, which the Committee has now considered. The Committee would be grateful if you could clarify the Government's position in regard to paragraph 105 of the Report, which recommends that payments for regions close to the boundary for eligibility should be phased in and out, rather than there being a single line between full eligibility and none. Would the Government favour a staggered system of payments for those regions near the eligibility boundary, or a single cut off point, with regions above this boundary receiving no payments.

30 October 2008

Letter from Pat McFadden MP to the Chairman

Thank you for your letter dated 30 October, regarding eligibility cut-off points for EU funding. The Government has yet to set out in detail how we believe Funds should be distributed in the next financial perspective 2014–20. Decisions around funding Cohesion Policy cannot be taken in isolation. They need to be considered in the context of the EU Budget Review which is still in its early stages. As such, I am not yet in a position to provide a direct answer to your question; however, I am able to set out the elements of our current policy position that relate to this issue.

One of the rationales for a staggered system of payments for regions near the eligibility boundary is that they would face a significant drop in their funding when they were no longer eligible. When considering this point it should be noted that the objectives of Cohesion Policy are supported in large measure by actions and funding at national, regional, local and neighbourhood levels. A point made by Rt Hon Stephen Timms MP in our written evidence to the Committee Inquiry.

As you are aware the Government responded to both the European Commission's consultation on the future of Cohesion Policy in January 2008 and the EU Budget Review in June 2008. We stated then that we believed structural funds in the richer Member States should be phased out. We also acknowledged that the consequences of significant changes to funding patterns would need to be considered. This would include what the shape of appropriate transitional arrangements would be. However, those arrangements would have to be considered within the context of the available EU Budget resources and priorities that had been agreed.

I will, of course, continue to keep you and Parliament informed as the debate on the EU Budget Review and the future of Cohesion Policy develops.

20 November 2008

21ST REPORT: THE PROGRESS OF THE COMMON FISHERIES POLICY

From Department for Environment, Food and Rural Affairs

Government Response

Introduction

The UK Government welcomes the Report of the House of Lords European Union Committee on the progress of the Common Fisheries Policy (CFP) and congratulates the Committee on the thorough nature of the Report and its associated Inquiry. The report is a useful contribution to the development of current UK policy on the reform of the CFP 2012. We agree fully that we should learn lessons from the past and that, in addition, we should acknowledge any successes and build on them.

We should not be afraid to consider fundamental changes to the structure of the CFP if these are warranted. Firstly, we want to see a stronger focus on delivering outcomes, rather than prescriptive rules, that secure both conservation of the fish stocks and long-term economic viability for fishermen and associated industries. Secondly, we want to work to achieve a more stable regulatory framework with an increased emphasis on long-term management planning. And thirdly we want to ensure better stakeholder involvement and the development of a more regional management model. More specifically the UK Government supports a move away from a "one-size-fits-all" approach and seeks to identify the most appropriate, effective measures for particular fisheries and fleets.

It is however important that we establish suitable overarching objectives to ensure a consistent approach across the Community. We also need to build public confidence in the Common Fisheries Policy. When people see thousands of dead fish being thrown back into the sea this reduces that confidence. This is, however, one of the issues that simply cannot wait for CFP reform in 2012. The conclusions of the Report will be taken in the order in which they appear in the Report.

1. *Recovery and Management Plans*

1.1 We therefore urge the Member States and the European Commission to attach greater priority to the adoption of recovery and management plans, and deploy their resources accordingly (page 22, para 61).

The UK Government strongly supports the development of recovery and management plans. Defra's Marine Programme 2008–09, whose aim is to deliver clean, safe, healthy, productive and biologically diverse oceans and seas, views fisheries management as central to achieving a sustainable fishing sector. The Marine Programme strongly believes that fisheries management should be integrated and devolved to the most appropriate level, and the development of Regional Advisory Councils (RACs) has been an important step forward. They are an important part of the 2002 Common Fisheries Policy reforms and one that the UK worked hard to achieve.

We have been supporting RACs both in terms of scientific support and through other practical measures to facilitate their work in producing management plans. We continue to support the establishment of recovery plans where they are required and believe that multi-annual management plans are the way to contribute to the delivery a more effective Common Fisheries Policy—avoiding as far as possible, the annual adjustments which make it difficult for fishermen to develop appropriate strategies for the future, with any degree of certainty. We continue to make these points to the Commission and other Member States as opportunities allow. We continue also to support RACs in their goal of recommending long term management plans to the European Commission.

1.2 Automatic adjustments to plans based on fixed harvesting rules should be used to deliver an element of responsiveness without sacrificing predictability—providing that Member States can agree to suspend rules only in genuinely exceptional circumstances (page 22, para 64).

We agree that sufficient clarity in these plans is essential to allow the necessary planning and provide a degree of certainty to ensure more effective management. However, whilst we accept that their effectiveness will be diminished if they are subject to regular adjustment, we would wish to avoid them becoming too rigid, to enable them to adapt to changing circumstances.

2. *Structural Policy*

2.1 We note with dismay that the Commission still detects scant political will among Member States to align the size of their fleets to the available resources (page 29, para 86).

2.2 It is imperative that Member States should resist the temptation to offer subsidies that keep uneconomical businesses afloat. We are concerned that state aid rules are being misused in this regard and oppose any relaxation—whether temporary or permanent-of the *de minimis* regime (page 29, para 87).

2.3 Public aid should instead be channelled into attractive decommissioning schemes designed to ease the transition. We urge Member States to heed the Commission's call for a greater emphasis to be placed on fleet capacity reductions in EFF Operational Programmes—this includes seizing the opportunity to re-programme allocations across axes (page 29, para 88).

It is not UK Government policy to subsidise fuel costs, including commercial fishing vessels. Such subsidies can lead to over capacity, distort business decisions, act against the long term interests of the industry, can be discriminatory and are not sustainable.

The UK Government has always emphasised that there should be a level playing field when it comes to state aid in the fisheries sector. We strongly opposed the recent proposals for an increase in the ceiling for *de minimis* payments, given the risk that this could be used to support sectors of the industry that are uneconomical and unable to support themselves. Increasing subsidies blunts the incentives for fishermen to make sound business decisions, and slows the progress towards an efficient, self-reliant fleet.

However, the difficulties faced by the industry are recognised and the UK Government is committed to doing everything it can to assist. What is needed is a strategic approach that helps the fishing industry adapt to a climate of high fuel prices. There are already a number of initiatives underway, or planned, such as the Fisheries Science Partnership, the Challenge Fund, and proposals to address the issue of availability of quota in the Under 10m fleet, with a consultation on a decommissioning scheme.

We recognise that decommissioning schemes can have a significant role to play in bringing fishing effort and opportunity into better balance. Indeed the UK Government has made significant use of decommissioning schemes in the last 10 years for this purpose.

However, our evaluation of these schemes, and wider studies which others have made of decommissioning programmes, suggest that such schemes have their limitations. While they have contributed towards overall fleet reductions:

— some vessel owners would have chosen to leave the industry in any event even in the absence of a scheme;

— in other cases, the scheme may only have encouraged owners to bring forward a retirement which was already planned; and

— in some instances, the premiums paid under schemes have been used to finance new investment in the industry.

The net reductions in capacity achieved by the schemes may therefore be fairly modest, and unit costs quite high: typically, of the order of £2,500 or more per gross tonne decommissioned, at today's prices (and even before allowing for the effect of any re-investment of premia in the industry).

We certainly do not rule out the further use of permanent cessation schemes, carefully targeted on specific problems, for the future. For example, a £5 million decommissioning scheme is currently under development as part of a range of measures aimed at reducing the capacity of the English under-10 metre fleet. In addition, market forces on their own are likely to continue to exert strong downwards pressure on capacity. Given the high costs and deadweight loss which are likely to characterise any decommissioning schemes, even if careful attention is paid to the detailed design, it is our opinion that use of such schemes should be highly selective.

We have also taken, or plan, a range of other initiatives to help bring fishing effort and opportunity better into line. For example:

— Improving the promotion and marketing of fish products we believe will drive up prices and profitability, increasing the proportion of the fleet capacity engaged in sustainable fishing.

— A Fisheries Challenge Fund established by Defra in 2005 for projects proposed by fisheries interests. Many of these attempt to divert attention from the more pressurised stocks to ensure their long-term sustainability (e.g. projects to build up lobster stocks in Cornwall and to explore the potential for mussel farming);

— Piloting the use of real-time closures under the EU Cod Recovery Plan is enabling fishing to be stopped in a particular area when significant quantities of spawning or juvenile cod are encountered. Scientific work continues on more selective gear configurations, e.g. the more widespread use of square mesh panels and sorting grids to allow non-target species to escape;

— The Welsh Assembly Government has developed its Wales Fisheries Strategy and will consider such measures as diversification and seasonal fisheries, mechanisms to improve marketing of fisheries products, pot number limitations, conservation targets, new technical conservation measures, and use of seasonal closures;

We are committed to working in partnership with the industry to determine how the problems which threaten the future of the fishing industry vary between different areas and different sectors of the fleet, and how resources available through EFF and nationally can best be deployed to deal with it. We are committed to considering the possible need for further action to reduce fleet capacity, as part of an overarching strategic response to fuel and other pressures facing the fleet. We have not ruled out at this stage any of the adaptation options offered in the Commission's recently adopted emergency package of measures in response to the fuel issue, and are working with stakeholders to consider how best these can be implemented.

As part of the negotiation on the EFF UK Operational Programme, we have already adjusted the balance of funds in favour of Priority Axis 1 (Measures for Adaptation of the Fleet) to provide headroom for support of such measures.

2.4 To the extent that it would enshrine these principles, we would welcome a WTO agreement on fisheries subsidies along the lines proposed in November 2007 (page 30, para 88).

We agree that whilst those subsidies that distort commercial activity and place certain countries at competitive advantage should be prohibited, there is still a place for financial assistance to hasten the restructuring of fishing fleets, in particular to reduce overcapacity and bring fishing effort into better balance with available opportunities.

2.5 We support the Commission's efforts to develop consensual methods of measuring overcapacity in the hope that this will prompt greater peer pressure, but are concerned that this endeavour should not be seized on as an excuse to postpone action (page 30, para 89).

We believe the Commission's efforts to develop consensual methods of measuring overcapacity will be greatly beneficial to the objective of bringing fleet capacity and fishing opportunities into more effective balance. This will ensure a coherent and consistent assessment can be made across the EU, and that more robust conclusions can be drawn on the level of overcapacity of the EU fishing fleets.

Notwithstanding this, the UK Government is committed to considering the possible need for future action to reduce fleet capacity, and will be working with stakeholders to consider the issues. We have already taken, or plan, a range of other initiatives to help bring fishing effort and opportunity better into line (further details can be found in our response to point 2.3 above).

3. *Control and enforcement*

3.1 We believe that a more fruitful control regime should be based on measures that reward good behaviour, and thus work with, rather than counter to fishermen's incentives (page 37, para 112).

There are various initiatives in place in the UK that encourage closer co-operation between the industry and government and these are designed to encourage and reward good behaviour. Examples of this include the Effort cap scheme in the cod recovery zone whereby owners of vessels who comply with enhanced conservation measures such as voluntary closures schemes are rewarded with additional days at sea. These initiatives are popular with the industry but need to be supported by a robust control scheme which prevents illegal activity.

3.2 Ultimately, however, we concur with those witnesses who emphasised that a culture of compliance can only develop in a fleet that is proportionate to the size of the resource on which it depends (page 38, para 113).

We fully agree that until capacity is bought into line with the size of the resource non-compliance will be a perennial problem. We are working within the EU and in international fora to encourage others to reduce the level of capacity. It should also be recognised that capacity can be measured not just in terms of the number of vessels but also in terms of the amount of time that a fishery is open. In some circumstances it may be possible to time limit the fishery itself rather than the number of vessels that operate within it.

3.3 However, we believe that the co-ordination of administrative penalties is necessary (page 38, para 114).

New legislation on the combating of Illegal, Unregulated and Unreported fishing imposes a minimum level of fine applicable for offences committed. This should go some way to ensuring a more consistent approach across the EU in applying penalties for non compliance.

3.4 We therefore support the extension of the CFCA's remit to include land-based inspections, and recommend that the Agency be allowed to co-ordinate joint deployment plans for all types of stocks, not just those subject to recovery plans (page 38, para 115).

Fisheries officers currently have powers to conduct land based inspections and will do so where it is considered that there is a possibility of non compliance with legislation. Whilst stocks that are subject to recovery plans will naturally be the main focus of inspections, fisheries officers are at liberty to conduct other inspections where it is considered that there is a need for them to do so.

3.5 We therefore urge all Member States to ensure that they have transposed the relevant EU legislation and are enforcing it rigorously (page 38, para 116).

The EU fisheries control regime is currently subject to a review. The proposals and consequently regulations that emerge from this review should, of course be transposed in national legislation. We will endeavour to do this as quickly as possible in the UK and would urge other Member States to do likewise.

4. *Reqional Advisory Councils*

4.1 They should instead be equipped with a budget that allows them to function independently, for example by commissioning their own research. A review of the budget made available to RACs should factor in the pace at which their activities are developing, and examine whether existing budgets could be managed more flexibly. For their part, Regional Advisory Councils should take into account the manpower shortages affecting the representation of non-fishing and recreational fishing interests when determining their internal organisation and their meeting schedules (page 44, para 137).

4.2 In the longer term, we favour the development of a policy process in which consensual advice from a RAC is normally heeded by the Commission and the Council (page 45, para 138).

4.3 However, RACs must be allowed to earn authoritative influence if stakeholders' engagement is to be secured and maintained (page 45, para 138).

The UK Government is a strong supporter of Regional Advisory Councils (RACs) and argued for their creation during the 2002 CFP Reform. It has funded the most successful ones and the Regional Advisory Councils have been asked to develop further long term management plans for key species and areas. The UK Government supports this and encourages the Commission and RACs to come together to set clear objectives in this regard and ensure appropriate resources are in place.

We agree that RACs should be fully funded to carry out their work and be put on a more sustainable basis. RACs have struggled within their existing funding framework to commission new analysis or evidence (e.g. on the economic impact of different fisheries management options) to help them develop their own thinking and turn practical experience into policy advice. RACs have had to rely on Member States to supply scientists and other experts to inform their meetings or to fund particular pieces of analysis.

Giving RACs increased access to ICES scientists and other independent experts and allowing them to use their existing budgets more flexibly will help slightly, but these measures do not get to the heart of the problem, i.e. a) insufficient resources due to limited funding and b) lack of volume of appropriate expertise in the Member States in the short-term and beyond (if the situation is not resolved soon). ICES has a new Memorandum of Understanding (MoU) with the Commission according to which, ICES has an additional and new funded role to support the RACs. That support, however, translates into very limited ways and does not make provisions for national scientists' staff time. The ICES/RACs management meetings, held to-date, have identified a need for work to be done by the RACs, but the Commission have asked that scientific requests be filtered through them for efficiency and to avoid duplication. The UK Government wishes RACs to be able, where appropriate, to commission directly scientific research to support their advisory role. In addition, we cannot underestimate the amount of work required to advance the timetable for the ICES advice within the context of the TAC and Quotas Regulation.

The UK Government supports the principle of Member States providing extra funding and support to RACs but believes more needs to be done to ensure greater consistency in support from Member States. We therefore believe that there should be a formal mechanism in place, such as direct funding from the EU budget, whereby all Member States with an interest in a RAC contribute to it on equal terms.

The UK Government would like to see RACs embrace a more global outlook on how the marine environment is evolving. It is understandable that RACs may wish to focus on issues of stock abundance and Total Allowable Catches (TACs), but that should not be allowed to dominate their activities. For example, long-term management plans and activities should emerge as mainstream business for RACs with the emphasis on sustainable fisheries and habitat conservation.

Currently the number of long-term management plans is relatively low, partly reflecting the RACs' limited capacity to synthesise and respond to proposals across the board. If we want to see a step change increase the rate of production of such plans, we have to put in place the mechanism and resources for RACs to absorb and handle the Commission's proposals. For instance, RACs should be able to produce well-defined scientific input directly to the Commission. A budget for that purpose would help, amongst other issues, improve relationships between RACs, including the Pelagic RAC, and the Commission.

The pace of development of the RACs should be related to the performance of the RACs, generally those that have been established the longest are performing better. RACs could be encouraged to mature by setting a series of performance targets, which, if met, would lead to further development of that RAC. This will lead to RACs being at different stages of development. This may be better than either waiting for the slowest developing RAC or allowing all RACs to develop at the speed of the fastest of them. Part of this process would require clearer benchmarking of RAC advice to the European Commission and of the responses from the Commission to the RACs.

5. *Ongoing Challenges*

5.1 We commend the decision to devolve effort allocation to Member States in the revised cod recovery plan, and strongly support the Commission's proposal to extend this approach to all other effort controls for 2009 (page 51, para 161).

We are currently trialling the operation of this mechanism in the UK whitefish and Nephrops fleets (under the existing cod recovery plan) to determine how practical it would be to apply Community wide under the revised scheme to be introduced next year and indeed to other plans where effort is restricted in some way.

5.2 We commend the Scottish Executive for piloting a real-time closure scheme that incorporates all these considerations, and trust that its impact will be evaluated with a view to assessing whether more widespread use should be recommended (page 51, para 162).

There is already evidence to suggest fishermen are starting to avoid areas of high cod concentration (whether juveniles or mature stock), both north and south of the Border (in anticipation of closures being triggered). This shows that the regime is altering fishermen's behaviour, which augurs well for the more widespread application of this sort of measure.

5.3 We envisage that multi-annual plans could incorporate multi-annual TACs for stocks whose biomass does not vary significantly from year to year. We have already indicated that the alignment of TACs for species of fish that are caught together is necessary. An element of risk management should also be built into management plans, providing for preplanned, automatic adjustments in catch restrictions triggered by predictable emergencies (page 51, para 163).

As in response to Conclusion 2, whilst we are sympathetic to such an approach, we would wish to avoid entirely removing any element of flexibility, even in respect of otherwise foreseen circumstances.

6. *Discards*

6.1 We urge EU Member States to work towards eliminating discards, and support the incremental approach that the Commission has mapped out, based on maximum allowed by-catch limits and fishery-specific strategies for achieving them (page 55, para 179).

6.2 We support the principle of a discard ban and therefore firmly endorse the Commission's aim of progressively reducing maximum allowed by-catch limits to zero. However, we recommend that if bycatches are to be confiscated in order to protect the principle of relative stability, financial compensation should be made available to cover stowing and landing costs (page 55, para 180).

6.3 The Norwegian experience leads us to conclude that flanking measures designed to prevent situations in which fishermen are tempted to discard would be critical to the successful implementation and enforcement of a discard ban (page 55, para 181).

We attach a copy of the formal written comments we have made to the Commission on their discard proposals, which cover our reaction to the issue of minimum allowed bycatch limits (MABLs).

7. *Rights based management*

7.1 For these reasons, we regard further moves towards rights-based management at a national level as highly desirable (and that recreational anglers interests should not be overlooked) (page 60, para 195).

It is recognised that there is a great deal that can be done to improve the way access to fisheries is controlled. Defra is currently working to explore this issue. Our key stakeholders will have a vital role to play in this process.

We recognise the need to take greater account of recreational anglers interests in developing fisheries policy. We are currently working with stakeholders to develop a recreational sea angling strategy for this purpose.

7.2 We believe that the in-year trade in fishing rights among UK quota holders should be recognised by the UK authorities. A control system based on penalty points, under which rights are temporarily suspended and eventually withdrawn in response to infringements (see Paragraph 108 above), could serve to couple rights and responsibilities in the manner envisaged by the Commission (page 60, para 196).

To maximise their fishing opportunities and to try to avoid the need to close fisheries, fishermen in the UK arrange quota exchanges and lease quota from each other. This practice has evolved from the original quota management system historically managed by UK authorities and we have systems in place to help control this practice. It is seen as providing essential flexibility in the current system, to avoid risks of more frequent closure of fisheries and thereby deterring illegal fishing activity.

7.3 Member States should nevertheless seek to develop more effective ways of managing such in-year swaps, so as to ensure that the discarding of unavoidable by-catch is minimised (page 60, para 197).

As indicated above, it is recognised that there is lots that can be done to improve the way access to fisheries is controlled. Work is underway to explore the issues, and inevitably this will include considering the management of in-year swaps.

8. *Governance*

8.1 The 2002 reform of the Common Fisheries Policy did not tackle what many stakeholders—and this Committee—regard as the over-centralised and stiflingly prescriptive legislative process through which fisheries are managed in the EU. We recognise that the clamour for a "level playing field" from Member States and stakeholders alike may over time have prompted policymakers to micro-manage in ever greater detail. It is clear, however, that this approach has failed and should now be abandoned (page 65, para 218).

The UK Government supports moving towards a more regional management structure for EU fisheries. More specifically the UK Government supports a move away from a 'one-size-fits-all' approach and seeks to identify the most appropriate, effective measures for particular fisheries and fleets. In seeking more regional management solutions it is important that we establish principles to ensure a consistent approach across the Community. We need also public confidence in the Common Fisheries Policy and when people see thousands of dead fish being thrown back into the sea this reduces that confidence. These are particular issues that the UK will be promoting through the CFP Reform. The regionalised approach to management being suggested by the Commission in their latest technical conservation and discard initiatives, suggest this message will be supported.

8.2 We were encouraged to hear that the Commission is ready to contemplate a move towards results-based management incorporating a greater degree of subsidiarity. We note, however, that competing visions are on offer as to what this may entail in practice (page 65, para 219).

We understand the Commission propose to produce a paper in the first half of next year, outlining in more detail how they propose the various elements of the new regime should operate in practice. We will review our position in the light of this. It is inevitable that any proposals to reform a system will provide competing visions and we will endeavour to work with the Commission and other Member States to ensure that whatever we agree to provide an effective means of managing marine resources within EU waters.

8.3 The division of labour we envisage is one where strategic decisions—on target mortality rates, for example, or maximum sustainable yield—continue to be taken centrally in Brussels, while decisions relating to delivery and implementation—determining how targets are to be reached—are delegated to regional forums. These should be organised to reflect the level at which outcomes can be measured, allowing local decision-makers to be held accountable by auditors at national and EU level (page 65, para 220).

The UK Government, in its deliberations on CFP Reform, is looking at the best governance arrangements and in particular how to move the system from its current command-and-control approach to decentralised co-management. This follows the Committee's vision for managing the fishing sector that allows objectives to be set centrally, with delivery decided regionally. Co-operative approaches to management have been little used in CFP, but the UK Government believes that there are advantages, such as better communication, greater transparency, stronger stakeholder commitment, spreading the risk and greater adherence to regulation. There remains a balance that needs to be struck though in terms of the role of government and industry self regulation.

8.4 Central monitoring of outcomes, backed by sanctions for poor performance, will be essential to the proper functioning of a more decentralised management system. We note the risk that a regional management model such as we have described might exacerbate enforcement problems. However, we believe that a double-tiered system of penalties, based on the suspension or withdrawal of fishing rights at individual level, and the imposition of fines on Member States who fail to deliver centrally-agreed outcomes, could hardly be less effective than the present, discredited control and enforcement regime (page 66, para 221).

8.5 In our view, this likelihood is not within the realm of practical policy. We consequently consider that withdrawal from the CFP is not only a false panacea, but a dangerous distraction from the more important task of reforming the policy (page 66, para 223).

The UK Government agrees that withdrawal from CFP is not a credible option. The EU probably has one of the most complex fisheries in the world, given the number of species, mixed ecosystems, active fishing nations and habitats involved. The current design flaws of the CFP do not reduce the need for a system that works in promoting a sustainable fishing sector. The development of an EU framework that gives space to Member States to delivery locally will be fully explored by the UK Government in its deliberations on CFP Reform.

8.6 The Common Fisheries Policy clearly remains in need of major reform, having failed to deliver sustainable fisheries—whether from a biological or an economic point of view (page 66, para 223).

8.7 Looking forward, we believe that urgent action is necessary to break out of this spiral. We urge Member States to resist calls for subsidies to offset fishing vessels' rising operating costs (page 66, para 225).

We fully agree that such subsidies should not be provided. See response to Conclusions 2.1, 2.2 and 2.3.

8.8 We believe that there is a very strong case for moving towards a much greater degree of decentralised fisheries management, whereby strategic objectives set centrally are delivered through methods devised at a regional level (page 67, para 226).

The UK Government agrees that further regionalisation is important. The establishment of RACs was an important step forward and demonstrate that it is possible to build a credible regional dimension to the CFP. Increased regionalisation would bring policymaking and management closer to practical realities, would enable more direct communication between managers and industry and would focus solutions more precisely on specific region's problems. Issues of accountability will be important and we will explore how such a system can work in practise.

8.9 We believe that the core objective of the Common Fisheries Policy should be to bring fishing capacity and fishing opportunities into balance. . . . . . In our view, this should be the agenda driving the next reform of Common Fisheries Policy, due in 2012 (page 67, para 227).

Developing a framework that balances fishing capacity and fishing opportunities is at the heart of creating a sustainable fishing sector. Reforming the CFP is our best opportunity to do this. There are many elements that need to be in place to achieve this balance—ranging from conservation and management, structural policy, control and enforcement, regional governance and stakeholder involvement—and discussions with experts and stakeholders should, over the next few months, allow the UK Government to develop its ideas and vision for a CFP in 2012.

November 2008

22ND REPORT: INITIATION OF EU LEGISLATION

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

Thank you for the European Union Select Committee's report of 24 July on the Initiation of EU Legislation. I welcome the quality of analysis and expertise, reflected in this report, that the Committee contributes on European issues. I read the report with interest, and agree with many of the Committee's points. I wish to respond to a number of the recommendations.

The Government believes that the Commission should include more data on the anticipated impact of its proposals at Member State level in order to give a better idea of the differing impacts on different countries. You suggest (paragraph 155), and I agree, that the Commission should do more to engage national stakeholders in its consultations. National stakeholders are likely to have a clearer impression of what the direct effects of different policies will be. However, the current minimum consultation period of eight weeks makes it very difficult for national stakeholders to respond. We would therefore like to see the Commission increasing this period to 16 weeks and we will continue to press for this.

You emphasise the importance of impact assessments (paragraph 156). I agree, and welcome the effort that the Commission has made under President Barroso to improve its impact assessment system. The Impact Assessment Board is an especially positive development. We were also pleased to have the opportunity to give our views on the Commission's impact assessment guidelines during its recent consultation. However, there remains scope for significant improvement. In particular, I agree that the Commission should place more emphasis on quantifying, and where possible, monetising the costs and benefits of different policy options in its impact assessments. Impact assessments should also be started earlier in the policy development process, so that they genuinely inform the direction that proposals take rather than serving to justify an approach which has already been decided on. We raised these points in our response to the Commission's recent consultation on its revised impact assessment guidelines and will continue to do so.

One of the findings of a 2007 evaluation of the Commission's impact assessment system was that the analysis of short term economic impacts is often more developed than the analysis of longer term social or environmental impacts. In response to the Commission's recent consultation on revision of its impact assessment guidelines, Defra proposed the Commission should insert a reference to developing methodologies for assessing the impacts of greenhouse gas emissions. Specifically, we think the work being undertaken in the UK on the Shadow Price of Carbon, and similar work in France, could be useful to Commission officials undertaking impact assessments. As experience and knowledge is gained, further technical advice could be placed on the Secretariat General's Impact Assessment website in due course.

I have brought the Committee's interesting proposal to create a cadre of specialist legislative drafters (paragraph 157) to the attention of colleagues at BERR. The Better Regulation Executive and Ministers in BERR are in regular dialogue with the Commission and other EU institutions on ways to improve the quality of EU legislation. For example Baroness Vadera's letter to Vice President Commissioner Verheugen on improving the quality and increasing the use of impact assessment in EU policy development in August 2008 and the Secretary of State for Business, letter to Vice President Commissioner Verheugen giving 25 proposals on how to reduce the administrative burdens stemming from EU legislation in July 2008.

On the issue of lobbying (paragraphs 158 and 159), I agree that it should be transparent and appropriately regulated, and refer the Committee to my Explanatory Memorandum of 26 June on the European Transparency Initiative/Commission's Register and Code of Conduct for Interest Representatives and my letter to you of 29 July.

On your point regarding different legal systems (paragraph 162), I agree with the Committee that the Common Law system needs to be more widely understood within the Commission and taken into account when legislation is developed on justice and home affairs. The UK already works closely with other Common Law

Member States to highlight issues concerning the Common Law system within the EU. We are continuing with plans to second staff to the Commission to embed knowledge of the Common Law system. We also recently arranged for Commission lawyers to visit the UK to increase their understanding of Common Law.

The Government agrees that Member States should make better use of impact assessments (paragraph 164). This also means Commission impact assessments should be discussed in all Council formations, so that there is more focus on evidence in negotiations. Moreover, the Council should honour its commitment to carry out impact assessments on substantive amendments to Commission proposals which it made in the Inter-Institutional Agreement on Better Lawmaking in 2003. The Council Secretariat has a role to play in providing administrative support for such analysis. We will continue to press forthcoming Presidencies to honour this commitment.

30 September 2008

Letter from the Chairman to the Rt Hon Caroline Flint MP, Minister for Europe, Foreign and Commonwealth Office

I am grateful for the Government's response to our Report, *Initiation of EU Legislation,* set out in the letter of 30 September from your predecessor, Jim Murphy MP. The Report will be debated in our chamber in due course and, in the meantime, I would like to follow up one element of your response.

In the fifth paragraph of the letter, Jim Murphy described our proposal for the creation of a cadre of specialist drafters in the Commission as "interesting" and mentioned that he had drawn the attention of colleagues in BERR to the proposal since they and the Better Regulation Executive were in regular touch with the Commission on ways to improve the quality of EU legislation. We welcome that initiative and should be grateful to know what steps have been taken to promote the proposal with the Commission and the reaction of the Commission.

6 November 2008

23RD REPORT: THE COMMISSION'S ANNUAL POLICY STRATEGY FOR 2009

Letter from Rt Hon Caroline Flint MP, Minister for Europe, Foreign and Commonwealth Office to the Chairman

I am writing as the new Minister for Europe in response to your Committee's report on the Commission's Annual Policy Strategy for 2009. I will respond first to some of the points you make about the Commission's specific plans and priorities.

I welcome the Committee's comments on Climate Change, Common Agricultural Policy (CAP), Fisheries and the Common Market Organisation (CMO), where the Government broadly shares your views.

I note that the Committee paid particular attention to the European Institute for Innovation and Technology (EIT) (paragraphs 98-99). The Government will continue to monitor progress in establishing the EIT. The Regulation provides a solid basis for the EIT to support European innovation by building upon existing institutions in Member States and ensuring that they are better linked up. We believe that the Regulation provides robust governance procedures and provision for monitoring and evaluation of the EIT by both independent experts and Member States.

The Government, like the Commission, believes that business involvement is crucial to the sustainability and credibility of the EIT. The Governing Board is tasked with steering and coordinating the EIT's activities and the selection, designation and evaluation of the Knowledge and Innovation Communities (KICs) activities. The Governing Board's members have considerable business experience which will be useful in mobilising private sector participation.

In the area of criminal justice (paragraph 112), I agree with the Committee that, following the Irish referendum, the Commission and Member States should press ahead to conclude proposals as foreseen in the Hague Programme and currently under negotiation.

The Committee questions whether proposals for the Electronic Communications Market Authority are necessary (paragraph 130). The UK very much welcomed the Commission's Review of the Electronic Communications Framework because it sought to improve the EU business environment and open up the European market in telecommunications to full competition. The Commission proposed granting themselves new powers to overrule certain decisions by national regulators to help realise this objective, and to set up an Electronic Communications Market Authority to advise them in this process. The UK supports effective liberalisation of the telecommunications market, and can see merits in increased Commission powers over market remedies if they can be effectively targeted and are shaped by sound technical and economic advice.

We did have concerns about the original Commission proposals which proposed this new authority should have a role in security issues and in the management of Spectrum, which are both national competences. These concerns in part explain why the Council of Ministers was opposed to its creation. However, an authority without these two roles, comprised of such experts, would be an effective mechanism to help Europe realise the economic benefits, and we are working closely with EU partners in negotiations on the best way to achieve this, conscious of the need to embed the better regulation agenda at its heart.

The Committee argues (paragraph 131) that the current budget does not have sufficient focus on climate change and energy. The reason for this is that annual allocations must be within ceilings set by the 7 year financial framework, which currently has only limited funds for climate change and energy. We would expect the allocation for climate change and energy to be increased in the next financial framework.

The Committee also indicates that it does not see obvious connections between proposed financial allocations under the "preservation and management of natural resources" heading and the Commission's priority of climate change and a sustainable Europe, focussed on energy, sustainable consumption, biodiversity, environmental law, maritime policy and the Common Agricultural Policy. Expenditure in this area falls under a number of headings, beyond Heading 2. It may, for example, also fall under Heading 1a—'Competitiveness for growth and employment'—in relation to energy policy and low carbon technologies; or under Heading 4—'EU as a global partner'—in relation to the Development Co-operation Instrument and the programme 'Environment and sustainable management of natural resources, including energy'. The Commission's preliminary draft budget for 2009 requests an increase in funding of €20.9 million for Heading 2 on top of 2008 commitments, and a proposed increase of €43.8 million for Heading 4 on top of 2008 commitments.

With regards financial support to improve access to justice for citizens (paragraph 132), we would support specific projects and financial support, in particular where action would enhance cross-border co-operation, such as funding for video-conferencing, translators and action related to e-justice.

Funding for e-justice—which includes projects on videoconferencing and interpretation—is under consideration by the Commission, and is complicated by the fact that e-justice cuts across both civil and criminal justice and that the current programmes do not easily allow for funding for projects that cover both. In its recent Communication on e-justice, the Commission has said: "During the mid-term evaluation of the financial programmes, the development of e-Justice will have to be taken into account and the financing re-evaluated, if necessary. In the medium term, a single, cross-cutting programme covering civil and criminal matters could be contemplated". We support this approach but will keep it under review.

Whilst I agree with the Committee that the Government must do all it can to influence the Commission's plans (Paragraph 142), the Annual Policy Strategy is just the first part of the Commission's planning and programming process. As my predecessor, Jim Murphy, said in his evidence to you, although the Annual Policy Strategy is useful, we should not overstate its significance (paragraph 143). The Annual Policy Strategy is a predictor of what is to follow, but it is not prescriptive. It is a broad and general document, giving the Commission's initial thoughts for priority areas in the coming year, upon which we can base our engagements with the Commission to influence the Legislative and Work Programme which follows later in the year.

The Committee has the impression that the Annual Policy Strategy is not taken seriously in Whitehall. I can assure the Committee that Whitehall partners were fully consulted on the Explanatory Memorandum (paragraphs 144-145). Whilst the Treasury scrutinises the financial and human resources section of the Annual Policy Strategy, it would be wrong to overstate the relationship between the Annual Policy Strategy and the preliminary draft budget. The Annual Policy Strategy contains very broad aspirational outlines for budgetary provisions and includes tables suggesting possible reprogramming of multi-annual committed resources. However it is not regarded by any Member State as the basis for budget negotiations. These are based on the much more detailed preliminary draft budget, within which many of the headline figures provided in the Annual Policy Strategy will have changed. The Treasury submits a very detailed Explanatory Memorandum on the preliminary draft budget and its Ministers attend both a Lords evidence session and Commons scrutiny debate.

I will take the Committee's further comments on our Explanatory Memorandum (146–147) on board, and instruct my officials to ensure that the Explanatory Memorandum for the next Annual Policy Strategy is as comprehensive as possible. We will also pay particular attention to any issues raised relating to fundamental rights or subsidiarity.

I hope that this letter is helpful in answering the points raised in your Committee's report.

7 October 2008

27TH REPORT: THE EU'S TARGET FOR RENEWABLE ENERGY: 20% BY 2020

From Department for Business, Enterprise and Regulatory Reform

Government Response

Introduction

The purpose of this memorandum is to provide a response to the House of Lords European Union Committee report on 'The EU's target for Renewable Energy', published on 24 October 2008.

The Government welcomes publication of the Committee's report, and is already seeking to implement a number of the detailed conclusions and recommendations. In particular, it is now seeking to use the current Energy Bill to take forward some of the Committee's recommendations such as financial support for renewable heat, and the Planning Bill to put in place a more effective planning regime for large-scale renewables infrastructure projects.

The Government's consultation on a Renewable Energy Strategy closed in September, and sought views on a wide range of potential measures that could enable the UK to meet its share of the EU 2020 target. Our response to this consultation will be published in the New Year with the final Strategy outlining Government policy on all the areas covered by the Committee's Report in Spring 2009.

Responses to Conclusions and Recommendations

The Government's response to each of the Committee's conclusions and recommendations is set out below. The paragraphs are numbered as they appear in the report.

Why 20% by 2020?

172. We do not agree with witnesses who state that the target was reached purely on political grounds. We believe that as the target date has now been accepted in principle by the European Council the 2020 deadline should not be extended.

The Government agrees that the EU's 2020 Renewable Energy target is an important element of our overall policy for tackling climate change and encouraging security of energy supplies. We accept the 2020 deadline.

173. We recommend that the Government increase their support for research into renewable technologies and ensure that the work of Government-funded research organisations is properly co-ordinated. (paragraph 28)

The Government recognises the case for supporting research in renewable technologies, given not only the difficulty for the private sector to get sufficient returns from early-stage R&D, but also the urgency of climate change. Indeed, overall UK expenditure in support of energy technology development significantly increased in recent years.

The Government has also taken action to ensure that the work of Government funded research organisations is properly coordinated. The UK has a broad set of energy innovation objectives and it is therefore natural and appropriate that the UK has put in place a range of bodies to deliver these objectives. Basic scientific research is supported by the Research Councils, which operate at arms length from Government. Expenditure by the Research Councils on energy related research has more than trebled since 2003–04, to over £90 million per year currently. It supports a broad range of speculative and directed research activities and will approach £300 million over the next three years, excluding £207 million for the Energy Technologies Institute over 2005–08.

Support for applied research and development and prototyping is business-led and includes a variety of work coordinated by the Energy Technologies Institute, the Technology Strategy Board and the Carbon Trust. We recognise that it is crucial these organisations work closely together which is why they have set up a Low Carbon Innovation Coordination Group, which is developing an approach and set of principles for on-going collaboration that will maximise the cumulative impact on accelerating the commercialisation of low carbon technologies.

In terms of support for demonstration and pre-commercial deployment, the new Environmental Transformation Fund represents a significant simplification of funding for demonstration, by uniting what were previously a wide range of grant schemes delivered by two Departments and several delivery agents, into a single coherent fund.[18]

174. We recommend that as part of its regular assessment of Member States' progress towards the target the Commission should consider whether emerging technologies such as wave and tidal power are likely to be disadvantaged by the strategy and if so whether further intervention or research support is necessary. (paragraph 29)

We fully recognise the continued need for a portfolio of energy technologies that make use of the range of natural resources available across Europe and agree that those technologies deployed close to 2020 should not be disadvantaged by the Strategy.

This is reflected in our current technology support system. Some UK support for energy technology development is aimed at reducing the cost of existing or very-near-market renewable technologies, to accelerate deployment by 2020. However, a significant element of work is also aimed at developing new and innovative technologies that are only likely to see significant deployment in the medium term. This includes support for applied research and demonstration of a range of technologies that can exploit the UK's significant tidal and wave resource. We also recognise that a wide range of support is necessary, including direct and indirect support and wider work to remove potential future barriers.

Indeed the UK Renewable Energy Strategy consultation recognised that supporting emerging technologies means investing in energy sources which may not be cost effective in the short term in order to accelerate learning and cost reduction to secure economic benefit and wider social return in the future. The Strategy is due to be published in spring 2009.

Guarantees of Origin

175. Guarantees of Origin trading will very likely have to be relied on to fulfil some part of the UK's commitments. We believe, however, that a significant proportion of the 15% target should be met domestically to ensure that Guarantees of Origin trading does not undermine efforts to increase the UK's renewable generation capacity. (paragraph 38)

The Government agrees that a significant proportion of the 15% target should be met domestically.

176. We recommend that the Government specify soon the maximum proportion of the UK's target to be met using Guarantees of Origin trading so that the extent of their reliance on them to meet the target is known. (paragraph 39)

The Government intends to set out whether and what role we believe "trading" of renewables (as proposed in the draft Renewable Energy Directive) should play in meeting the UK target in the Renewable Energy Strategy, due to be published in spring 2009. Our initial view, as set out in the Renewable Energy Strategy consultation document, is that we would make use of the flexibility subject to a number of principles, including that only a limited and pre-specified portion of the target would be tradeable.

Energy efficiency and energy saving

177. We believe that energy efficiency measures must form the starting point for the Government's drive to meet the 2020 target. The scale of the challenge facing the UK means that action is necessary on all fronts. (paragraph 55)

The Government agrees that saving energy is the starting point for policy to meet the 2020 renewables target. That is why, before the end of the year, the Government will be publishing a consultation on further energy saving measures as part of the consultation on a Heat and Energy Savings strategy. Next year, we will publish both the level of the first three carbon budgets, from 2008–22, and our plans for meeting them. Energy saving measures will have an important role to play in meeting carbon budgets as well as helping reduce the level of investment required to meet the renewable energy target.

178. We are disappointed that the Government are not consulting in depth on energy efficiency as part of their Renewable Energy Strategy work as this suggests that demand reduction will not be a central part of the strategy to meet the target. We believe the UK should commit to an energy reduction target, such as 20% by

[18] We recently published the UK Environmental Transformation Fund strategy (available at http://www.berr.gov.uk/files/file47575.pdf), which sets out a coherent view of how the ETF sits within the wider technology framework, the purpose of the fund and how the fund will operate.

2020, by the spring of 2009 with a fully worked-out strategy specifying the steps needed to achieve this. (paragraph 57)

The Renewable Energy Strategy focused on measures to increase deployment of renewable energy capacity by tackling financial and non-financial barriers to deployment. It deliberately did not consult on new measures for energy savings, but committed to consulting separately on a range of new and enhanced energy efficiency policies alongside new measures on low carbon heat. We will do so later this year.

The Government is clear that if we can reduce the amount of energy we use, this will reduce carbon emissions, reduce the need for additional energy supplies and reduce costs. Saving energy will reduce the amount of renewable energy needed to meet our target by reducing our overall energy consumption. There are already a range of policy measures to reduce energy use. In the business sector the EU Emissions Trading Scheme, the Climate Change Levy and Climate Change Agreements all provide incentives for greater energy efficiency. In 2010 we will introduce the Carbon Reduction Commitment, a mandatory trading scheme for large non-energy intensive businesses and public sector organisations. In the domestic sector the new Carbon Emission Reduction Target (CERT), which sets obligations on energy suppliers to deliver energy efficiency improvement measures to households, marks a significant strengthening of our efforts with a doubling of the level of activity of its predecessor Energy Efficiency Commitment (EEC). In September we announced a tightening of the CERT targets. After 2011, as set out in the 2007 Energy White Paper, the Government's aim is to introduce a Supplier Obligation which aligns the incentives of energy companies with a reduction in demand through the development of 'energy services' markets. Building on already tougher building regulations, we intend that all new homes in England will be zero-carbon from 2016, and all new buildings from 2019. In the transport sector we are negotiating new EU-wide emissions targets for new cars.

These policies will deliver considerable reductions in projected energy demand over the coming years. However, our renewable energy targets change the context, making more radical measures to reduce energy use even more economically attractive. Because energy efficiency measures are generally lower cost than building additional renewable supply, our analysis suggests that it will be economically worthwhile to introduce such measures, by comparison with marginal electricity options, up to a cost of around £45/tCO2. A range of policies and measures for realising further savings by 2020 will be set out in our Heat and Energy Savings strategy consultation.

Renewable heat and micro-generation

179. We recommend the Government treat micro-generation and renewable heat technologies as being as important as large-scale electricity generation. To this end, we believe that the existing micro-generation grants should be increased and a system of grants specifically for renewable heat should be introduced. (paragraph 69)

The Government agrees that micro-generation and renewable heat technologies have a key role to play in our overall renewable energy strategy. It has tabled amendments in the current Energy Bill to give the Government legal powers to introduce a renewable heat incentive to support renewable heat technologies of all scales, including microgeneration renewable heat, and to introduce a feed in tariff for small scale electricity generation. If the Energy Bill achieves Royal Assent, we will be looking to introduce secondary legislation to implement these policies as soon as possible.

Our research suggests that such revenue support schemes will be more effective than grant schemes, as the market appears to consider grants as insufficiently reliable for the long term (given their potential "stop and go" nature).

180. To reach the level of renewable heat the Government estimate could be achieved by 2020 we urge the Government to commit more fully to renewable heat than our evidence indicates is currently the case. (paragraph 70)

We agree that more needs to be done to support renewable heat technologies. That is why we are seeking to introduce a new incentive mechanism for renewable heat in the UK. The recent consultation on the Renewable Energy Strategy made it clear that renewable heat will be key to delivering the proposed UK target and one scenario suggested that renewable heat could deliver 14% of heat demand. To achieve this, renewable heat technologies will have to deliver at maximum growth rates over the coming 12 years.

Potential technology mix

181. In order to minimise the risk of the UK becoming reliant on wind power the Government must ensure that other technologies receive, where practical, the policy support needed to bring them to commercial viability as quickly as possible. (paragraph 76)

The Government agrees that a range of renewable technologies will be needed to meet the UK's 2020 target. All renewable technologies will be eligible for financial support under one of the different financial incentives we will make available under the Renewable Energy Strategy. We are also considering policies to tackle the barriers to take-up of specific technologies such as biomass and marine.

182. It is necessary to await the economic, technological and environmental assessments for the Severn Barrage project before decisions can be made about whether it can be included as a deliverable resource. The Government should not rely on inclusion of the estimated generating capacity of the Barrage to reach the 2020 renewables target. (paragraph 78)

The Government agrees that the estimated generating capacity of a Severn tidal power scheme should not be assumed in the plans to reach the 2020 target. That is why our lead scenarios in the RES consultation document for meeting our 2020 targets did not include the generation that could be delivered by such a scheme. The decision on whether to support a Severn tidal power scheme will be a question of relative costs, benefits and impacts as compared to the alternative options for meeting both our renewable energy and longer term carbon reduction goals.

The Government is assessing the costs, benefits and impacts of a Severn tidal power scheme through the Government Severn Tidal Power feasibility study. 10 potential schemes (including barrages, lagoons, a tidal fence and a tidal reef) are currently being considered and some of these options could be generating electricity by 2020. Later this year there will be an internal review to consider whether any issues have emerged so far to suggest that the Government is not interested in promoting a Severn scheme. At this stage, there will be a decision to either stop the study now, or continue with our evidence gathering and assessments. If the decision is to proceed, the Government will consult (in early 2009) on both a short-list of potential schemes for detailed analysis next year and the scope of the Strategic Environmental Assessment that is being carried out within the feasibility study. Following the detailed analysis next year, in 2010 there will be a second public consultation on the evidence gathered and analysis done, in order to inform the decision on whether to proceed and if proceeding, the terms of proceeding and a single preferred option.

Security of supply

183. We consider intermittency to be a manageable problem but one that will increase costs to consumers. However, the development of storage technologies and other options such as demand-side management could help reduce costs and, by reducing the need for reserve capacity, improve the economic and environmental performance of renewable energy. (paragraph 87)

The Government recognises that the Renewable Energy Strategy will pose challenges for the energy market in terms of higher levels of intermittent generation, such as that provided by wind, over the next few years. Those challenges will emerge over time and National Grid will be able to take steps to manage and mitigate any impacts. Previous research by The United Kingdom Energy Research Centre suggested that the costs were likely to be marginal up to 20% wind penetration. To achieve our 2020 target, however, we are likely to need to go beyond that level. National Grid are clear that the issue is an economic rather than a technical one and that the key challenge was to ensure that there is sufficient responsive capacity to maintain a reliable electricity system. Geographical diversity and a range of renewable technologies will help to mitigate the impacts of intermittency.

The Government considers that we need to explore all options and that demand-side management and energy storage technologies could be part of the wider strategy to manage the costs and security of supply impacts of renewable deployment, as could greater interconnection with other countries. In particular the role of energy storage via electric vehicle batteries was discussed in the Renewable Energy Strategy consultation. It is the Government's view that it will be for the market to decide whether and how to deploy options for energy storage, demand management and interconnection and that the financial incentive will emerge as the deployment of renewables increases in the UK electricity market. However the Government recognises that markets alone will not deliver all our wider social and environmental objectives. We will therefore need to monitor the extent to which these incentives emerge and whether the market is able to bring forward the necessary investments to make use of opportunities for energy storage, demand management and interconnection amongst other options to smooth the balance of demand and supply of electricity.

Grid access

184. We believe that "connect and manage" offers a more efficient use of grid and should be adopted. (paragraph 96)

The Government and Ofgem published the Transmission Access Review in June 2008. The review identified steps to reform grid access in the short and medium term and to speed up the delivery of essential infrastructure.

The Government agrees that in the short term "connect and manage" will be useful in accelerating the connection of ready to go projects and we are taking forward with National Grid and Ofgem the measures to deliver this.

We are aware that "connect and manage" is favoured by many in the renewables industry as an enduring solution, however, the costs of some approaches could be significant. We therefore believe that careful consideration needs to be given to costs, and how they might be mitigated, if such an approach were to be pursued.

Following the Transmission Access Review, a number of approaches to grid access, including "connect and manage", are being considered by industry working groups and we are closely monitoring progress. The industry working groups are expected to make proposals to Ofgem in December 2008 and January 2009.

Ofgem will report to the Secretary of State for the Department of Energy and Climate Change on progress on this by the end of the year. We are committed to seeing rapid progress on improved grid access. Whilst we believe that current industry-led process is likely to be the quickest way to deliver these reforms, we are taking backstop powers through the Energy Bill that would enable the government to intervene if it became clear that this was the best way forward.

185. We believe that transmission operators will need to build in advance of firm commitments from developers if sufficient grid is to be built in time for 2020. We welcome the move away from "finance and connect" proposed in the Transmission Access Review. Ofgem will need to monitor this work closely to minimise the risk of asset stranding. Parliament should be informed annually of grid investments planned under this system and Government should report to Parliament on the use of such grid. (paragraph 104)

The Government recognises the need for new grid infrastructure in support of our 2020 renewable energy targets and energy security goals and agrees that timely investment in new grid infrastructure will be needed to achieve those outcomes. In many cases this could be achieved by relatively low-cost preparatory work (e.g. feasibility and design work) starting ahead of full commitment from generators, up to and including seeking planning consent. Identifying key projects now and starting development is likely to give additional certainty to renewable developers as to when and where connection opportunities will be available.

The Electricity Networks Strategy Group (chaired by DECC and Ofgem) is working with National Grid and the Scottish Transmission Companies to develop a vision for the electricity network for 2020 and beyond. At the same time Ofgem is taking forward with the transmission companies (National Grid, SHETL and SPT) development of appropriate financial incentives to deliver timely investment in the network needed to meet the 2020 target.

National Grid already publishes detailed annual reports on grid connections and investment through its 7 year statement. We do not believe there is a need for further reporting.

186. We strongly support the Government's proposal to use "connect and manage" to reduce the grid queue and believe that this system should be adopted immediately and permanently. (paragraph 106)

As discussed in our response to question 184, the Government agrees that, in the short term, "connect and manage" can help to accelerate the connection of ready to go projects and further work to develop this approach has been taken forward since the publication of the Transmission Access Review in June.

We are working closely with National Grid and Ofgem to ensure that we see meaningful progress, and by that we particularly mean, earlier connection dates being offered to projects that already have planning consent.

The Government considers that as the costs of some approaches could be significant, any proposals to move "connect and manage" beyond the short term to a more permanent basis should carefully consider the costs against the benefits of doing so.

187. We call on Ofgem and the Government to keep the issue of locational pricing under review. (paragraph 110)

The Government believes that transmission charges should be fair on both generators and consumers and that the principle of cost reflectively is the right one. The charging system is applied in the same way on generators throughout the GB network and fairly reflects the costs that generators impose on the network to get their energy to the end user.

This is because the further a source of gas or electricity is from its end user, the more it costs to transport that energy to them. All generators and suppliers need to pay their fair share. In any event most (73%) of the costs of the transmission system are met by the supplier, not the generator.

Ultimately it is for National Grid and Ofgem to decide on the most effective charging methodology and to ensure that the detailed arrangements are fair. However, there is no evidence that cost reflective transmission costs are harming the development of renewable generation, and that includes renewable energy in Scotland. Despite the views of some generating companies there is a large volume of renewable generation projects in the planning stage in Scotland, and developers are well aware of the transmission charging regime. Moving away from the principle of cost-reflectivity will almost certainly mean higher charges for renewable generators further south, including offshore wind.

Planning

188. We are concerned that consulting on how to improve planning measures still before Parliament does not create the stable and predictable planning environment needed to encourage investment in renewable energy. The policies resulting from the UK Renewable Energy Strategy consultation must be as comprehensive and definitive as possible. (paragraph 126)

The Government is fully committed to wide-ranging reforms of the planning system so as to help make the move to a low-carbon economy with much higher use of renewable energy. We fully agree that the planning measures supporting the UK Renewable Energy Strategy must be as comprehensive and definitive as possible. The possible measures in relation to planning included in the consultation on the Renewable Energy Strategy are designed to be complementary to those set out in the Planning White Paper and Planning Bill, rather than changing them. We agree on the need to avoid uncertainty and on the importance of a stable and predictable planning environment. We are working to finalise decisions as soon as possible.

189. We believe that strong measures are needed to improve the energy planning system. We support the proposals described in the UK Renewable Energy Strategy consultation document but believe that further measures will be needed. The Government should apply the provisions of the Electricity Act 1989 to all renewable generation capacity above 20MW. (paragraph 127)

The Government agrees that strong measures are needed to improve the energy planning system. However, we do not think it appropriate to reduce the threshold between central and local decision making to all renewable generation capacity above 20MW. We acknowledged in our consultation on the Renewable Energy Strategy that some stakeholders would prefer more projects to be considered by the new Infrastructure Planning Commission. However, the threshold we have proposed reflects our commitment to local planning decisions being made at the appropriate level, ensuring a balance between local democracy and wider national interests.

The new Infrastructure Planning Commission (IPC) will consider Nationally Significant Infrastructure Projects and needs to be able to concentrate on what are clearly major projects in order to be able to deliver the intended efficiencies. The 50MW threshold matches s.36 of the Electricity Act 1989 for onshore generating stations. For offshore generation 100MW has been proposed because the increasing size of offshore wind farms in particular, plus their generally more remote geographical locations, mean that a project has to be somewhat larger than an onshore project before it becomes nationally significant. Also a higher threshold would apply to offshore electricity generation projects to be determined by the IPC because there is much greater pressure on our use of space on land which means rather bigger wind farms can be built at sea before they become nationally significant infrastructure projects.

Supply chain bottlenecks

190. We agree that with a sufficiently strong commitment to renewables some investment will be stimulated. However, the current condition of the supply chain means that there is simply not the industrial capacity to increase the UK's renewable generation fast enough, regardless of the wishes of energy suppliers. Given the short timeframe involved, we urge the Government to use the analysis already carried out and build on their

general manufacturing strategy and to come forward with proposals specific to overcoming the problems of the supply chain in the renewables industry. We look forward to reviewing such proposals. (paragraph 135)

The Government agrees that the scale of ambition in our renewable energy goals presents significant challenges (and opportunities) for the supply chain in the renewables industry. The Manufacturing Strategy recognised the importance of supporting the supply chain for renewable energy technologies. It included an announcement of our intention to create an Office for Renewable Energy Deployment (ORED) to support the supply chain as the UK worked towards its challenging renewable energy goals. The Low Carbon Industrial Strategy and the Renewable Energy Strategy in 2009 will offer further analysis and proposals on how the supply chain constrains on the UK renewable industry can best be addressed.

191. We recommend that the Government share details of plans for renewable energy proposals widely so that market information is available to all parts of the supply chain. (paragraph 136)

The Government is fully committed to ensuring information is available to all parts of the supply chain. As mentioned above, the Government intends to create an Office for Renewable Energy Deployment (ORED). This will be one of a suite of new low-carbon offices, as a one-stop-shop for business and other stakeholders aimed at removing supply chain barriers to renewables deployment. The ORED will help the UK to facilitate a potential £100bn private sector investment in UK energy and to ensure that as many as possible of the estimated 160,000 jobs required to meet the renewables energy target are UK-based. Building upon our current approach, ORED will work to strengthen UK supply chain capacity, including by tackling specific supply chain blockages and facilitating inward investment, in partnership with RDAs, UKTI and others.

Regulation

192. Ofgem must encourage renewables development whilst also protecting consumers' interests. (paragraph 141)

The Government believes that Ofgem, the gas and electricity markets regulator, has a contribution (consistent with its role as the independent regulator) role in supporting the delivery of government energy policy, including the specific needs of renewable energy investment. For this reason, the Government has been consulting on revised statutory social and environmental guidance for Ofgem. Ofgem must "have regard" to such guidance, which sets out the Government's expectations of how it can make a contribution to the achievement of Government social or environmental policy goals appropriate to its remit and functions. As part of this, the draft guidance calls on Ofgem to carry out its functions in relation to the regulatory arrangements for network access in the manner best calculated to support timely deployment of renewables, both on and offshore. Specifically in relation to grid access, the draft guidance calls on the regulator to do all it can to enable new generators to connect to the networks in a timeframe consistent with their development programme.

Renewables obligation and feed-in tariffs

193. We recommend that a system of feed-in tariffs be created to work alongside the RO. (paragraph 155)

The Government agrees that a system of feed-in tariffs should be introduced for small-scale renewable generation, working alongside the RO which remains as the main support mechanism for large-scale renewable generation. We have announced our intention to bring forward a system of feed-in tariffs for small-scale generation and introduced amendments to the Energy Bill that will give us the powers to do so. We have set a maximum upper limit of 5 MW for eligibility under the FIT scheme. This is because we believe that those who we hope to encourage to install renewable generation at the small and micro level need a more transparent and guaranteed revenue stream. Larger generators should be able to enter the wholesale electricity market and negotiate a competitive price for their electricity and Renewables Obligation Certificates.

194. We are concerned that the provisions of the Energy Bill before Parliament appear already to have been superseded by the UK Renewable Energy Strategy consultation. This does not constitute clear and stable policy signals. We recommend the Government amend the Energy Bill now and increase the RO target from 20% to 40% by 2020. (paragraph 156)

The Government believes that the changes to the RO set out in the Energy Bill provide the necessary powers to incentivise the significant increase in renewable generation that the 2020 targets imply. The levels of the obligation are set in secondary legislation (the Renewables Obligation Order). The proposal announced in the Energy White Paper is to increase the maximum level of the RO from the current level of 15.4% to 20%

and we expect to make this change in a new Order which would take effect from April 2009. In the light of our Renewable Energy Strategy consultations and the 2020 target for renewable energy, we are considering what further changes will be necessary to the RO, including whether to raise or remove the upper limit. We anticipate that any further changes will come into effect in April 2010.

195. We urge the Government to act quickly following their consultation so that energy companies have a clear policy environment in which to make investment decisions. (paragraph 157)

The Government agrees on the need to act quickly following our consultation. We are already working to implement a number of proposals to further encourage renewable deployment, and will publish our full Renewable Energy Strategy in the Spring.

Cost to the consumer

196. We believe that although an increased use of renewables will cushion consumers from fluctuations in gas and oil prices, meeting the UK's 15% target will result in consumers paying more for their energy. This underlines the need for a commitment to an effective energy efficiency strategy. (paragraph 163)

The Government agrees that increased use of renewables could reduce exposure to volatile gas and oil prices, but that energy prices will be higher.

The Government also agrees that further energy efficiency measures could reduce the impact of the renewables strategy price increases on bills. The Government will therefore publish a consultation on new and enhanced energy savings measures before the end of the year.

Is the target achievable?

197. We believe that the EU's 20% by 2020 target, and the UK's 15% national target, should be regarded as a stepping-stone, not as a goal in itself. Without political momentum, the UK will continue to under-perform on renewable generation and will be in an increasingly poor position to move away from a reliance on fossil fuels. We are content, therefore, for the Government to agree to the proposed Directive but in our judgement the target can only be met if at least the conclusions and recommendations of this report are followed. (paragraph 170)

The Government agrees that the 2020 renewable energy target is a stepping-stone to our longer term climate change and energy security goals, rather than an end in itself. The Government also welcomes the Committees' conclusions and recommendations in the Report. We intend to publish the final Renewable Energy Strategy outlining Government policy on all the possible measures that will enable the UK to meet its share of the EU 2020 target in Spring 2009.

198. In order to provide an incentive for technologies and investments not fully deployed by 2020, but which will require commitment and resources before then, the Government and the EU should consider also adopting a target for 2030 so as to both sustain the overall momentum for renewables and provide an incentive for still emerging technologies, such as wave and tidal power. (paragraph 171)

The Government fully agrees on the need to sustain momentum for renewables beyond 2020, and to incentivise still emerging technologies such as wave and tidal power. We do not plan to adopt a target for 2030 at this stage, as we believe it will be important to take account of how renewables, the wider energy market and other factors develop in meeting the 2020 target before setting any further targets. However in drawing up the Renewable Energy Strategy, we are conscious of the need to provide a coherent policy environment post-2020, which includes incentives for emerging technologies.

20 November 2008

29TH REPORT: EUROPOL: COORDINATING THE FIGHT AGAINST SERIOUS AND ORGANISED CRIME

Letter from Vernon Coaker MP, Minister of State, Home Office to the Chairman

I am writing in response to this report, which I very much welcome.

I was pleased to read many positive comments about our engagement with Europol and recognition that the organisation plays an important part in supporting UK law enforcement agencies in the fight against cross border serious and organised crime and terrorism. Through the Serious and Organised Crime Agency we have established an extremely fruitful relationship with Europol and intend to build on that in the future.

I agree with the Committee that for it to be effective Europol needs Member States to engage more and to improve information sharing, both at the level of the analytical work files, where the UK is particularly active, but also at the more general level, feeding into the Europol Information System. There are no instant solutions but we are addressing the technology problems that will allow SOCA to use the Europol automatic data loading facility to populate the Europol Information System.

I accept the findings of the Committee that we can do more to play our part in developing our information exchange processes, and to improve the sharing of information that is circulating the periphery of Europol, through bilateral and multilateral engagement at the level of the Member State Liaison Bureaux. We have already made some progress in this area, and this will continue.

I note also the views of the Committee on the Europol management structure, and the limited impact it believes will derive from the new Europol Council Decision. While this is not the solution we worked hard for during the negotiations of the new Europol Council Decision, the new arrangements for selecting the Chair of the Management Board still represent a significant change, which in our view will improve the current situation. The Committee recommends re-opening the debate and seeking to amend the Europol Council Decision before it comes into force as expected on 1 January 2010. As the Home Office said in its evidence; we would have gone for more far-reaching reform along the lines that the Committee itself has recommended. Other Member States were not prepared to go that far at the time and there is no indication that their views have changed. We think we will need to let the new arrangements settle in and then review the position, before considering whether there is a case for proposing an amendment to the Council Decision.

The Government has prepared a detailed response to the report which addresses the Committee's recommendations and conclusions, and this is attached.

13 January 2009

Government Response

1. *Objectives and competence*

264. We believe that where Europol is likely to have information or intelligence, which will facilitate the investigation and detection of crimes, those are crimes which should fall within Europol's mandate. (Paragraph 40)

265. In our view it is therefore right that Article 4 of the Europol Decision will not limit the mandate of Europol to "organised crime". As drafted, in our view it gives as good a definition of the crimes which should fall within its competence as is likely to be achievable. (Paragraph 41)

> The Government agrees with the Committee's view and believe that the position we took when negotiating the new legal instrument has resulted in a practical outcome. When the new Council Decision comes into force Europol will have some flexibility to support Member State law enforcement investigating the most serious of crimes, which are not necessarily or obviously linked to organised crime gangs. But equally we are also pleased to see some safeguards which will limit Europol's involvement to cross border criminality.

2. *National units and liaison officers*

266. While we accept that SOCA is best placed to act as the United Kingdom National Unit, the fact that it has no counter-terrorism remit makes it all the more important that it should work very closely with the Metropolitan Police and other forces which do have such a remit. (Paragraph 46)

> We recognise the importance of working closely with all UK police forces to maximise the support they may gain from Europol, and not just on counter terrorism issues. SOCA has extremely close links with the Metropolitan Police Service (MPS) and for the last four years a senior officer from the MPS Counter Terrorism Command has been seconded as a Counter Terrorism Liaison Officer (CTLO) at the UK Liaison Bureau at Europol. This allows the MPS and other UK police forces with a counter terrorism remit to enjoy full and direct access to the counter-terrorist activities of Europol. In addition, individual UK police forces can and have engaged directly with Europol on specific counter terrorism operations.

3. *Bypassinq Europol*

267. We agree with the Friends of the Presidency Group that it is highly desirable that bilateral exchanges of information should be recorded on Europol secure databases. The Management Board should give this serious and urgent consideration. (Paragraph 57)

268. There is a lot to be said for building up bilateral and multilateral contacts between national liaison officers. It is the first and most important step in the development of trust between them. (Paragraph 62)

269. However, for Member States to share information in a limited way through liaison officers is the antithesis of the purpose of Europol, which is the enhancement of the already existing combined effort of the Member States' competent authorities so that the whole is greater than the sum of its parts. Limited sharing of information will not achieve a common approach to cross-border cooperation against serious crimes. (Paragraph 63)

270. The Home Office tell us that the United Kingdom is prepared to take a lead in improving the amount of material shared with Europol. We look forward to hearing in the Government's response to this report precisely what steps they intend to take to bring this about. (Paragraph 64)

The Government agrees with the Committee that Member States can and should do more to share information at their disposal with Europol. This is not something that can be achieved across the EU that quickly, but the development of a new IT architecture at Europol, including a new information system for the liaison bureau network, offers an opportunity to improve information exchange. And, in our view, confidence in Europol and its databases is generally improving across the EU, which will encourage an increase in data sharing.

We are ready to lead by example. SOCA has already reviewed its internal procedures and it has now adopted a policy where, sensitivity permitting, details of all its bilateral exchanges through the Europol Liaison Bureau network will be routinely copied to and searched against central Europol databases. Subject to the outcome of discussions with ACPO and others this will include material received from UK partner agencies.

Also, through SOCA, the UK will lobby at the Europol Management Board and elsewhere for this approach to be adopted across all Member States.

4. *Intelligence-led policing*

271. We believe that Europol is uniquely well placed to establish among the police forces of the Member States a common understanding of intelligence-led policing. Europol should work with the Heads of National Units and the European Police College to organise training which will encourage the adoption and use of intelligence-led policing as the common working method. (Paragraph 76)

There was acceptance during our 2005 EU Presidency of the concept of intelligence led policing. We recognise there is still some way to go to establish this as "the common working method". But the Government believes that there is a gradual awareness emerging of the benefits of an intelligence led approach which will become more embedded as the organised crime threat assessment (OCTA) and EU terrorism situation and trend report (TE-SAT) are further developed. We need to build on this.

The Government is very pleased to note that the Europol draft work programme 2010 contains an objective to embed the principles of intelligence led policing in Europol's decision making processes, and that as a result Europol would update its planning methodology to recognise this principle. For this to be a success though Europol would need to have the active participation of Member States. We see a role here for SOCA promoting the initiative at the level of Heads of Europol National Units, and we agree with the Committee that there is an opportunity for the EU Police Training College (CEPOL). This will be explored through the National Police Improvement Agency and the UK representative on the CEPOL Governing Board.

5. *The Organised Crime Threat Assessment*

272. We congratulate the Government and officials on their work in exporting to other Member States and to Europol the concept of the Organised Crime Threat Assessment. The continued development of the OCTA should be pursued. (Paragraph 81)

273. When associated with an intelligence-led approach to policing the OCTA should improve the liaison arrangements between prosecuting and investigating officials required by Article 30(2)(c) of the Treaty on European Union, and lead to better coordination of internal security, improved information exchange, and more accurate communication. We encourage the Government to persevere in their attempts to embed these concepts in the policing culture of all Member States. (Paragraph 82)

The Government believes that the Organised Crime Threat Assessment produced by Europol is increasingly being seen by Member States as an important tool to combat organised crime in their countries. We feel that its quality and thus its effectiveness will continue to develop as countries derive benefits from the OCTA. This will encourage them to provide the necessary intelligence to Europol that goes into updating both the OCTA and the EU Terrorism Situation and Trend report (TE-SAT).

We are pleased to note that the Europol draft work programme 2010 contains an objective to maximise the quality, relevance and timeliness of strategic products such as the OCTA, TE-SAT and thematic threat assessments and situation reports.

6. *Information exchange and analysis*

274. We continue to doubt whether all Member States have the necessary commitment to the exchange of information which is Europol's core function. (Paragraph 88)

275. Information capture is an important part of Europol's functions, and the Government should ensure that automatic data loading from SOCA to the Europol Information System is implemented as a matter of urgency. (Paragraph 94)

276. We agree with the Friends of the Presidency Group that the Director should put in place a mechanism which can automatically check the information in the different Europol systems for cross-references, and where possible notify the owners of the data. If further resources are needed, they should be made available. (Paragraph 98)

The Government agrees with the Committee that for the Europol Information System to become an effective provider of intelligence it needs to be supplied with far more data than has hitherto been the case. We acknowledge that the only practical way of loading large volumes of data onto the Europol Information System is to use the automatic data loading facility supplied by Europol. The United Kingdom is not alone in the EU in not being able to use this facility at the moment but the Government views it as a priority that SOCA's information technology systems are upgraded so that it can take advantage of automatic data loading facilities. SOCA expects to have the requirement incorporated into its information management programme for delivery by 2010.

In the meantime it is hoped that the gradual increase, over the last year, in the UK's contributions to the Europol Information System will improve further with the planned introduction in 2009 of a direct link to police forces in England and Wales via the 'police national network' (PNN) system. Progress has already been made and SOCA has, this month, successfully connected the Metropolitan Police to the Europol Information System over the secure PNN.

The Government shares the view of the Committee that it is essential for the development of Europol's capabilities that there is effective inter-operability of databases at Europol. We understand that this ranks as a high priority in Europol's Information strategy and we will continue to support it strongly.

7. *Joint investigation teams*

277. The role of Europol in relation to joint investigation teams should be to facilitate, support and coordinate investigations, but not directly to initiate them. (Paragraph 112)

The Government agrees with the Committee's conclusion. We are convinced that Europol's role is to support Member State law enforcement authorities in their fight against serious and organised crime and terrorism. It should not become an investigative body in its own right.

For this reason the Government was content with the outcome of the negotiations of the new Europol Council Decision, which enables Europol staff to participate in investigations in a supporting capacity, at the invitation of and under the direction of the Member State Joint Investigation Team leader.

8. *Counter-terrorism*

278. The Government must make sure that United Kingdom agencies comply with the 2005 Council Decision on the supply to Europol of information relating to terrorism investigations, subject always to the qualification protecting essential national security interests. We recommend that the Government should persuade other Member States to do likewise. (Paragraph 117)

279. Member States should consider amending the 2005 Council Decision to delete the requirement that at least two Member States must be involved in a terrorist act for the Decision to apply. (Paragraph 118)

280. We believe the Government should treat with caution any proposal that direct exchanges of intelligence between the security services of the United Kingdom and those of other Member States should take place through Europol. (Paragraph 123)

The Government believes that the UK has a good track record of sharing information on terrorist related investigations with Europol. Indeed this is recognised by Europol itself. The Committee acknowledges the overriding need to protect national security interests, and this does have an impact on the decision whether to share the information at all or simply the timing of when it is shared with Europol. In some cases it is only possible to share material after an investigation.

We do not see that the provisions of the 2005 Council Decision on the exchange of information and cooperation concerning terrorist offences, actually prevent a Member State from sharing such information with Europol, and the UK already provides material to Europol where no other Member State is involved in a terrorist investigation. For this reason the Government would not see it as a priority to seek to amend the 2005 Council Decision.

We note at paragraph 116 of the Inquiry Report the Committee's opinion that the 2005 Council Decision requires Member States' security services to pass intelligence information to Europol. We do not agree that this is the case. The legislation was drafted with law enforcement in mind, and not the intelligence agencies. Indeed, in our view Article 2 is quite specific on this issue with clear references to police and law enforcement authorities collecting information resulting from criminal investigations conducted by the law enforcement authorities with respect to terrorist offences. We believe this puts the security services completely out of scope as far as the 2005 Council Decision is concerned, and we shall continue to take this line in any further discussions on the issue.

The Government is not aware of any current proposal that direct exchanges of intelligence between the security services of the United Kingdom and those of other Member States should routinely take place through Europol. We would agree with the Committee that such a proposal should be resisted. In any event national security falls outside the competence of the EU and in that context there is an important distinction to be made between providing information relating to a criminal investigation and providing intelligence. This does not mean that Member States' intelligence or security services may not choose to provide information to Europol but we believe that the current arrangements where the Member State intelligence services plug into the EU Joint Situation Centre (SitCen) are working well.

9. *The Chairmanship of the Management Board*

281. There is no conceivable logical connection between the nationality of the person best qualified to be Chairman of the Management Board and the identity of the Member States holding the troika Presidency; there is no reason why the other members of the Management Board should be excluded from the selection of their Chairman; and the length of three Presidencies should be irrelevant to the term of office. (Paragraph 134)

282. We recommend that the Decision should be amended before its entry into force to adopt for Europol a system identical to that of Frontex: a Chairman of the Management Board elected by and from among his colleagues for a term of two years, renewable once. (Paragraph 136)

283. We further recommend that the dates of appointment of the Chairman and Director should be such as to give several months of overlap between their respective terms of office. (Paragraph 137)

The Government is sympathetic to the views of the Committee and we worked very hard during the negotiations of the Europol Council Decision to achieve the sort of outcome envisaged by the Committee. We agree that from a practical point of view the principle of rotation of the Presidency of the EU is more likely to reduce the chances of identifying the person best qualified to be the Chair of the Europol Management Board.

Our proposal was to introduce an open competition for the entire Europol Management Board to identify an individual who would hold the Chair for at least two years. A significant majority of Member States would not agree to this proposal and we reluctantly agreed to the compromise rather than to block progress of any sort. We do not sense any change in Member State's views. Our view is that there would be no likelihood of any support to re-open the discussion and no realistic chance of amending the Council Decision in the foreseeable future. It will be necessary to give the new arrangements time to settle down and the situation can be considered again at the first formal review.

That said the Government feels that even the compromise is a big step forward. The Chair of the Management Board will serve for 18 months rather than 6 months as at present. As we said in evidence to the Committee, this provides greater continuity, will encourage longer term planning and gives more time to develop effective working relations with the Europol Director.

We recognise the obvious benefits of overlapping the appointment periods of the Europol Director and the Chair of the Management Board where this is possible, and to an extent this could be facilitated by the new arrangements for appointing the Chair of the Management Board.

10. *The relationship between the Management Board and the Director*

284. It should be made clear in the text of the Decision that the Management Board is responsible for the strategic direction of Europol, and the Director for its performance and administration. (Paragraph 147)

285. It should also be made clear that the provision that the Board should "oversee the Director's performance" means no more than that he is accountable to the Board for the performance of his duties. (Paragraph 148)

286. However the Management Board will not be inclined to leave the Director free to run the organisation unless they feel they can trust him to do so efficiently and effectively. (Paragraph 149)

287. In the end, good governance of Europol depends on having the right personalities as Director and Chairman of the Management Board. We do not believe it will be possible for them to develop a relationship of mutual respect and trust unless our recommendations on the chairmanship are adopted (Paragraph 150)

288. The Chairman of the Management Board needs a supportive Secretariat whose staff must be allowed a sufficient degree of independence to carry out their task. If the Secretariat needs to be larger than at present, it should be enlarged. (Paragraph 151)

The Government believes that the text of the new Europol Council Decision does articulate more clearly than the existing Europol Convention, the functions and responsibilities of the Management Board and the Europol Director. The intention is that the Management Board should develop the strategic direction and the Director will be responsible for the performance of the tasks assigned by the Management Board. The role of the Management Board would be to oversee the Director's performance and hold him to account for delivery of his objectives, not to get involved in micro-management. From our experience of the negotiation of the new Council Decision we have no reason to believe that any Member State has a contrary view and we are confident that this approach will prevail at the Europol Management Board.

As the Committee points out, an effective relationship between the Management Board and the Europol Director is essential to fostering confidence, and although not perfect, the new arrangements for appointing the Chair of the Management Board are a positive step towards creating that trust.

We recognise the need for an efficient Secretariat, one that is sufficiently resourced and empowered to carry out its functions in support of the whole Management Board. Although we are not aware of any concerns in this regard, we agree with the Committee that were such issues to arise they should be addressed as a matter of urgency.

11. *Four-yearly reviews*

289. If a full and independent evaluation of the work of Europol is to take place only every four years, the Decision should give guidance as to how the evaluation is to be carried out, and what is to be its outcome. We would like to see the Decision amended in line with the Frontex Regulation. (Paragraph 165)

290. Whether or not the Decision is amended, it should be clearly understood that the independent evaluation must take fully into account the views of stakeholders, and that the Management Board and the Commission both have parts to play to ensure that any shortcomings shown up by the evaluation are put right within a reasonable time. (Paragraph 166)

291. In the end, any organisation will function well only if its staff can work together as one unit in an atmosphere of mutual confidence and trust. We hope that the evaluation will pay particular attention to this issue. (Paragraph 167)

The new Europol Council Decision requires the Management Board to issue specific terms of reference for the conduct of Europol's external review. While the Government understands the point made by the Committee, the Europol Working Group determined not to try and insert specific directions in the legal instrument. It was felt that this level of detail was inappropriate for a Council Decision and further that it would more likely limit flexibility than be of benefit.

The Government agrees with this approach and is confident that the Management Board can produce terms of reference that address the specific points raised by the Committee as well as issues that have arisen in the period in between reviews.

12. *Democratic accountability*

292. It must be for the European Parliament to decide whether it wishes to adopt, in the spirit of the Treaty of Lisbon, a formal procedure for the scrutiny of Europol's activities, and whether, and if so how, to involve the national parliaments of the Member States. We hope however that the Parliament will give this serious consideration. (Paragraph 174)

We note the Committee's view and in general terms the Government believes that Europol should be open to scrutiny by the European Parliament. It was for this reason that we pressed for an amendment to the Europol Convention during the negotiation of the new Europol Council Decision. As a result the Parliament can now require the Europol Director, the Chair of the Management Board and the Presidency of the Council to appear before it to discuss issues relating to Europol.

13. *Relations with partners*

293. We believe that for Europol and Eurojust to be located and working together in the same building could have resulted in a partnership which was easier, more productive and above all more secure. We share the disappointment of our witnesses that this will not now take place. (Paragraph 187)

The Government shares the Committee's view that co-locating both organisations in the same building would have been beneficial and it too regrets the lost opportunity. We understand however that this was not due to a lack of will, that there has always been general agreement from all sides to explore the opportunity for co-location. But in the final analysis this was simply not possible because the site acquired for Europol could not support a building that would accommodate both organisations and their likely expansion over the coming years.

14. *Responsibility for security*

294. The Director of Europol should have overall responsibility for security in the organisation he directs. There is no case for the responsibility lying with a deputy whose responsibility bypasses the Director. (Paragraph 213)

295. Advice to the Director on security issues must come from within the organisation: from the deputy he appoints to deal with such matters, and from the security officer and other officials responsible. (Paragraph 214)

296. Whatever body it is that advises the Management Board on security issues must be small, must consist of security experts, and must work on a need to know basis. Except perhaps in the case of institutional matters there is no need for all Member States to be involved, or indeed for any Member States to be involved unless the security issues directly involve them or their national units or liaison officers. (Paragraph 215)

297. There must be clear demarcation between safeguarding security and data protection. (Paragraph 216)

298. Changes to the security structure can be made by amendment of the Council Act. The Council can make such amendments at any time there is no need to wait for the Europol Decision to come into force. (Paragraph 217)

The Government agrees with the Committee that the Europol Director should have direct and personal responsibility for security at Europol and in our view he does have that responsibility.

The Security Committee consists of experts from Member States and is responsible for ensuring that the organisational security architecture is sufficiently robust to satisfy the Member States. The Security Committee's recommendations are critical to whether Member States have confidence in EUROPOL and this will be important to both the Director and the Management Board. We see no conflict in the Security Committee advising both the Director and the Management Board at a strategic level.

The post of Security Coordinator *is* responsible to the Director for day to day security in the organisation and for implementing secure operating procedures and for dealing with breaches.[19]

[19] In accordance with COUNCIL ACT of 3 November 1998 adopting rules on the confidentiality of Europol information (1999/C 26/02) Article 4.
Security Coordinator
1. The Security Coordinator shall have general responsibility for all issues relating to security, including the security measures laid down in these rules and the Security Manual. He shall monitor the enforcement of security provisions and inform the Director of all breaches of security, who shall, in serious cases, inform the Management Board, If such a breach risks compromising the interests of a Member State, that Member State shall also be informed.
2. The Security Coordinator shall be directly answerable to the Director of Europol.

15. *Individual security*

299. If Member States are prepared to devote the necessary resources to clearing all individuals involved to the highest security levels required for their work, this alone should do much to enhance trust. (Paragraph 221)

The Government agrees with the Committee, and feels that until people working at Europol are security cleared to the appropriate level this will continue to impact on Europol's effectiveness. Security clearance is not a particular issue for the UK, but we will continue to encourage our partners to take this issue more seriously, through intervention at the Management Board, for instance.

16. *Data protection*

300. We express our regret, not for the first time, that the negotiations for a Data Protection Framework Decision, which could and should have resulted in an instrument setting a high general standard of protection for third pillar data exchanges, have instead produced an anodyne and toothless document which the Europol Decision does not trouble to apply to Europol's work. (Paragraph 237)

The negotiations on data protection issues within the Europol Working Group considered at length the relevance of the Data Protection Framework Decision (DPFD) to Europol. On the advice of the Council Legal Service that the DPFD did not apply to Europol, all references were removed from the Europol Council Decision. That said the data protection safeguards set out for Europol in the legal instrument exceed those that were envisaged by the DPFD, and the Government is quite satisfied with the effectiveness of Europol's data protection regime.

17. *Privileges and immunities*

301. The Regulation removing the privileges and immunities of Europol staff taking part in joint investigation teams will enter into force at the same time as the Europol Decision. We believe that this is a satisfactory outcome. (Paragraph 241)

The Government agrees with the Committee and is pleased that the strong position we took during the negotiations of the new Europol Council Decision resulted in this satisfactory outcome.

18. *Linguistic and legal difficulties*

302. If analysis work files are to live up to expectations there must be a common understanding of the language used. We believe that a review should be commissioned to bring the terminology up to date. Once this is done, a small group should be appointed to make sure that the terminology remains clear and consistent. (Paragraph 249)

303. One of the activities listed in Europol's 2009 Work Programme is a multilingual European law enforcement dictionary, intended to facilitate searches by Europol officials for law enforcement words and expressions. This is an initiative we applaud. (Paragraph 250)

We would have no particular concerns if the Europol Director was minded to establish a small "terminology review" group as recommended by the Committee, and will bring this recommendation to the Director's attention.

But in respect of Analytical Work Files the Government is broadly pleased with the progress being made in broadening the scope of the Work Files and thereby improving their flexibility whilst retaining the discipline of the arrangements for opening, closing and merging Work Files. This is being achieved whilst maintaining data security and observing data protection regimes and should lead to better supported operations.

The Government recognises the twin problems of practitioners working in a second language and the very technical nature of the subject matter. Europol is at the forefront of a dynamic area of international intelligence best practice. Against this background it is not surprising that some of the terminology used, and even some of the techniques developed are unfamiliar to main-stream law enforcement officers. However we recognise the role of the Europol Liaison Officers—as pointed out by ACC Gargan when he gave evidence—in clarifying any areas that are not easily understood and explaining this to local law enforcement officers in their own language. Further we highlight the role of officers that have worked at Europol either directly or as Liaison Officers and returned to national policing as advocates for Europol and experts in criminal intelligence. These officers often become agents for change in their own organisations building on the expertise they gained at Europol.

19. *Quality of officers seconded to Europol*

304. We believe that the Director of SOCA and Chief Constables should make it the norm that a secondment to Europol takes place on promotion. (Paragraph 254)

The Government agrees with the Committee that we need to do more to encourage UK law enforcement officers to apply for posts at Europol, but we feel the position will not be improved by focussing just on promotion opportunities. However we will take up the matter with ACPO. A key problem for a police officer deciding whether to apply for a posting at Europol is their police pension arrangements. All Europol staff are required to sign an employment contract. Under the current arrangements an officer's pension contributions and thus their period of service is frozen while they are working at Europol. In essence they either have to resign or seek an extended leave of absence. On return to their home force they cannot make up the "lost" contribution from the lump sum they would receive from Europol at the end of their posting. We see this as the biggest disincentive for our law enforcement officers to seek employment opportunities with Europol.

We have been discussing with Europol lawyers ways of ameliorating this situation, and in turn they are in discussion with the European Commission, because we need to find a solution that will operate from 2010, when Europol's legal base changes. The Government is still hopeful that a solution to this problem may be found.

If the pension problem can be resolved then there are a number of strands of activity that need to be developed through the auspices of SOCA, ACPO and ACPO(S) aimed at raising awareness within the UK law enforcement community of the benefits of working at Europol. Apart from ongoing awareness-raising campaigns we need to ensure that officers enjoy a right of return to their home force on completion of the posting and have the right to apply for promotion within force in the meantime. In addition we need to consider the training needs of UK law enforcement officers to ensure they carry a sufficient focus on EU components, including knowledge of Europol and language skills. And finally we believe there is benefit in promoting the greater use of short-term secondments to EUROPOL, in support of specific projects of high priority value to the UK, to build competence and provide a flavour of working at Europol.

20. *The profile of Europol among United Kingdom police forces*

305. It is essential that, when local police forces seek the help of SOCA over crimes with an international element, they should be told whether SOCA intends to seek help from Europol, Interpol or some other agency, and be kept fully informed of the outcome of their query and the source of any information from international agencies. If information from Europol reaches them re-branded as SOCA information, this will hinder their evaluation of it. (Paragraph 260)

306. Similarly, if SOCA requests information for Europol from police forces, they should be told that this is the purpose of the request. (Paragraph 261)

307. It should be the responsibility of SOCA to arrange visits to Europol by officers from United Kingdom forces, and to encourage senior officers to have a better understanding of Europol's work. (Paragraph 263)

The Government accepts that more could be done to improve feedback to UK law enforcement bodies by SOCA, where Europol features in information exchanges that relate to them. We recognise the benefits that would accrue, raising awareness of Europol and the part Europol can and does play in supporting our criminal investigations, which in turn will encourage more international participation by UK law enforcement agencies.

SOCA is already active in promoting Europol domestically through, for example, regional road shows to police forces, various publications and bringing together the international liaison officers from each force, at a conference at the end of 2008. SOCA also regularly hosts visits to Europol by senior officials and politicians including law enforcement officers at the highest levels of command. All of these activities will continue. In addition, SOCA will act on the recommendation by the Committee that they should indicate to police forces which channel of communication is being used in facilitating an international request, and the outcome of the enquiry.

31ST REPORT: ADAPTING THE EU'S APPROACH TO TODAY'S SECURITY CHALLENGES—THE REVIEW OF THE 2003 EUROPEAN SECURITY STRATEGY

Letter from Rt Hon Caroline Flint MP, Minister for Europe, Foreign and Commonwealth Office to the Chairman

I welcome the thoughtful 31st Report of the 2007–08 session by the House of Lords European Union Committee into the Review of the European Security Strategy. The inquiry took evidence from a range of witnesses and made an insightful set of recommendations many of which the Government would endorse. In my letter of 17 December 2008 enclosing the Report of the Review of the European Security Strategy, I summarised the content of the Report endorsed at the December European Council. I have attached the Government's response to each of the Committee's conclusions. In some cases where the conclusions follow on from each other I have taken them together.

21 January 2009

Government Response

Chapter 1: The Security Strategy

The 2003 Strategy

The European Security Strategy represents the collective thinking of Member States on the challenges and security threats facing them at the beginning of the 21st century, as perceived in 2003. The ESS is not a strategy in the military sense of prescribing detailed actions and set timelines. However, it does helpfully define a common approach to the main security challenges and sets three important EU security objectives: addressing the threats, building security in the EU s neighbourhood and working with other states and organisations to achieve "effective multilateralism" (paragraph 11).

The 2003 European Security Strategy is a clearly drafted and concise document. We attach importance to any revised Strategy not being significantly longer. In consultation with its EU partners, we believe that the Government should seek a limited number of changes to the 2003 European Security Strategy, in order to introduce or strengthen references to climate change, the links between security and development, energy security, human security and the "responsibility to protect", and multilateral nuclear disarmament. Other issues, including implementation and operational lessons, could be covered in a separate document to be appended to the revised Strategy (paragraph 18).

> The Government agrees with the Committee that the 2003 Security Strategy has been helpful in setting out a common approach to the security issues faced by the EU. Throughout the process the Government has emphasised that the fundamental analysis underpinning the European Security Strategy is still relevant, but that a changed global environment made a review timely. As I said in my letter of 17 December 2008, in order to ensure that the document remained focused on the high level strategic aims of CFSP and the threats facing the EU, Javier Solana's Policy Unit took lead responsibility for drafting the review of the strategy, The Government was particularly keen to ensure that references to climate change, energy security, responsibility to protect and multilateral nuclear disarmament were robust and accorded with our policy positions. Broadly, I believe that we were successful in securing such recommendations, many of which I consider in more detail below.

Concepts of security range from the traditional defence against armed attack from a hostile power, to more recent concepts, such as human security, which focuses on the individual. Both types of concept are relevant to European security and should be taken into account in the review. The August 2008 conflict in Georgia has, for example, reminded Europeans of the continuing existence of military threats while events in Afghanistan have shown the importance of human security. But we would caution against an approach which extends the concept of human security to almost any form of human activity; and also against any attempt to establish a hierarchy between state security and human security (paragraph 31).

> Rightly, the Review does not seek to engage in the debate about how security should be defined. Rather, it makes clear that CFSP's success in tackling complex challenges depends on flexibility. However, in line with evolving concepts of security it does recognise the importance that should be attached to "people-based" approaches, "coherent with the concept of human security" (page 14).

We consider that developments in the past five years on the global scene and the events in Georgia in August 2008 make a review timely, while recognising that the December 2008 date for the presentation of the review is too early for the implications for transatlantic relations of the US election to have been absorbed and for the future of the Lisbon Treaty to have been resolved (paragraph 35).

The ESS should in future be reviewed on a regular basis, normally every five years (paragraph 36).

> The timing of the ESS Review will enable the EU's engagement with the incoming US administration to be more comprehensive regarding questions of security. There are currently no plans to review the European Security Strategy on a regular basis. The original document and the review are intended to set out a broad framework rather than specifying detailed plans of action. Shifting international positions and global trends will impact on the relevance of the strategy and its review. As such, we see it as a fluid document that is flexible enough to guide action in the short to medium term, but which may need to be updated in the future as threats change.

Chapter 2: The Strategy's Profile and Influence

The Strategy's influence on policy-making

The European Security Strategy is used extensively and influences policymaking in the EU institutions, especially in the parts of the Council and Commission dealing with security issues. To build on this achievement, we would encourage the Council and Commission services to take steps to heighten awareness of the Strategy among staff dealing primarily with other policy areas, especially trade and development, justice and home affairs, energy and the environment. We believe that in future the Commission should make more use of the Strategy as a point of reference in proposals it puts forward, including in its Annual Policy Strategy and, where appropriate, Country Strategy Papers which the Commission drafts as part of its development cooperation policy (paragraph 43).

> The Government agrees that heightening awareness of the Strategy amongst Member States and the EU institutions will assist in taking forward its recommendations. Consideration is ongoing within the institutions as to how best to achieve this, and the Government will continue to engage to ensure that our views are reflected.

The European Security Strategy represents a common European analysis and Member States should therefore use it as a point of reference although we recognise that it is likely to continue to have a highly varying degree of influence on policy-making in the Member States. We support the Government's efforts to influence the outcome of the current review and encourage them to raise awareness of the Strategy within relevant Departments, including MOD, FCO, DFID and BERR, including through its incorporation into staff training modules (paragraph 44).

> The conclusions of the ESS and the Review of its implementation are broadly in line with the UK's own National Security Strategy, in terms of the key principles of preferring a multilateral approach, grounded in a set of core values, wherever possible seeking to tackle security challenges early. Similarly the ESS promotes capability development in line with our own objectives set out in the National Security Strategy, for example developing better civilian responses. The National Security Strategy is the framework under which relevant Departments consider their policy responses in the security field, and we feel that this is the right vehicle through which to consider the security questions facing the UK.

Is there a need to increase public awareness of the Strategy?

Awareness of the ESS among the general publics in the EU is low and interest is likely to remain at that level unless a conscious effort is made to remedy this and to connect the Strategy to developments which affect citizens' everyday lives. We believe that, once the review has been completed, the European institutions and the governments of Member States should make explaining its relevance an important part of their public diplomacy; and that HMG should do this in the UK. We also recommend that any future review of the Strategy should be preceded by a more systematic consultation of civil society institutions than has been the case on this occasion (paragraph 49).

> The UK Government is actively seeking to engage on its delivery agenda for the EU. Over the past year we have held a series of seminars at home and across European capitals to explain what we are seeking to achieve in Europe, and ensure we reflect the views of Europeans. We will continue to engage on issues of concern to UK and European citizens and we will consider whether European security should be a topic for future discussion at seminars of this nature.

Chapter 3: Changes in the Security Environment Since 2003

The changing security environment since 2003

The coherence between the EU's internal and external security activities needs strengthening as coordination between the EU's external policies and home affairs policies was identified as an area of weakness in evidence to the Committee. We believe this should be covered in the review of the Security Strategy (paragraph 57).

The UK National Security Strategy is clear that we need to develop a more integrated approach to security. The review of the ESS recognises that security "issues cross boundaries, touching as much on domestic as foreign policy" (page 18). Indeed, the review acknowledges explicitly that "we need to improve the way in which we bring together internal and external dimensions" and that "progress has been slow and incomplete" (page 7). More needs to be done in practice to ensure that the Stockholm Programme, the Justice and Home Affairs work programme to be agreed under the Swedish Presidency (the successor to the Hague Programme), takes this aspect on board to recognise the link between internal and external security. Following a review of the JHA External Strategy in 2008, the French Presidency renewed focus on the external aspects of policies across the JHA area. This emphasis will continue during the Czech and Swedish Presidencies with a dedicated Working Group to improve linkages and better harness the links between the internal and external elements of JHA policies. The Government is mindful of the interconnectedness of the internal and external elements of security policy, and has been involved in a range of efforts to better develop these linkages at EU level.

Climate change and its implications for international security

The most important development since 2003 is that the EU has become more aware of the current and potential effects of climate change. This is a crucial concern because developing countries will be among those hit hardest by the consequences of climate change but have the least ability to cope and adapt, thereby potentially impacting on competition for natural resources, conflicts and international security. We believe that the review should recognise this (paragraph 69).

These security implications strengthen the case for the UK and the EU to play a leading role in addressing climate change, which is a fundamental challenge of our times. Its relevance as a threat multiplier and an exacerbating factor of human insecurity and conflict means it is one of the main issues which should be given significant attention at the December European Council (paragraph 70).

The Government agrees that if we do not limit the threat of dangerous climate change through an urgent transition to a global low carbon economy, the EU will not be able to deliver security for its citizens. The UK has taken the lead in integrating climate change into traditional security policy through pushing climate change to the top of the international debate about security. The importance of climate change as a security threat is reflected in the UK's National Security Strategy published in March 2008, which states "climate change is potentially the greatest challenge to global stability and security, and therefore to national Security"

The mandate for Javier Solana and the European Commission to publish the joint report in June 2007 on "Climate change and international security" came as a result of UK efforts, including the UN Security Council debate on climate security in April 2007. The agreement on a legislative package by the December 2008 European Council to implement the EU's energy and climate change commitments demonstrates that the EU is now a strong front runner in international action on climate change. The UK Government will continue to push all Member States to honour their climate change commitments.

Further analysis and research is required to identify with a greater degree of precision the exact implications of climate change for international and human security, including for conflict and migration dynamics. These are likely to vary considerably in different regions of the world, and we therefore strongly support the work currently underway by Dr Solana and Commissioner Ferrero-Waldner on regional analysis which is the place for further development of these issues (paragraph 71).

The UK is clear about the potential threat climate change poses to global security and our own national security. We support the Commission work currently underway on further regional analysis. The Government agrees that we need to deepen understanding of the second and third order impacts triggered by climate change such as water scarcity, migration, crop decline; and how climate change will interact with other factors that can trigger instability such as weak governance. The UK is contributing to the Commission's work with a series of studies. We are funding UK, US and Chinese think-tanks to conduct a study examining the security implications of climate change in China which started in December 2008. The Government is starting a joint study with the French Government in March 2009 on the security implications of climate change in the Sahel region in Africa. We are also in the process of developing further studies to commence over the course of 2009.

We are concerned that the EU has not yet paid enough attention to the importance of adaptation in developing countries. Without undermining the ambition of its mitigation objectives, the EU should place a greater emphasis on meeting this challenge, including by stepping up the budgetary resources available for this end. Technology transfer to these countries will also play an important role (paragraph 72).

The Commission has proposed the Global Climate Change Alliance (GCCA) to help developing countries most affected by climate change and through which the EU and developing countries will work to integrate climate change into poverty reduction strategies. The Government will continue to work with the Commission and Member States to support poor and vulnerable developing countries to develop climate-resilient development plans and programmes, and continue to press for new additional finance of national planning and delivery to help countries adapt to climate change. The Government will also work to ensure Commission aid programmes take account of the risks from climate change.

Development and security

The increasing importance of the links between security and development should be taken into account in the review of the European Security Strategy. Achieving human security and resolving conflicts in developing countries make a direct contribution to the security of the EU and to addressing global challenges ranging from pandemics to migration and environmental degradation (paragraph 83).

An important part of this agenda is tackling the root causes of conflict and radicalisation, including poverty, inequality, the perception of injustice and marginalisation, poor governance and human rights abuses. The development assistance of the EU should be conflict-sensitive and contribute to peace-building and conflict prevention in fragile states (paragraph 84).

It is in the EU's interests to help prevent violent conflict and security threats from developing. An emphasis on prevention can save lives and often only costs a fraction of the cost of international intervention once a crisis has developed. Greater attention and resources should be devoted to this objective (paragraph 85).

The Government fully supports the recognition in the European Consensus on Development that there cannot be sustainable development without peace and security, and that without development and poverty eradication there will be no sustainable peace. The ESS Review explicitly recognises that conflict is often linked to state fragility and that "preventing threats from becoming sources of conflict early on must be at the heart of our approach." This in turn is linked to the need for development assistance. The EU clearly has a comparative advantage in preventing and resolving conflict because of the array of tools that it can deploy. It will be important that European Commission development assistance remains focused on addressing the needs of developing countries and the structural causes of conflict.

The Government will work with the Commission and Member States to implement the Council Conclusions on fragility and security and development of November 2007. On security and development, these recognised that the responsibilities and roles of development and security actors are complementary but remain specific. The conclusions also committed to a greater focus on conflict prevention through intensified cooperation with the United Nations and African Union; joint analyses, planning, training and implementation between Council bodies, the Commission and Member States as well as cooperation with other stakeholders. The Commission is preparing an Action Plan on Security and Development to present to Member States in early 2009.

Energy Security

Energy Security is an increasingly important challenge for the EU, and should be fully addressed in the review of the European Security Strategy. Concerns have been heightened by the EU s dependence on Russian oil and gas imports which we highlighted in our report in May 2008 on the EU and Russia. Greater diversification of energy sources and routes, as well as solidarity between the Member States in their external energy relationships, should be identified as key objectives of EU security policy (paragraph 92).

The UK pushed hard to ensure that energy security was given suitable prominence within EU security considerations, and this has gained additional significance in light of the recent Russia-Ukraine gas dispute and its impact on the EU. We agree with both the Committee's Report and the ESS Review that greater diversification of supply is needed, and believe that the Second Strategic Energy Review (released 13 November) will be instrumental in achieving this. We also support the EU's ambitions to go further in implementing the concept set out in the ESS Review of the "solidarity of all Member States" (page 8) on questions of energy security. As I said when I gave evidence to the Committee, the EU should push forward to achieve a fully liberalised and complete internal market for energy.

The "Responsibility to Protect"

The "Responsibility to Protect", as agreed at the UN summit in 2005, reflects a major shift in the international community's thinking since the European Security Strategy was adopted in 2003 and it should be taken into account in the review of the European Security Strategy. We believe that the EU should be ready to play a leading role in attempts to put this concept into operation; and should endeavour to reduce the suspicion felt towards it by many developing countries. The review should also underline the fact that the concept refers to the use of force only as a last resort and should put more emphasis on its use as a preventive tool (paragraph 97).

The Government believes the Responsibility to Protect should be a governing principle of EU security, conflict and stabilisation policy. We will continue to argue for the EU to implement the concept, to explain the concept to others and to play a positive role with regard to implementation at the international level. We would have liked the ESS Review to give more prominence to the concept but it does acknowledge that "we hold a shared responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity" (page 18).

Multilateral Nuclear Disarmament

The fundamental interest that the EU has in the revival of negotiations on multilateral nuclear disarmament should figure prominently in the review of the European Security Strategy. We believe that the EU will need to discuss in depth the multilateral nuclear disarmament agenda ahead of the 2010 NPT Review Conference. We strongly encourage the Government to work towards a consensus on a common EU approach. We recommend that the EU maintain an intensive dialogue with the US administration and the new US president so as to capitalise on the recent initiatives on both sides of the Atlantic in favour of significant progress on this issue (paragraph 104).

The Government agrees with the Committee that work ahead of the 2010 NPT Review Conference should include the multilateral disarmament agenda. The UK and the EU have a common policy objective to strengthen all three pillars of the NPT, and the Government believes that, whilst acknowledging that more needs to be done on specific issues, such an approach should be based on non-proliferation, disarmament and peaceful uses of nuclear energy. The Council Declaration on tighter international security endorsed by the December European Council makes clear that the EU will step up the implementation of the 2003 non-proliferation strategy.

The ESS Review highlights EU support for multilateral approaches to the nuclear fuel cycle, countering financing of proliferation, measures on bio safety and bio security, containing proliferation of delivery systems, and negotiations on a treaty banning production of fissile material. The Government firmly supports EU activity in these, as well as other, areas.

The Government agrees with the Committee's recommendation that the EU maintain an intensive dialogue with the US Administration and the new US President on these issues, and will support the High Representative, the Presidency and the troika in engaging them at the earliest opportunity. The UK will also do so on a bilateral basis.

Chapter 4: The Impact on the Strategic Objectives

EU Enlargement and the European Neighbourhood Policy

The substantial enlargement of the EU in 2004 and 2007 came after the adoption of the 2003 Security Strategy which placed considerable emphasis on accession as an integral part of assuring the EU's security within the European region. This consideration remains as valid now as it was then (paragraph 113).

The potential for membership of the EU acts as a strong incentive to candidate countries to strengthen their democracy and the market economy. The EU's enlargement process therefore contributes to European security by building areas of stability and good government on Europe's borders. The continued enlargement of the EU should not be dependent upon entry into force of the Lisbon Treaty (paragraph 114).

We welcome the British Government's support for giving Ukraine an EU accession perspective (paragraph 115).

Chapter 2 of the ESS recognises the European interest in countries on its borders being well-governed. We agree with this aim, a key tool in which is the European Neighbourhood Policy for nations who are not, or not yet, potential candidate members. The ENP plays an important role in constructing security and stability in the EU's wider neighbourhood and sufficient resources should be allocated to enable it to be implemented effectively. Key subjects for action, both political and economic, will be the internal stability and economic well-being of the individual countries, migration and cooperation to combat terrorism (paragraph 116).

Europe's neighbourhood policy and enlargement are an important tool for ensuring EU security and bringing stability to the Western Balkans and our region. The ESS Review was right to place building stability in Europe and beyond as one of the three planks of on-going EU security considerations. The Government wants the Lisbon Treaty to come into force, but agrees that it would be possible for enlargement to take place within existing treaties. We believe that Ukraine, as a European country, should be able to join the EU if it meets the membership criteria. The clearer we can make this prospect the stronger the incentive for Ukraine to undertake the difficult reforms necessary. Finally, the UK particularly supports the conclusions of the December European Council on the importance of the Eastern Partnership, which is a high priority for the Czech Presidency and offers the potential to deepen significantly the EU's relationship with its Eastern neighbours.

Effective multilateralism

Effective multilateralism is a key pillar of the EU's security strategy. In particular, the EU's commitment to international law and a rules-based international system contributes to global peace and stability, and gives it influence and credibility as a reliable partner. The challenge now is to continue to build stronger international institutions, including the United Nations and the world's financial and trade systems (paragraph 120).

The United Kingdom, France and a number of Member States have been at the forefront of the nascent global debate on the need to make more effective the existing international system. And here the focus will rightly fall over the next few months—and at the London Summit on 2 April—on reforming global financial and economic institutions. However, the Government remains keen to ensure that we do not lose sight of improving the broader international architecture, including on security issues.

The Government's work on the post-conflict stabilisation strand of the International Institutional Reform initiative focuses on improving the effectiveness of the UN, the EU and regional organisations such as the AU in responding to conflict. This can only be achieved if key players provide a coherent response behind an integrated leadership and a shared strategy. The Government believes that the EU, the UN and others need to work more closely together during and immediately after a conflict, to ensure that the international response is co-ordinated, coherent and best placed to meet local needs, thus contributing to a sustainable peace. We will continue to encourage the EU to engage actively with the UN and others to ensure that this happens.

Working with partners: the US

The EU's most important bilateral relationship is that with the USA. The inauguration of the new president in the US presents the EU with an opportunity to intensify the transatlantic dialogue on security strategy (paragraph 127).

It is absolutely essential that the EU continues to build on the opportunities of a strong relationship with the US, and the ESS Review notes that the US is the "key partner" in security questions and in building a more effective multilateral order (page 16).

In the area of traditional defence, the ESS recognises that the United States has played a critical role in European security, in particular through NATO. We welcome the expressed willingness of the French President to work more closely with the NATO structures. The objectives of the EU and NATO are different but we commend efforts by both organisations to align their strategic concepts as far as possible. Consideration should now be given to developing areas of cooperation with NATO, particularly as the majority of EU states belong to NATO (paragraph 128).

The Government believes that NATO and the transatlantic relationship remain at the heart of European defence. NATO and the EU must be mutually reinforcing, rather than seeking to duplicate, challenge or undermine each other and we welcome the clear public statements of French President Sarkozy that the two organisations are complementary. The European Council of December 2008 reaffirmed the goal of strengthening the strategic partnership between the EU and NATO and the setting up of an informal EU-NATO high-level group to improve cooperation between the two organisations. We will continue to work with Allies and European partners to further this goal.

Working with new partners: Russia and China

Recent events in Georgia have underlined the importance of Russia for European security. We believe that the document to be adopted by the December European Council should refer to the challenge that Russia presents both as a partner and a source of risk and instability (paragraph 133).

Russia's future actions will depend partly on the response of the EU and its partners, and the rest of the world. The actions of the EU in sending an observer mission to Georgia and appointing a Special Representative over the summer of 2008 showed that the EU can act quickly when the political will to act is there. A continuing firm stance on the principles of sovereignty and territorial integrity will be needed, together with dialogue and sensitivity to Russia's genuine concerns. The review of the European Security Strategy should address these issues (paragraph 134).

> The UK Government position continues to be that events in Georgia last summer make it imperative that the EU should step up its support for the region, especially the longer-term reform process. The text of the European Security Strategy Review strikes a balance in noting that relations with Russia have deteriorated and that the expectation is that Russia will "honour its commitments in a way that will restore the necessary confidence" (page 16). The UK will continue to encourage EU Member States to engage with Russia as one, making clear, in the words of the ESS Review, that "respect for the sovereignty, independence and territorial integrity of states and the peaceful settlement of disputes are not negotiable" (page 4).

Working with other: international and regional organisations

Regional institutions are also essential in helping to maintain peace and stability, and the EU should continue to work closely with organisations where Member States have membership, such as NATO, the OSCE and the Council of Europe. In addition, the EU should continue to build the relationship with the African Union, ASEAN and others, helping to build up the capacity of African peace and security institutions, including the early warning, dispute resolution and peacekeeping capacities of African regional and sub-regional organisations (paragraph 140).

> The Government agrees that EU relationships with regional institutions have an important role to play in ensuring security. In Kosovo, for example, EULEX is operating successfully alongside the NATO force, and in Africa the EU has deepened its dialogue with the AU through the Peace and Security Partnership of the EU-Africa Strategy. The African Peace Facility which will provide up to €300m of assistance in 2008-2010, remains the only "African-owned", predictable source of donor-funding for AU peacekeeping. In addition the EU has two military ESDP missions in Africa and two civilian missions in the Democratic Republic of Congo to help address army and police reform. The Government fully supports the continued development of EU relationships with regional organisations, including with ASEAN where the cooperation on the 2005-06 EU-led Monitoring Mission in Aceh demonstrated what could be achieved.

Chapter 5: Implementation: Is the EU More Active, Capable and Coherent?

Implementation

Implementation of the Security Strategy is a key area on which the EU should focus its efforts. This could be achieved through the adoption of action plans or sub-strategies to take implementation forward. These action plans or sub-strategies should be linked to the overall approach to security set out in the Strategy, rather than incorporated into the existing document (paragraph 146).

> The Government considers that, now the formal review process is complete, implementation is the key next step. This can be best achieved by actively implementing existing EU strategies and action plans which cover the majority of areas referenced in the ESS review and flow from the 2003 Strategy.

More Capable

We are concerned that the EU still suffers from major shortfalls of key military and civilian capabilities, made available by the Member States, although there has been an improvement since the first mission was launched in 2003. The EU's capacity to take on new crisis management operations on missions abroad will soon reach its limit if more resources are not allocated. Concerns focus mainly on the lack of civilian and military personnel and assets, with a particular gap being the shortage of helicopters. Work should continue in the European Defence Agency on the development of European capabilities, in full coordination with NATO (paragraph 168).

The December European Council adopted a Declaration on Strengthening Capabilities which refined Europe's Level of Ambition in civilian and military terms. Much has already been achieved in this sphere and the rapid deployment of the EU Monitoring Mission to Georgia showed what could be achieved with the necessary will and resources. Currently the EU has ten civilian missions deployed, and with the strategic aims of the ESS Review in mind, the EU and Member States will need to consider where to focus their combined civilian efforts to ensure security. In addition to this, agreement was reached at the December European Council on establishing a single civilian/military planning structure, drawing together existing resources to enable a more joined-up approach to strategic-level planning.

The refined Level of Ambition means that much more attention will be required on the key enablers needed for more small military operations (e.g. helicopters, engineers and medical) The declaration also states that "for its operations and missions, the European Union uses, in an appropriate manner and in accordance with its procedures, the resources and capabilities of Member States, of the European Union and, if appropriate for its military operations, of NATO"—recognising that Member States and Allies choose the most appropriate organisation to carry out a particular mission. This reinforces the need for greater convergence between the EU and NATO on capability planning.

Under the French Presidency a series of voluntary initiatives aimed at filling gaps in EU military capabilities have been established: multinational air transport fleet; voluntary exchange programme for young European officers; a deepening co-operation between the European Defence Agency (EDA) and the Organisation for Joint Armament Co-operation (OCCAR). We welcome these initiatives (although we are not participating in all of them) as ways of strengthening interoperability and capability development across Europe in an inclusive/open way.

EU civilian crisis management capacity, comprising, for example, rule-of-law experts, judges or policemen, can make an essential contribution to preventing and resolving conflicts and strengthening democracy and respect for human rights. Member States, whose responsibility it is to provide personnel for missions, should consider developing or strengthening their national programmes for deploying civilians abroad particularly in the areas of policing and justice. These should be high quality serving or recently retired personnel, rather than be those who are simply available. For serving personnel this should be considered a career enhancing, developmental period of service (paragraph 169).

The establishment of the Civilian Planning and Conduct Capability in 2007 has helped to improve coherence in the planning and conduct of missions. Work on improving civilian crisis management should be continued as part of the implementation of the ESS (paragraph 170).

Member States should consider how to make the pay received by seconded personnel more equitable in comparison with the pay of UN and NATO personnel operating in the same theatre. We welcome the existence of the system of sharing common costs of EU missions with defence implications (Athena mechanism) (paragraph 171).

The Government believes that a focus on quality, rather than simply numbers, in civilian secondments is essential. This should involve consideration of the incentives and possible barriers to participation by civilian and police personnel, balanced against an assessment of the different requirements of individual missions. In 2009 we anticipate taking forward some work to consider questions of recruitment and training and the Czech Presidency will be focusing on the latter. The UK will also play an active role in discussions on improving the management of missions through the CPCC, which the Review of the ESS highlights as key. The High Representative's initiative endorsed by the December European Council to enhance the strategic planning capability of the Secretariat by bringing together military and civilian expertise will also help in this regard.

Member States should be encouraged to address the capability shortfalls which have been identified by the EU. Member States should also be urged not to impose national caveats, or conditions, on the deployment of troops to ensure that they can fulfil their commitment to the EU and operate under agreed rules of engagement (paragraph 172).

The UK agrees that mission personnel should be able to operate as flexibly as possible in order to meet the requirements of the missions of which they are a part. The UK has consistently led the way in Europe, for example in Afghanistan, where UK troops are engaged in some of the most challenging combat situations faced by any Member State's forces.

The world-wide search for helicopters which are suitable for use during EU missions, for example for lift, should continue and contributions from non-EU countries should be welcomed, on a no-cost to the EU basis if possible. The contribution of Russian helicopters for Chad is welcome (paragraph 173).

The UK-France summit communiqué of 27 March 2008 acknowledged the importance of improving helicopter availability "by addressing critical shortfalls in capability which constrain the deployment of helicopters in operations". The UK and France have undertaken to support initiatives such as pilot operational and advanced training courses and upgrading helicopters. The UK has established a multinational Helicopter Fund, facilitated by SHAPE, to help finance activities to improve the availability of helicopters to NATO, EU and UN operations.

As part of the multinational helicopter initiative we are now leading work in the European Defence Agency on training of helicopter pilots for future operations. In addition to this, Spain has recently agreed to provide heat and dust helicopter training under the initiative.

We welcome the fact that the EU has a "lessons learned" process to take stock of the outcome of EU missions but believe that it can be improved. There would be merit in compiling an overarching document with lessons for the future based on the EU's past experience of missions. Member States should be encouraged to be as frank as possible about mistakes and failures as well as successes for improvements to be made (paragraph 174).

We also agree that now is the time to undertake some further work to look at operational lessons learned from ESDP and we anticipate that further work will be taken forward under the Czech and Swedish Presidencies on this front.

More coherent

The question of coherence will need to be addressed seriously with or without the entry into force of the Lisbon Treaty if the effectiveness of the EU's actions in the security field is not to fall far short of its aspirations (paragraph 195).

The Government believes that ensuring a coherent EU response to crises, conflict and security is paramount in considerations of CFSP going forward. The UK will continue to lobby through the working groups in Brussels and at the political level to bring about EU policies and actions in the CFSP field which are proportionate and specific to the security threats identified in the Review of the ESS. We will also continue to press for future actions in the security area to be conducted within the framework set out in this strategy refresh.

33RD REPORT: THE REVISION OF THE EU'S EMISSIONS TRADING SYSTEM

Letter from Lord Hunt of Kings Heath, Minister for Sustainable Development and Energy Innovation, Department for Environment, Food and Rural Affairs and Department of Energy and Climate Change to the Chairman

I enclose the Government's response to the House of Lords, European Union Committee report on "The Revision of the EU's Emissions Trading System", published on 10 December 2008.

I would like to thank you and your Committee for producing such an informed and considered report. This makes an important contribution to the debate on this vital issue.

I am sorry that you are only receiving our response the day before the report is due to be debated. However, I hope you understand given the short notice received in scheduling this early, and opportune, debate.

3 February 2009

Government Response

Introduction

The Government welcomes the Lords European Scrutiny Committee's Report on the EU Emissions Trading System (EU ETS) and we have taken careful note of the recommendations made.

The Government especially welcomes the Committee's overall endorsement of the European Commission's proposals for a significantly improved EU ETS. This is very much in line with the Government's position:

Since publication of the report, negotiations on the EU Climate and Energy Package, of which the EU ETS forms part, have moved on considerably. In December 2008, European leaders and the European Parliament reached agreement on the EU Package, including on the EU ETS. The overall environmental ambition of the Commission's Package remained intact. Most importantly, the EU has put in place the measures to deliver a unilateral 20% reduction in greenhouse gas emissions by 2020 from 1990 levels, rising to 30% as part of an international climate agreement.

Specifically on the EU ETS, the following key elements were agreed:

— The Directive provides for a fundamentally different and much more rigorous approach to setting the cap on emissions. A central EU cap will guarantee that the EU ETS will deliver its share of emission reductions in order to meet the EU's overall climate change targets.

— The central EU cap is set at a much more ambitious level. For the first time, there is an annually declining trajectory for the cap to 2020 and beyond which will deliver emissions 21% below 2005 levels by 2020.

— Access to international carbon credits is limited in the ETS to ensure that at least half of the required emission reductions take place within the EU, whilst providing finance to developing countries to invest in low carbon projects.

— There is a large increase in auctioning. At least 60% of EU ETS allowances will be auctioned by 2020. In Phase II only around 3% of allowances are being auctioned across the EU. This will provide a more economically efficient way of allocating allowances, and help to address the issue of windfall profits.

— Use of up to 300 million EU ETS allowances, worth billions of pounds, to part fund up to 12 Carbon Capture and Storage (CCS) demonstration plants. This provides a credible financing mechanism for this technology that has huge potential to reduce emissions across the globe.

The Government welcomes these elements of a revised EU ETS, which demonstrate the EU's leadership in tackling global climate change. This should provide a solid foundation as we work towards the Conference of the Parties to the Framework Convention on Climate Change at Copenhagen in December this year.

The Government's responses to the specific conclusions and recommendations of the Lords European Union Committee's Report are set out below.

Conclusions and Recommendations

The Overall Target, the EU Wide Cap and the international Context

1. Like all of our witnesses, we welcome the application of an EU-wide cap supported by a clear trajectory for emissions reductions over time, as it should deliver a level playing field and provide industry with the certainty that has been lacking in the ETS thus far. 44.

The Government strongly supports an EU-wide central cap and clear trajectory for emissions reductions to 2020 and beyond. We agree that this will provide industry with the certainty it has asked for, and needs, if we are to move to a low carbon economy in a cost-effective manner.

2. We agree with the UK Government that the proposed change from a 20 per cent emissions reduction target to a 30% cent target by 2020, conditional on reaching an international agreement, is desirable. A unilateral 20% target would be less helpful in achieving the desired global reductions than a 30% target alongside an international agreement. A 20% target would also fall below the 25–40% target range recommended by IPCC scientific advice. However, we believe that the change should be conditional on a credible and robust international agreement so as to ensure that EU businesses are not placed at a competitive disadvantage in world markets. 45.

As part of the agreed EU Climate and Energy Package, there is a clear commitment to move to a 30 per cent target as part of an international agreement. The Government shares the belief that any international agreement would need to address issues around carbon leakage (i.e. production moving out of the EU as a result of the carbon price—see also paragraphs 21-24) and will be working towards this goal as part of the international negotiations.

Following an international agreement on climate change, the revised Directive requires the Commission to produce a report assessing the impact of the agreement. This would include a reassessment of the competitiveness of EU manufacturing industries in the context of carbon leakage risks. This report would then inform the Commission's legislative proposal for amending the Directive to increase the emissions reduction target to 30%.

3. As agreed by the European Council in March 2007, an international agreement should include a commitment by developed countries to mandatory reductions of greenhouse gas emissions in the order of 30% by 2020 and a commitment by economically more advanced developing countries to an adequate contribution according to their responsibilities and respective capabilities. We urge the Commission and the Member States to adhere to these minimum conditions. 46.

See paragraphs 2 and 4.

4. Some advanced developing countries' argument that developed countries ought to take "historical responsibility" for the cumulative impact of their historical emissions is compelling, but we consider that the threat posed by climate change—not least to the very countries taking that position-is sufficiently grave that advanced developing countries must commit to binding emissions reductions. Persuading these countries to take on such commitments will be particularly difficult and, as a quid pro quo, we accept the UK Government's contention that increased financial flows to developing countries, through external credits and direct assistance for adaptation to climate change, will be an essential bargaining tool in the negotiations. 47

The Government believes that it is important that all countries play a part in tackling climate change. Developed countries have to take the lead and reduce their emissions by 25–40% by 2020 compared to 1990 levels. The agreement of the EU Climate and Energy Package in December 2008 represents a significant step forward in climate policy in the EU. However, emissions in developing countries also need to deviate substantially from business as usual.

Action needs to be taken to ensure scaled up, predictable, mobilised and better orientated finanical flows for a successful future climate change regime.

The EU, and the Government, are committed to funding carbon reduction and climate change measures in developing countries. The carbon market should be a key source of such funds, and this flow of funding will continue, with some changes, under the revised EU ETS through the Clean Development Mechanism.

The European Council. in December 2008 also adopted a political declaration indicating Member States' willingness to spend at least half of the revenues, from EU ETS auctioning, to tackle climate change both in the EU and in developing countries. This will include reducing emissions; adapting to climate change; reducing deforestation; and developing renewable technologies. Although much of this will be spent within the EU, this provides a strong signal to offer support to the international community ahead of Copenhagen later this year.

5. We believe that a final decision on the emissions reduction target for 2020 should be reached as early as possible following the conclusion of negotiations on an international agreement, in order to provide the certainty that would enable industry to make the appropriate investment. We see no compelling reason for the decision to be adopted through the co-decision procedure as this would prolong the period of uncertainty, and risk re-opening negotiations on the climate change package as a whole, which will already have been agreed by the European Parliament and Council through the co-decision procedure. It is crucial, however, that the details of the agreement are scrutinised by the Member States and the European Parliament as provided by the Treaty. 48.

The Government agrees that the EU should move as quickly as possible to increase the emissions reduction target to 30% (or whatever figure is agreed as part of an international agreement) following an international climate agreement. Under the new EU ETS Directive, moving to a new emissions reduction target will require a full co-decision process between EU Member States and the European Parliament.

Chapter 1: Scope

6. If the EU's Emissions Trading Scheme is to achieve its fundamental objective of delivering GHG reductions as cost-effectively as possible, it must eventually include as many sectors as possible. However, sectors should only be included if their emissions can be reliably monitored and verified. In view of the quality of data and methodology currently available, we support the proposed scope of the EU ETS from 2013, but recommend that this aspect of the Directive be kept under regular review. 76.

The EU ETS currently covers around half of EU CO_2 emissions and from 2012 emissions from aviation will be included in the system. The more emissions that are covered by the system, the more cost-effective it will be for all to achieve challenging targets to reduce emissions. Additional industrial sources of CO_2 and other greenhouse gases as well as non-industrial sectors should therefore be included in the system, provided that their inclusion is beneficial to the system, feasible to administer and the regulatory burden is cost effective. From 2013 the scheme will be expanded to include a broader definition of combustion and some new activities particularly in the aluminium and chemicals sectors. The revised Directive continues to include provision for Member States to include additional activities and gases into the scheme unilaterally.

7. We note that the inclusion of agriculture and forestry sectors in the EU ETS may pose particular practical difficulties due to monitoring and verification problems and the large number of small enterprises involved. We nonetheless consider that these sectors have a major role to play in reducing greenhouse gas emissions, and urge both the Commission and the UK Government to accelerate work on assessing how those sectors can contribute most cost-effectively to a reduction in greenhouse gas emissions, drawing lessons from the experience of other countries. 77.

The Government agrees with the Committee that the agriculture and forestry sectors have a major role to play in reducing greenhouse gas emissions. We note that these sectors together are responsible for some 30% of anthropogenic greenhouse gas emissions and mitigation potential identified by the Intergovernmental Panel on Climate Change in its Fourth Assessment Report. Without reducing these emissions it will be impossible to avoid the worst effects of climate change.

The Government has therefore included emissions from agriculture, forestry and land-use change within the 80% emissions reduction target introduced under the Climate Change Act, and in the intermediate budgets. This will ensure that effective policy action is taken to reduce emissions from these sectors. We have commissioned research into how to do this most cost effectively, including the feasibility of emissions trading. We also note that the EU's 2020 Climate and Energy Package includes agriculture in the non-traded sector. The provisions for land use, land-use change and forestry (LULUCF) in a future climate agreement will be negotiated in Copenhagen in 2009. In the event that an agreement is not reached, the Commission is required to assess the case for inclusion of LULUCF in the EU ETS.

By far the biggest source of emissions from LULUCF is currently linked to deforestation in developing countries. The Government is working hard to ensure that these emissions are included in a Copenhagen climate agreement. So far, we have secured a Ministerial Statement at the UNFCCC Conference of Parties in December 2008 setting out principles for doing this.

Furthermore, in November 2008, the Eliasch Review commissioned by the Prime Minister into financing global forests was published. This is the most comprehensive review available so far of options for financing incentives to reduce emissions from deforestation. The Government agrees with the Review that the carbon market will eventually provide the most likely source of funding required. However, other sources of funding will be needed before then. The UK is therefore contributing up to £165 million from the Environmental Transformation Fund to support sustainable forestry in developing countries. We are also pleased with the Conclusions agreed by the European Environment Council in December 2008 which advocate establishment of a Global Forest Carbon Mechanism.

8. Swift action must also be taken to tackle emissions from shipping. If a sectoral agreement cannot be reached through the International Maritime Organisation in the near future, we believe that the sector's inclusion in the EU ETS should be given serious consideration, and should be delayed no further than 2013 for the largest emitters in the sector. 78.

The Government agrees that there needs to be real action on shipping emissions, preferably through a global system in the International Maritime Organisation (IMO). The UK supports the European Commission in developing options for inclusion of shipping in the EU ETS should there be no progress at IMO or the climate negotiations in Copenhagen. In the run up to Copenhagen we need to consider how best to use the development of regional options to support the development and delivery of a truly effective and ambitious global climate deal.

9. The development of a reliable and commercially viable method of decarbonising coal is urgently necessary, as coal is likely to remain a significant—and growing—source of energy. We therefore wish to see significant investment in carbon capture and storage, to establish whether this technology could meet that need. We support the provision in the draft Directive stipulating that operators need not surrender allowances for emissions that have been captured and stored, as it should help to stimulate such investment. 79.

The revised Directive recognises the contribution carbon capture and storage could make to emissions reductions by setting out that operators need not surrender allowances for emissions that have been captured and stored. Secondly, it allows for up to 300 million allowances to be made available from the new entrant reserve to co-finance up to 12 commercial scale demonstration projects. The projects will demonstrate the feasibility of safe capture and storage of carbon dioxide emissions from fossil fuel power plants and industrial installations as well as the demonstration of innovative renewable technologies.

10. We accept that the *de minimis* emissions threshold proposed in the draft Directive may be too low, and that a large number of small emitters accounting for a relatively small proportion of overall emissions could be removed from the scope of the ETS in the interests of better regulation. We would therefore support a raising of the *de minimis* threshold as proposed by a number of our witnesses. 80.

The revised Directive agreed that installations emitting less than 25,000t CO_2 per annum, and where they carry out combustion activities have a rated thermal input below 35MW can be excluded from the EU ETS. This is higher than the 10,000t and 25 MW thresholds originally proposed by the Commission. This threshold allows for a significantly higher number of installations (around 50–60% of installations, covering <2.5% of emissions) with low emissions to apply to opt-out of the scheme, thus reducing the regulatory burden of the EU ETS.

11. We note, however, that unintended consequences may flow from a *de minimis* threshold, such as incentives to build smaller, possibly less efficient installations, and recommend that such effects be monitored closely and pre-empted where possible. In this respect, we welcome the Government's assurance that small installations in the UK that are excluded from the scope of the ETS will instead be covered by the Climate Change Agreement scheme or by the Carbon Reduction Commitment. 81.

One of the conditions for exclusion from the system for small emitters is that they are subject to alternative measures that will achieve an equivalent contribution to emission reductions. For example, in the UK, this could be for installations covered by the Climate Change Agreement scheme or by the Carbon Reduction Commitment (from 2010). Should an installation no longer be covered by such a scheme or its emissions rise above 25,000t CO_2 per annum or it installs combustion capacity above 35 MW, then that installation must return to the EU ETS.

12. We note that the UK Government is making some efforts outside of the ETS to tackle climate change but we would urge the Government to intensify its pursuit of cost-effective emissions reduction measures across the economy, particularly in sectors remaining outside the ETS such as agriculture, forestry and road transport. Emissions reductions in other parts of the economy are no less important than those within the sectors and installations covered by the ETS, 82.

The UK Climate Change Act introduced a long-term legally binding framework to cut UK emissions over the coming decades. This includes a binding target of at least an 80% reduction in greenhouse gas emissions by 2050, and an interim binding target of at least 26% reduction in CO_2 emissions by 2020. The Act introduced a system of five year carbon budgets. The first three carbon budgets will be set by 1 June 2009.

Meeting the carbon budgets will require effort in both the traded and non traded sectors. The Government will publish an overarching strategy on energy and climate change alongside the carbon budgets. This will set out our policies that will enable us to meet our carbon budgets.

We consulted in June on how to increase the use of renewable energy in the UK. We are also developing a strategy to reduce greenhouse gas emissions from transport. In addition, we will consult shortly on further measures to save energy and to reduce emissions from heating.

Specific policies which already exist to reduce emissions in the non-traded sector, such as the Climate Change Agreements, are being renewed for the future. The new Carbon Reduction Commitment, which will cover non-energy intensive industry will be launched in 2010. In the agricultural sector we are funding research into changes to livestock diets, breeding strategies and the more effective application of fertiliser to see how these can help reduce emissions.

See also paragraphs 7 and 26.

Allocation and auctioning

13. We support in principle the 100 per cent auctioning of allowances from 2013 in all sectors other than those deemed subject to carbon leakage. Free allocation of allowances can lead to windfall profits and should for that reason be avoided wherever possible. 109.

The UK Government also supports the move towards 100% auctioning of allowances. We believe this is the most effective way to ensure that the cost of carbon is fully taken into account in business decisions and to reduce the potential for windfall profits. Under the revised EU ETS Directive, there will be a significant increase in levels of auctioning. Overall, at least 60% of allowances will be auctioned by 2020, compared to around 3% in Phase II.

14. We acknowledge, however, the concerns of those Member States whose energy mix is fossil fuel-intensive and who therefore fear that the Commission's proposal may have a disproportionate impact upon them. We believe that time-limited derogations from the principle of 100 per cent auctioning in the power sector from 2013 could be granted to Member States with particularly fossil fuel-intensive energy sectors; on the condition that the transition period is used to develop and trial carbon capture and storage technology. Derogations should be phased out by 2020 at the latest, by which time full auctioning should be in place for the power sectors of all Member States. 110.

Auction levels will be 100% for the power sector in the UK and across most of the EU. However, the revised Directive includes a derogation to full auctioning for some Member States for a transitional period to allow for improvements to their energy infrastructure. This will start with minimum rates of 30% auctioning in 2013, rising to full auctioning by 2020 at the latest.

15. Should the Commission's proposal for a gradual transition towards 100 per cent auctioning over the period 2013–20 for all but the power sector be adopted, we consider that a harmonised level of auctioning should be set across the EU, with no flexibility for Member States to either raise or lower the level set. This is crucial in order to prevent distortions of competition across the European Union. In any transition towards 100 per cent auctioning, free allocation should be based on sector-specific EU-wide benchmarking that rewards the use of Best Available Technology and stimulates further innovation. 1.

The revised Directive provides for a significant increase in levels of auctioning over the current phase. For industry not deemed to be at risk of carbon leakage, auction levels will increase from 30% in 2013 to 70% in 2020, and reaching 100% in 2027. These levels of auctioning will be set across the EU, with time-limited derogations applying only to the power sector in a small number of Member States. The Directive agreed harmonised levels of auctioning but, as agreed at the December European Council, the European Commission will consider a system of minimum levels of auctioning over the next 6 months which may or may not lead to an amendment of the legislation. The Government position is to support minimum levels of auctioning so that the UK retains greater control on auctioning levels and revenue streams, and is able to address the issue of windfall profits competitive distortions, where they are shown to arise.

The Government agrees with the recommendation on benchmarking. The revised Directive states that installations will be allocated allowances based on benchmarks. This will determine how much effort individual firms have to make. Benchmarks will be based, as a starting point, on the average performance of the top 10% of performers in a sector or sub-sector. This means around 95% of firms in industrial sectors, including those receiving 100% of their benchmarks for free, will need to reduce emissions or buy additional allowances.

16. With regard to how auctioning revenues are spent, we agree with the UK Government that it would be inappropriate for this to be prescribed at the EU level as it breaches the principle of subsidiarity. Without such earmarking, we do not see any remaining justification for the redistributive element of the Commission's proposal, under which a proportion of the rights to auction allowances would be redistributed towards Member States with low income per capita or particularly high compliance costs. 112.

The Government has consistently opposed the hypothecation of auction revenues. However, as a part of the new EU ETS Directive, EU Member States have made non-legally binding commitments to spend at least half of the revenues from auctioning or the equivalent to tackle climate change both in the EU and in developing countries. The Government is content with this approach, which we believe will provide a strong signal of the EU's willingness to invest in a low carbon economy and offer support to the international community ahead of negotiations in Copenhagen at the end of this year.

See also Paragraph 17.

17. We are conscious, however, that the redistributive element of the Commission's proposal commands wide support among Member States. If this aspect of the proposal were to be accepted, and if any derogations from the principle of 100 per cent auctioning in the power sector were to be permitted, the levels of redistribution of auction rights among Member States should be re-considered. If the levels are not re-considered, the EU risks compensating the same Member States twice over for the compliance costs they face. 2.

The Government agrees that the use of environmental legislation for the redistribution of wealth between Member States is inappropriate. This is, and should remain, a function of the EU budget through the use of EU structural funds. However, under the revised Directive, 10% of the total allowances to be auctioned will be redistributed to Member States with lower GDP. An additional 2% will be redistributed to those Member States that, in 2005, had reduced emissions by at least 20% compared with their Kyoto base year. The remaining 88% will be distributed according to verified 2005 or 2005–07 emissions.

18. It is our firm view that Member States should invest considerable funds in climate change-related measures—including R&D and demonstration projects, as well as adaptation measures—and in measures to help ease the social problems that may arise as a result of the ETS, such as increases in electricity prices. In our view, this will be essential to secure the credibility of the scheme, by signalling that governments are willing to foot part of the bill that they are imposing on the private sector. 114.

The European Council has adopted a political declaration indicating Member States' willingness to spend at least half of the auction revenues to tackle climate change both in the EU and in developing countries. This will include reducing emissions; adapting to climate change, reducing deforestation; and developing renewable technologies. Although much of this will be spent within the EU, this provides a strong signal to offer support to the international community ahead of Copenhagen later this year.

The revised EU ETS Directive also provides Member States with the option of compensating those installations that are at significant risk of carbon leakage as a result of indirect costs, in the absence of an international climate agreement. This could occur through increased electricity prices as a result of the pass through of the costs to electricity producers of complying with the Directive. This provision will be based on a revision to State Aids guidance by the European Commission.

The UK Government recognises that our energy and climate policies will add to energy prices. Tackling fuel poverty is a priority for the Government. The Department of Energy and Climate Change will be undertaking a review of fuel poverty in light of recent market developments and the Government's more ambitious aims on reducing emissions.

19. It is critical, however, that the measures into which such funds are invested should not cancel out the carbon price signal altogether by compensating industry and consumers fully for price increases arising from the ETS, as this would undermine the scheme's *raison d'etre*. Investment should instead focus on providing viable, low-carbon alternatives and promoting the necessary transition. 115.

See Paragraph 18.

20. The balance of evidence presented to us suggests that the proposed level of the New Entrant Reserve is too high, which would have the effect of creating a large reserve of allowances whose deployment is unpredictable. We accept our witnesses' contention that the New Entrant Reserve is too large, but would support the redeployment of unallocated allowances from the Reserve towards large-scale carbon capture and storage demonstration projects free of charge, as proposed by the European Parliament's Environment Committee. A provision along these lines would stimulate the development of this important technology without undermining the overall cap on allowances. 116.

The Government agrees that the original proposal from the Commission to set aside 5% of allowances for the new entrant reserve (NER) is too large. The revised Directive states that up to 300 million allowances will be made available until the end of 2015 from the new entrant reserve to co-finance up to 12 commercial scale demonstration projects for the safe capture and storage of carbon dioxide emissions from fossil fuel power plants. This will provide an incentive for the development of the technology. Projects can apply for up to 15 per cent of the total number of allowances available.

This should amount to billions of pounds of investment and will put the EU at the forefront of the development of this technology. This will be vital for the global transition away from fossil fuels, and shows a clear commitment to de-carbonising energy supply.

Allowances in the NER that are not allocated to new entrants over Phase III will be auctioned by Member States. This will take into account the level to which installations in Member States have already benefited from the reserve.

Carbon Leakage

21. While the EU ETS remains a regional scheme, we believe that some sectors of industry may be at risk of carbon leakage. The evidence we received suggests that vulnerable firms are concentrated in a handful of sectors, and in some cases, sub-sectors, such as clinker and primary aluminium. We consider that it would be

appropriate to award special treatment to the industries or sub-sectors at risk in the third phase of the ETS until an international agreement or a global sectoral agreement putting these industries on an even footing with their non-EU competitors can be reached. 13.

Government agrees that, in the absence of an international climate change agreement, sectors or subsectors at significant risk of carbon leakage should be allocated free allowances. Under the revised Directive, those sectors identified as being at significant risk will be allocated 100% of their allocation for free. However, following a comprehensive international climate change agreement, levels of free allocation will be reviewed to assess whether they are fully justified.

22. Identification of the sectors or sub-sectors at risk should be evidence-based. We support the Commission's proposed criteria for arriving at these judgments, but emphasise that the analysis should distinguish between potential competitiveness lost as a direct result of the ETS and other influences on competitiveness (e.g. regulatory standards more generally) that arise from trading in a global context. The extent to which cost savings are possible through energy efficiency measures should also be considered. 1384.

The Government agrees that the identification of sectors at significant risk of carbon leakage should be based on a robust analysis and a set of detailed and transparent criteria. Government believes that the criteria set out in the revised Directive provide an appropriate basis for a broad ranging assessment, covering both quantitative and qualitative factors. Within the text of the Directive, issues such as the possibility of cost savings through energy efficiency measures are covered under the qualitative criteria.

23. In order to create a predictable policy environment, decisions on the sectors or sub-sectors at risk ought to be taken as soon as possible. We therefore believe that the decision-making process should be speeded up. Sectors potentially at risk of carbon leakage should be identified by 2009 so as to minimise uncertainty for all other sectors within the scope of the ETS. Decisions on the treatment to be afforded to sectors at risk of carbon leakage should be taken in 2010 after the December 2009 UN Climate Change Conference in Copenhagen, when the full extent of that risk (or lack of it) will become clear. 139.

The Government has consistently supported bringing forward the date by which sectors at significant risk of carbon leakage would be identified, in order to provide greater certainty for business. We therefore welcome the agreed timetable set out in the revised Directive. The date by which sectors at significant risk of leakage will be identified has been brought forward to 31 December 2009. The report on proposed measures to address leakage will be completed no later than 30 June 2010.

24. Free allocation of emissions allowances should in our view be the preferred policy response to the threat of carbon leakage, but international sectoral agreements on emission reductions in particular sectors must be the eventual aim as there is a risk that free allocation could, in the long term, become a protectionist measure. Border adjustment measures should be avoided, due to their potential to breach WTO rules. 1405.

The Government agrees that the best way of addressing carbon leakage is through a comprehensive international climate change agreement at Copenhagen in 2009, as this will create a more level playing field for industry. In the interim, we favour the allocation of allowances for free to those sectors at significant risk.

The Government does not support the introduction of trade measures, such as border adjustment measures, to address carbon leakage as this risks pushing emerging economies away from the negotiating table, would be difficult to implement and could be viewed as protectionist.

Compliance and Enforcement

25. The practical application and enforcement of the EU ETS is critical to its success. It is clear to us that, without effective enforcement, the integrity of the scheme would be severely prejudiced. We therefore welcome the European Commission's proposal that monitoring, reporting and verification rules should be harmonised across the European Union with the aim of guaranteeing a level playing field. The Commission has been vigilant in monitoring Member States' compliance with climate change legislation thus far and we urge it to continue to pursue this approach in future, taking all necessary action against Member States that are not fulfilling their responsibilities. We are not persuaded by the argument that the performance of national regulators will be kept in check by competitors in different Member States informing on each other. 152.

The Government agrees that effective compliance and enforcement is essential to the working of the EU ETS. The revised Directive recognises this in developing two new regulations for monitoring and reporting, and verification and accreditation. These two regulations should improve harmonisation across Member States and provide further tools for protecting the integrity of the scheme. The Government takes compliance and enforcement extremely seriously and has a 100% record for Phase I of the ETS.

26. We note with serious concern that the enforcement mechanisms of the Kyoto Protocol have been shown to be weak and consider that these deficiencies must be addressed in any successor agreement if international efforts to address climate change are to produce the desired result. The Commission and Member States must therefore place high priority on this issue during negotiations on a new international climate change agreement. 153

The Government has a high level of confidence in the Kyoto Protocol enforcement regime. This has proved itself to be both tough and effective, and compares well with the enforcement regimes for other multilateral environmental agreements. A robust compliance regime that maintains the environmental and market integrity of the Protocol, will clearly be an essential part of any agreement at Copenhagen. While this is likely to be fairly similar to what is already in place, the EU will be arguing for a tightening of the relevant provisions to remove any uncertainty about enforcement and to ensure the regime is legally binding.

Chapter 2: External and domestic credits

27. External credits can play an important role in reducing global emissions cost-effectively as long as they do not crowd out developing countries' own efforts to cut emissions. 173.

The Government agrees, international project credits do play an important role in bringing developing countries into the carbon market. They provide an important conduit for financing mitigation action abroad as well as delivering cost-effective reductions in carbon emissions. We also agree that baseline and credit mechanisms such as the Clean Development Mechanism (CDM) only provide an interim step. The long term goal must be for all countries to take on binding targets.

28. Nonetheless, the EU cannot hope to set an example in the international arena without undertaking substantial emissions reductions within its own borders. It also cannot hope to secure a competitive advantage in low-carbon technologies if external credits are too freely available, as this will stifle domestic innovation and investment. 174.

The UK Government has been clear that the EU must demonstrate it is serious about the transition to a low carbon economy through emission reductions within its borders. We should not rely disproportionately on third countries in order to meet Europe's own targets. Therefore, we see a limit on the use of international project credits as appropriate in the context of the EU's unilateral commitments. In order to achieve abatement most efficiently, and to provide necessary finance flows to developing countries, it is important that openness to project credits be maintained. The appropriate approach will of course need to be reconsidered in the light of an international agreement.

29. On balance, we consider it appropriate as a negotiating tactic to restrict the level of external credits in Phase 3 to those available and unused under Phase 2 of the EU ETS, as proposed by the European Commission, until such time as an ambitious global climate change agreement has been concluded. This will be one of the few bargaining chips available to the EU in international negotiations: we urge the European Commission and the Member States to use it to press for an ambitious global emissions reduction target at Copenhagen in December 2009. 6.

There has been a small increase in access to CDM credits in Phase III of the system. We support this in order to harmonise some of the discrepancies in allocation that occurred in Phase II. However, this increase has been limited such that at least 50% of absolute reductions (in terms of effort) in the EU ETS take place within Europe. This compares to access in Phase II equivalent to 226% of effort. This restriction on access to credits provides a strong incentive for developing countries to sign up to a global deal in order to increase their access to a global carbon market.

30. In order to provide the carbon market with as much certainty as possible, it is imperative that a decision on the future level of credits is taken at the earliest opportunity in the event of an international agreement. 176.

The Government agrees and we will be pushing the European Commission to come forward with their revised proposals as quickly as possible after the signing of an international deal.

31. The use of external credits must be properly audited, but this process should not lead to the development of standards separate to those stipulated by the Kyoto Protocol if the aim is to promote a liquid, truly global market. EU Member States might instead press for a review of the role of the CDM Executive Board by the Secretariat of the UNFCCC in order to assess whether it is functioning effectively. 177.

The Government recognises that concerns have been raised over the quality of CDM projects and the UK is working, with our EU partners, to address any problems through the CDM Executive Board. Using the Kyoto and UN Processes for reform is difficult but represents the first best option for improving the quality of CDM. The new EU ETS Directive continues to exclude certain project types, and will allow the EU to exclude additional projects that are not of sufficient quality in Phase III. However, we believe that this avenue should only be explored as a last resort.

32. We are sceptical about the benefits that domestic off-setting might offer, on the basis that tapping cheap abatement opportunities in non-ETS sectors could push up the cost of meeting emissions reduction targets in those sectors. 178.

The Government agrees that the use of domestic off setting mechanisms does not represent a cost effective means for incentivising emissions reductions not covered by the traded sector. This is because the abatement cannot be used to reduce the UK's liabilities under the Kyoto Protocol or contribute towards the UK Carbon Budgets set under the Climate Change Act.

Linkages with other schemes

33. It is critical that the EU ETS should be able to link with similar schemes around the world. Emissions trading will become increasingly effective as it becomes more widespread. Conversely, the EU ETS will be less effective, both in economic and environmental terms, while it remains an isolated regional initiative. 18.

The Government agrees on the desirability of linking the EU ETS with other similar systems. We recognise the economic and environmental benefits of expanding the reach of the EU ETS and are working with our international partners towards linking of emerging emissions trading systems.

34. The evidence presented to us suggests that linkages will only be possible between emissions trading schemes that share similar levels of ambition with respect to environmental objectives, quality-control of credits, verification and enforcement mechanisms. We note that on current projections, the third phase of the EU ETS is likely to deliver a substantially higher carbon price than the emissions trading schemes being developed in other parts of the world. This carbon price differential would in turn present a serious obstacle to establishing links between the EU ETS and other emissions trading schemes. We therefore anticipate that, due above all to the potential price differential, the EU may in future face stark trade-offs between compromising the environmental integrity of its scheme and extending its reach. It is not clear in advance which of these two approaches will deliver more emissions reductions overall, but this consideration should in our view drive EU policy on linkage. 190.

The Government agrees that there are certain practical constraints to linking with other trading systems, and comparability is one of the main challenges. Although a tonne of carbon emitted in the EU has an equivalent environmental impact to a tonne of carbon emitted elsewhere, a significant price difference could have an undesirable effect on the markets. Ensuring comparability of ambition is one way to reduce this. We believe that EU policy on linking should be based around a careful balance of environmental integrity; cost-efficiency; confidence and credibility; and support for the development of a global carbon market, The UK will work closely with our European partners to ensure that this process is managed appropriately.

35. In view of the significant remaining barriers to linkage between schemes, we wish to highlight the role that the International Carbon Action Partnership could play in facilitating international dialogue on these issues. We urge the European Commission and the Member States to take a leading role in promoting such dialogue. 191.

The UK is one of the leading partners in the International Carbon Action Partnership (ICAP). We have been working closely with the Commission, EU Member States and other ICAP members to ensure that consideration of the feasibility of linking between trading systems is taken into account at an early stage of their development.

35TH REPORT: DEVELOPMENTS IN EU TRADE POLICY

From Department for Business, Enterprise and Regulatory Reform

Government Response

The Government welcomes the Committee's report. We appreciate the value that this report brings to the debate about EU Trade policy and in particular about the importance of agreeing an ambitious and pro-development outcome to the DDA Round.

Our response to the specific conclusions and recommendations of the Committee are set out below. We have responded to the recommendations in 2 & 3 in conjunction.

We stand ready to provide further information as the House of Lords EU Committee requires.

The conclusions and recommendations of the Committee

The need for trade

1. We have not heard anything in this inquiry to change the conclusion of our 2004 inquiry on trade policy: we recommend that the Government continues to pursue further trade liberalisation through the EU as an important policy objective. This should be fully consistent with the EU's development objectives, including the reduction of poverty in developing countries. The continued removal of trade barriers will lead to greater economic growth and jobs around the world. This growth is shared between developed and developing countries alike. A global recession will be made worse if there is a retreat into protectionism (para 17).

The Government agrees that trade liberalisation remains important for economic growth and development in both the UK and developing countries. The Government will continue to pursue trade liberalisation through the EU as a priority; in particular, completing the Doha Round as soon as possible, and signing ambitious trade agreements with Korea and India. The Government strongly agrees that the global recession will be made worse if there is a retreat into protectionism. The Government will use all opportunities, in particular the London Summit, to keep global markets open. The Doha Round would provide important insurance against countries raising their tariffs.

2. The impact of commodity price volatility during 2008 on EU trade policy was limited to protectionist rhetoric rather than actions. We hope that EU Member States do not use the current economic environment as an excuse to delay or even roll back reforms of the Common Agricultural Policy. We ask the Government to work with EU partners to ensure that trade liberalisation contributes to improving food security in developing countries (para 21).

3. We would prefer to see continued reform of the Common Agricultural Policy for its own sake, although further reductions in agricultural support would also allow the EU to offer still larger cuts in agricultural tariffs. Although it was at the periphery of the area of dispute in this summer's talks, the EU retains a central position in international trade negotiations and will need to maintain and strengthen its role as a promoter of liberalisation (para 59).

As the Government's response to the Committee's 7th Report on *the Future of the Common Agriculture Policy* sets out, Common Agriculture Policy reform is a key element to achieving the Government's long-term vision for agriculture. The Government will continue in its efforts to call for further reform of the Common Agriculture Policy.

A successful conclusion to the Doha Round will reduce distortions on global agricultural markets, improving opportunities for farmers in developing countries. Together with investment by the Department for International Development in research into sustainable increases in global food production, this will contribute to improving global food security.

The UK has been leading the calls for a step increase in global attention to food security and agricultural development. The UK was among the first countries to engage with the emerging crisis, and has provided consistent international leadership over the last year. Last April Gordon Brown hosted in Downing Street a meeting of world experts to discuss the food crisis. At the Rome Food Summit last June, Douglas Alexander called for a doubling of global efforts to tackle global food security. He announced some £825 million of DFID commitments to back this agenda. The UK is also pushing for the establishment of a Global Partnership for Agriculture, Food Security and Nutrition to shape and deliver a comprehensive and coordinated international response to both the immediate problems caused by the food crisis of last year, as well as addressing the underlying problems of increased vulnerability resulting from a decade or more of collective neglect of tackling agricultural development in poorer countries. This has included calling for countries to avoid protectionism in the midst of the high food prices of last year, when some exporting countries banned or considered banning exports in order to ensure domestic food supply—which aggravated the international situation.

The European Union has made an ambitious offer on agricultural tariff cuts in the Doha Round, which helped to advance negotiations last year. The Government will continue to work for a successful and ambitious conclusion to the Doha Round.

The Doha Round

4. We are disappointed that the Doha Round is yet to reach a successful conclusion and are concerned that a global recession will increase pressure for protectionist measures. We therefore welcome the decision of the leaders of the G20 countries to use their November summit as a springboard towards further Ministerial meetings on the Doha Round. We commend the UK Government, Lord Mandelson (in his former role as

Commissioner for Trade) and the Commission for their work to date. We welcome Commissioner Ashton's announced commitment to work to revitalise the multilateral talks at the start of her tenure as Commissioner for Trade (para 54).

The Government remains fully committed to an ambitious, pro-development outcome to the Doha Round. We are deeply disappointed that WTO members were unable to reach agreement on an outline Doha deal on agriculture and industrial goods in 2008, despite the real political momentum given to the talks at the Washington summit. This deal would have been good for the global economy in this time of economic uncertainty; it would have provided a legally binding safeguard against some forms of protectionism; it would have provided new opportunities for UK businesses and lower prices for ordinary British families; and it would have provided a vital lifeline to some of the world's poorest people, who are among the hardest hit by the current crisis.

However, progress was made on agriculture, industrial goods and services in 2008 and the Government believes it should be possible to make further progress this year and possibly to reach agreement on modalities, provided that WTO members demonstrate sufficient political will.

5. We call on the Government and the Commission to make every effort to ensure that the positive rhetoric arising from the G20 summit is translated into action and a successful conclusion to the Round. The Government should also work with the incoming administration in the United States to emphasise the importance of trade liberalisation (para 55).

The Government will continue to work closely with others, including the new US administration, in pursuit of a successful Doha deal. Maintaining support for open markets will be vital to restoring the health of the world economy. The London summit in April will be important in showing global leadership in tackling increasing problems in the real economy; global job creation, economic growth and financial stability. Among the aims of the summit the Government will be seeking to secure strong commitments from G20 leaders to keeping markets open and resisting protectionism, including committing to a successful conclusion to the Doha round as early as possible.

6. We are concerned about the pace of services negotiations, especially as this is the area in which the UK has the most to gain from the Doha Round. Services negotiations require more attention because of the range of issues involved. We would encourage the business community to be more vigorous in advocating the completion of the Round (para 56).

Within the Doha Development Agenda, services negotiations have operated on a different basis to other market access negotiations—on a "request-and-offer" basis rather than a "formula-driven" basis. The services negotiations in the Doha Round have made progress, particularly with a successful Services Signalling Conference in the course of the last WTO Ministerial, where key WTO Members signalled the further commitments they would be willing to offer in the context of a successful conclusion to the negotiations.

The Government has regular contact with the Confederation of British Industry (CBI), the European Services Forum (ESF), the Liberalisation of Trade in Services (LOTIS) Committee and other representatives of services industries to ensure that their interests are fully taken into account in UK and EU policy development.

7. The Singapore issues should be revisited outside of the Doha Round (para 57).

We agree with the importance of Singapore issues for 21st century economies. WTO members can negotiate to include aspects of the Singapore issues in bilateral or regional/other trade agreements. The EU is negotiating a range of trade agreements, for example the Free Trade Agreement with South Korea, that include aspects of the Singapore issues. The EU is also negotiating Economic Partnership Agreements with African, Caribbean and Pacific (ACP) countries. If the ACP country or region so wishes, they can include trade-related policies such as investment, competition and public procurement aspects in the EPAs. The government believes such reforms in trade-related policies are advantageous for ACP countries to help improve their global competitiveness, attract foreign direct investments and stimulate exports. However, these additional areas should be included in EPAs at a pace and scope that is acceptable to ACP. The CARIFORUM agreement that was signed on 15 October 2008 is a comprehensive trade and development agreement covering trade in goods, services, and investment, as well as a wide range of trade-related areas. For the majority of Caribbean countries the services sector, including industries other than tourism, presents the best prospect for economic diversification and global repositioning because of its value-added potential.

The Government remains convinced that a robust and comprehensive trade facilitation agreement should form an integral part of the final Doha package. Active and consensual discussions amongst WTO members continue in a Trade Facilitation Negotiating Group on the basis of a so-called "Compilation Plus" text. This text is broad in scope and offers a high level of ambition, including enhanced transparency of trade rules, simplified trade procedures and fees and improved transit of goods across countries. WTO Members are also discussing, in line with the negotiating mandate, how to ensure a practical delivery mechanism for technical assistance and capacity building support to developing countries in implementing the agreement.

Outside of the Doha talks, the Government supports appropriate trade facilitation measures in regional trade agreements and other trade negotiations consistent with its objective of achieving a multilateral agreement on trade facilitation. Additionally, trade facilitation measures are an important part of the Government's support for developing countries through its Aid for Trade programme.

8. A Round in which WTO members bound tariffs at existing applied tariff rates would not be a failure: we do not take the current, historically low, levels of tariffs for granted. The embedding of current low levels of protection at a time when the global economy is facing a turbulent period featuring volatile raw material prices and a likely economic contraction would be a very real gain (para 58).

The Government agrees strongly that a successful Doha deal is more important than ever at this time of global economic uncertainty and growing protectionist sentiment. At present the emerging economies could increase their tariffs on average to 3.5 times their present level, without violating WTO rules. An increase in tariffs back to the maximum level applied since the Uruguay Round would reduce world trade by over 3 per cent, reducing global income by almost €170 billion.

A Doha deal would greatly reduce the scope for WTO members to raise tariffs. It would deliver reductions in industrial tariffs so that the EU would have almost no industrial tariff above 6 per cent, and no developed country tariff would be greater than 8 per cent, real new market access into key emerging economies such as Brazil and China in sectors such as automotives, chemicals and machinery; and reductions in agricultural trade barriers (tariff reductions at an average of at least 54 per cent) and trade-distorting subsidies (which currently cost developing countries €15 billion per year in agricultural income alone).

Trade disputes

9. We are disappointed that the Commission has not made progress on reforms to the anti-dumping rules and ask the Government to work with other Member States to prioritise this work (para 66).

We share the Committee's disappointment. The Commission launched a public consultation exercise on how the EU can continue to use Trade Defence Instruments (anti-dumping, anti-subsidy and safeguards) to best effect in the European interest through the publication of the Green Paper "Global Europe—Europe's trade defence instruments in a changing economy" in December 2006. The deadline for submitting contributions was 31 March 2007.

The Government welcomed the consultation exercise and submitted a substantive response. Among a number of issues, we highlighted the following three major issues as being ripe for reform:

— Transparency: anyone (business or individual) potentially affected by an investigation that might lead to the imposition of a trade defence measure needs the TDI regime to provide certainty and predictability. This is not always the case when the Commission conducts trade defence investigations. The Government therefore proposed work to be undertaken that would lead to a significant increase in the transparency of the TDI regime.

— Definition of Community industry: The Government commented that EC Trade Defence Instruments (TDI) actions must take into account the reality of globalisation, recognise the increasing complexity of supply chains and the interests of EC businesses that have manufacturing operations in third countries but which retain significant operations and employment within the EC.

— Community Interest: The Government commented that the community interest test is the cornerstone of the TDI regime but that it is currently too often operated in a way that gives disproportionate precedence to EC producer interests at the expense of those of other legitimate economic interests such as users, consumers, producers and traders.

The Commission received more than 500 responses to the Green Paper and after a careful analysis concluded that there was no consensus for change. The consultation was therefore shelved and we have been advised that it is unlikely to be re-launched during the lifetime of the current Commission. The Government shares the disappointment of the House of Lords EU Committee.

The Government will take every opportunity to raise the need to update the EC's TDI regime in our contacts with all economic interests, other member states and the Commission.

10. Because its rulings have largely been accepted, the WTO Dispute Settlement Mechanism has generally been a success, although smaller participants have faced delays and third parties may be prejudiced by the outcome of cases between larger parties. We do recognise the need for support for Least Developed Countries

and non-combatants to participate; more should be done to promote transparency. We look forward to the Government's proposals for these changes (para 75).

The House of Lords EU Committee report concentrates on two specific issues. These are being considered during the on-going discussions on review of the Dispute Settlement Understanding.

Support for Least Developed Countries (LDCs) in disputes

The UN Conference on Trade and Development (UNCTAD) manages a project "The Project on Dispute Settlement in International Trade, Investment and Intellectual Property" that helps to build a permanent capacity in countries for dispute settlement in the WTO and elsewhere. The WTO provides training for exponents in the area of dispute settlement and the WTO Secretariat will assist poorer country members where it can.

The prime objective should remain to resolve disputes through consultations and dialogue, including the formal consultations process required as part of the Dispute Settlement Understanding (DSU). The Government supports any initiatives that build upon the current levels of assistance afforded to non-developed countries engaged or wishing to be engaged in the dispute settlements process.

LDC members have put forward a number of suggestions. Suggestions include proposals to create a Dispute Settlement Fund for Developed Countries (DCs) and to introduce litigation costs for DCs (a recent text has emerged and will form the basis of further discussions).

Transparency

The current system provides flexibility in enabling third parties to join in the consultation stages of disputes. Third parties have been able to join panel proceedings on a case-by-case basis. There is some support during the on-going consultations of DSU reform for third panel rights at the panel stage to be enhanced.

Proposals in relation to transparency include opening panel and Appellate Body hearings to the public, access to the public of submissions and timely access to panel reports. There is a lack of consensus amongst WTO members on these issues.

Some WTO members favour opening proceedings to the public whereas other members have reservations. There is a feeling as to the need to preserve the intergovernmental character of the dispute settlement proceedings and the need to protect confidential information. The Government appreciates that there will be occasions when it is necessary to protect business sensitive information. The Government believes that recent experiences where proceedings have been open, or open in part, to the public will help to inform debate in this area.

There is a divergence of opinion on making WTO member government submissions available to the public. This in part is a result of concerns that the WTO dispute mechanism process should remain a government-to-government exchange.

One of the final documents from the 1994 Uruguay Round Ministerial was a commitment to review the DSU and to complete this review by the end of 1998. The deadline has been extended on a number of occasions and even now there is no schedule to conclude the review.

Trade and development

11. Support for trade capacity building in Least Developed Countries and other developing nations is required in order to allow these countries to benefit from liberalisation. While we congratulate the Government for their leadership role to date, we are concerned that Aid for Trade has been in many cases no more than a rebranding of existing or pre-planned development aid. Funds should be directed towards tangible infrastructure improvements and support and advice for potential exporters and associated domestic supply chains (para 85).

In 2008 DFID published its Aid for Trade Strategy which sets out how it will deliver aid for trade. DFID will work at the country and regional levels to build capacity to trade effectively and competitively. DFID will focus especially on Sub-Saharan Africa where increased regional integration, better infrastructure and more efficient border crossing procedures are important for unlocking Africa's trading and growth potential. Link to the Strategy: http://www.dfid.gov.uk/pubs/files/Aid_for_trade.pdf

Aid for Trade targets areas as diverse as trade policy and regulations, infrastructure, business development, agricultural production, customs reforms. The concept of aid for trade organises these existing areas for development into a comprehensive framework for addressing in-country barriers to inclusion in regional and global markets. The concept of aid for trade includes economic 'adjustment costs'; this acknowledgement of trade agreement related costs is new. Importantly, aid for trade requires donors to deliver increased assistance. The EU is committed to increasing selected trade policy related sub-components of bi-lateral aid for trade to €2 billion a year by 2010. Against the same narrow definition the UK is committed to increasing aid for trade to £100 million a year by 2010. Total UK bilateral aid for trade increased from £288 million in 2005 to £300 million in 2007. In addition, the UK's multilateral share of aid for trade increased from around £240 million in 2005 to £500 million in 2007. Examples of aid for trade in action include the North-South Corridor—a major trading route across East and Southern Africa which will be rehabilitated through a sequenced comprehensive approach that will address transport and energy bottle necks. The UK is supporting a fund raising conference for the North-South Corridor; this will take place in Lusaka in April 2009. In Mozambique, UK Aid for Trade support has enabled 70,000 fishers from Mozambique to retain the EU standards accreditation they need to export to the EU.

12. Aid for Trade must not be allowed to become a bargaining chip in multilateral trade talks: developed countries should recognise the benefits of capacity building in Least Developed Countries regardless of whether multilateral talks are continuing (para 86).

UK Aid for Trade is not linked to the signing of any trade deal or to forced liberalisation of any kind. We believe in a fair and free rules-based global trading system. We also believe open markets and competition can bring immense benefits to countries in the form of increased revenue, more jobs, access to cheaper goods, supplies and technology. But we fully recognise that countries need to build their capacity to compete globally. And we know that some countries or groups in countries can be adversely affected by more open markets. But no country has developed successfully in isolation and without foreign trade and investment. Aid for Trade can helpfully address both challenges and opportunities that come with more open markets.

13. The Commission's initial handling of the EPA negotiations was far from perfect, but improvements have been made. In particular we welcome the extension of the offer of duty-free, quota-free access to negotiating partners to remove the pressure of time on the talks. The desire to encourage ACP countries to work together in regional blocs is commendable and we hope it will lead to lower tariffs within the blocs (para 102).

The Government shares the view that relations between the Commission and ACP partners have not always been easy. However, as discussions have progressed there has generally been an improvement in mutual understanding. The Government continues to support the move towards regional integration to reduce costs of trade, at a pace and scope with which ACP countries are comfortable.

The Government welcomes the signing of the full EPA in the Caribbean where we played a pivotal role in the success of the agreement. We remain hopeful that interim EPAs will be signed soon as well as full EPAs in some regions.

Good progress is being made in SADC, East African Community (EAC) and West Africa towards their respective Regional EPAs. We will continue to support these and other ACP regions as they move ahead with their EPAs.

14. Where the regional approach is clearly not working we recommend that the Commission scales back its hopes for integration and instead works with individual countries: this could take place within a common framework which would enable any future regional integration. The Commission should also do more to explain its reasons for this regional approach to its critics (para 103).

The Government supports regional integration and this is a key principle underpinning EPAs. We recognise that there are ACP countries where to date it has not been possible to forge a regional EPA strategy and to address these cases a flexibility in approach is required.

The Government continues to provide Aid for Trade, for instance, to support a range of trade-related issues including regional integration, this is not conditional in any way to a region or country signing an EPA.

Regional integration is critical as it has the potential to remove trade barriers, especially for landlocked countries and it is here that the economic development gains for integration are the greatest. The UK government is also helping support regional integration through measures that include important infrastructure projects such as the North-South Corridor. The corridor will provide countries in this part of Sub-Saharan Africa with access to important trading routes enabling them to get their produce to market. Similarly the Regional East African Integration Programme (REAP) means that the Government has committed £20 million to the E.A.C region over the next five years to help boost its competitiveness and bolster growth and poverty reduction.

15. We recommend that the Government monitor the remaining negotiations closely and provide the House with regular Written Statements on the progress towards agreement of the remaining EPAs, and in particular the steps they are taking to ensure that signatories are satisfied with their content (para 104).

The Government continues to monitor the progress of EPA negotiations and offer support as they move towards the regional agreements, especially in regions such as West Africa and E.A.C where significant progress has been made. We will also monitor developments in other ACP regions and will provide the House with appropriate updates.

The Government continues to work closely with regional governments and the Commission as part of our efforts to ensure that EPAs are development friendly trade agreements. We will also work with regions and the Commission to develop monitoring bodies to evaluate the impact of the Agreements; we are currently assisting the CARIFORUM Region in this regard.

16. While the detail remains to be finalised, we support in principle moves towards a more flexible Rules of Origin regime for LDCs (para 108).

The Government is actively promoting improved preferential rules of origin as they apply to developing and especially least developed countries. The principles against which it assesses proposed changes are simplification, transparency, relaxation and trade facilitating, reinforcing the Commission's commitment in its March 2005 Communication and the EU's commitment in the Hong Kong WTO Ministerial declaration on Least Developed Countries.

17. We are satisfied that the Commission continues to work towards the EU's Treaty-based objective to support sustainable development of developing countries. We are also reassured that DG Trade and DG Development work together to consider the development implication of trade and liberalisation decisions. However, the Commission could do more to promote its development work (para 116).

The Commission's delivery of development aid has been improving steadily. Over the last few years an increasing focus on evaluations and impact assessments has highlighted areas of strength and weakness in the Commission aid programmes and the Government is pleased to see that the Commission has responded constructively.

Unilateral, bilateral & regional liberalisation

18. The Government should work with developing countries to promote policies in the WTO which allow credit to be given for unilateral liberalisation in multilateral negotiations and thus encourage countries to bind their unilateral actions (para 119).

The Government agrees with the House of Lords that credit should be given for unilateral liberalisation in multilateral negotiations to encourage countries to bind their unilateral actions. This issue has been discussed throughout the DDA but no consensus has emerged on how such a mechanism might be made operational.

19. We recognise that bilateral agreements are now a fixture of the trade negotiation landscape, and they can contribute to economic growth and liberalisation, both by making progress beyond the WTO remit and acting as the foundations for future multilateral deals. Some witnesses took the view that their proliferation has not been conducive to a multilateral settlement. To minimise the risk we recommend that the Government and the Commission should work with the WTO to enhance the Organisation's role in the monitoring of bilateral negotiations, and allow it to encourage good practice and the inclusion of provisions in bilateral agreements which help to minimise damage to non-signatories (para 140).

The Government recognises the proliferation of bilateral trade agreements and agree with the conclusion of the House of Lords that they are a fixture of the trade negotiation landscape. Bilateral or regional trade agreements can make a positive contribution to economic growth and liberalisation, both by making progress beyond the WTO remit and acting as the foundations for future multilateral deals.

The Government supports measures already underway in the WTO to strengthen the role of the WTO in this context, including the Transparency Mechanism on Regional Trade Agreements, introduced by the WTO on a temporary basis through the Doha Round negotiations. This has contributed to increasing transparency around RTAs and we support the Transparency Mechanism being made permanent with the conclusion of the Round. The Government also welcomes the launch in early 2009 of the online Regional Trade Agreement Information Service, providing a database of the RTAs currently in force as well as early announcements of RTAs under negotiation.

The Government agrees with the House of Lords that the WTO could have a valuable role in promoting good practice to ensure that RTAs are building blocks for future rounds of multilateral liberalisation. The Government believes RTAs can build towards multilateralism if there is commitment to multilateral liberalisation and where the FTAs are consistent with and ideally exceed WTO commitments. Where possible, FTAs should be used as a tool to promote greater regional integration, both in order to complement the multilateral agenda, and also for development reasons. For instance, it may be possible for an agreement between the EU and a key trading partner to be structured so as to allow other willing parties to join this core. The Government will work alongside the Commission and the WTO to further this.

20. The Commission's work on bilateral agreements has not undermined its commitment to multilateral trade agreements. We were particularly reassured that the previous Commissioner opposed agreements with developed nations which would freeze out poorer countries and hope that the new Commissioner will maintain this stance. We recommend that the Government and the Commission look at ways to help developing countries deal with the complexities of negotiating bilateral agreements, and welcome the Government's commitment of funds for this purpose. Aid for Trade facility is a suitable source of funds for such help and the Sussex Framework one possible instrument (para 141).

Aid for Trade is not a facility or a ring-fenced fund; it is essentially increased ODA for trade-related activities that will help poor countries address their supply side constraints. UK aid for trade has helped the University of Sussex to develop the Sussex Framework, a computer program which helps countries assess the benefits of a trade agreement and the sectors that may be detrimentally affected through multilateral or preferential trade liberalisation. The UK also provides support to EPA negotiators in ACP countries and is providing long-term support to the LDC group in Geneva, helping them assess emerging proposals and develop their own policy and negotiating positions.

The role of the WTO

21. We endorse the Minister's praise for Mr Lamy, and welcome the Government's support for his decision to seek a second term as Director-General of the WTO (para 146).

The Government welcomes the announcement in February 2009 of Lamy's unopposed appointment for a second term as Director-General of the WTO.

22. Although the focus of WTO members' attention should be on completing the Round, it is not too soon to examine the future of the WTO. While the existing Round should be completed under the current rules, discussions about the Organisation's future should not wait until the end of the Round (para 161).

Reaching a successful conclusion to the Doha Round remains a priority for the Government. However, the Government recognises that the WTO, like any organisation, continually needs to adapt to take account of emerging issues and new challenges, and make improvements to ensure that it maintains its central role. The Government agrees with the House of Lords that the existing trade Round should be completed under current rules and that this should remain the focus of WTO members' attention. In the meantime, the Government supports the WTO's ongoing efforts to modernise. The regular biennial ministerial meeting, expected this year, will provide an opportunity for the WTO to consider the role and structure of the organisation outside of the current multilateral trade negotiations.

23. The consensual approach to agreement should remain a fundamental tenet of the WTO. It is no longer appropriate however that the Organisation should move at the speed of the slowest or most cautious. We therefore support an extension of the plurilateral approach to negotiations. If groups of WTO members wish to negotiate agreements on particular subjects, within the consensual approach and on terms which they then make open to all WTO members, they should be allowed to do so (para 162).

The Government agrees with the House of Lords that the consensual approach to agreement is a fundamental tenet of the WTO. The Government supports the negotiation of multilateral trade agreements through the WTO wherever possible. The Government would also support consideration of increased use of plurilateral negotiations in the WTO, to allow groups of members who wish to negotiate agreements on particular subjects, within the consensual approach and on terms which they then make open to all WTO members. However, it is important to give further consideration to how this would work in practice and how to mitigate potential risks, including the capacity of the WTO to negotiate plurilateral agreements.

24. The WTO should also undertake work to promote unilateral liberalisation and encourage members to set applied tariffs at rates below their bound levels. We also support calls for the WTO to strengthen its research and monitoring work with a view to encouraging more liberalisation among members (para 163).

The Government welcomes the role that the WTO plays in promoting the value of open and undistorted trade. We also welcome the current work that the WTO is undertaking to monitor trade protectionist measures under its mandate in Annex 3 of the 1994 Marrakech Agreement. The Government supports the WTO's continued work in this area and anticipates the London Summit in April providing further recognition of the value of this contribution at the current time. The Government is also working to ensure renewed commitment of the G20 commitment to refrain from introducing protectionist trade measures at the London Summit.

The WTO has an important and ongoing role in delivering timely monitoring and research reports, for example its publication of comprehensive international trade profiles, and the WTO Secretariat is recognised for its valuable contribution.

25. WTO members should not underestimate the value of the functions performed by the Organisation outside of the multilateral trade negotiations. We look forward to the Government's work on the role and structure of the WTO and invite them to detail their emerging conclusions in the response to this report (para 164).

The Government welcomes the House of Lords' recognition of the valuable work delivered by the WTO in addition to multilateral trade negotiations. The Government supports ongoing work to strengthen the WTO's role, for example, under the dispute settlement understanding and the trade policy review mechanism. In addition, the Government recognises the importance of the bienniel Ministerial meetings in providing an opportunity to focus on the role and structure of the WTO outside the ongoing multilateral trade negotiations and support a firmer reinstatement of these Ministerials.

As the nature of the challenges facing the WTO evolve it is right that the role and structure of the WTO should respond. This is a long-term project and we will share the conclusions with the Committee as they emerge.

26. We welcome the support given to the principle of free trade by the November G20 summit and believe that it bodes well for the future of the WTO. We share Mr Lamy's confidence that the WTO will be supported by its members, but we are concerned that actions members may take, such as the conclusion of unambitious bilateral agreements or increased protectionism could undermine the Organisation. The WTO is of crucial importance to the wellbeing of the global economy, with a vital role to play in the current financial turmoil, and it must not be allowed to decline. The rule-making function and above all the dispute settlement system must be kept in good health even if traditional multilateral liberalisation is making slow progress (para 165).

The Government recognises and supports the central role that the WTO does and should have in trade liberalisation. Concluding the Doha Round of trade negotiations would provide a significant opportunity for locking in the trade liberalisation achieved to date, and the Government continues to push for progress in reaching a successful conclusion as a priority. The Government welcomes the current work that the WTO is undertaking to monitor trade protectionist measures under its mandate in Annex 3 of the 1994 Marrakech Agreement. Rather than undermining the Organisation, the efforts made by the WTO to protect the achievements made in trade liberalisation to date through its monitoring role have been widely welcomed. The Government supports the WTO's continued work in this area and anticipates the London Summit in April further recognising this contribution.

The Government agrees with the importance of the dispute settlement system. The current review of the Dispute Settlement Understanding, which does not form part of the DDA's Single Undertaking, is not a priority for many WTO members and definitive progress is unlikely until the overall DDA progresses further. Much work remains to be done but we support proposed measures that will improve the efficiency and transparency of the dispute settlement system.

REMAINING GOVERNMENT RESPONSES SESSION 2006–07

2ND REPORT, 2006–07: BREAKING THE DEADLOCK: WHAT FUTURE FOR EU PROCEDURAL RIGHTS?

Letter from the Rt Hon Jack Straw MP, Lord Chancellor and Secretary of State for Justice, Ministry of Justice to the Chairman

The purpose of this letter is two-fold: first, to apologise for my Department's failure to reply to the Committee's report of January 2007; second, to provide a brief update on this area of work.

The Committee's report "Breaking the deadlock: what future for EU procedural rights?" looked at the Framework Decision on criminal procedural rights that was then under consideration in Brussels. The protocol on such reports is clear, namely that departments should always provide a formal reply. Therefore, notwithstanding that a great deal of water has passed under the bridge since then—including the creation of the Ministry of Justice—I offer my unreserved apologies for the oversight.

The Framework Decision in question fell, as the Committee is aware, because the UK, with others, could not support it. (It did little more than duplicate—inexactly and therefore potentially confusingly—provisions of the ECHR.) The UK position led to unhappiness in some quarters at the time but I am satisfied that our position was the right one in relation to that text in its final iteration. In any event it is now finished business. No further work is planned on that Framework decision.

However, the Commission have indicated that they are minded to introduce a new proposal on criminal procedural rights in the second half of this year under the Swedish Presidency. We understand it is likely to be narrower in scope than its predecessor—and look forward to seeing the detail of the proposal. Any such proposal will, of course, be deposited in due course.

5 February 2009

27TH REPORT, 2006–07: WATER FRAMEWORK DIRECTIVE: MAKING IT WORK

Letter from Huw Irranca-Davies MP, Parliamentary Under Secretary of State for Marine and Natural Environment, Department for Environment, Food and Rural Affairs to the Chairman

I am sorry that this Response is being provided outside the conventional time limit. There was a misunderstanding of the statement that the Report was being made for information.

Since the Report work has continued to implement the Water Framework Directive, and in December the Environment Agency met a significant milestone in publishing the draft River Basin Management Plans for a six month public consultation on 22 December 2008. The consultation ends on 22 June, and the Environment Agency will revise the draft Plans and submit a final version to the Secretary of State in September. The Directive requires the Government to publish Final River Basin Management Plans by 22 December.

We were pleased with the Committee Report of March 2007 which recognised the quality of UK reporting on the Water Framework Directive to that point. As the Committee noted, the ultimate aim is to produce comprehensive and ambitious River Basin Management Plans by the end of 2009. With the publication of our draft Plans we have an excellent starting point and want to see the ambition of the Plans increased before the final Plans are published in December.

Work to further clarify disproportionate cost has been undertaken, and was shared with the Environment Agency in the 2008 guidance document: *River Basin Planning Guidance Volume 2*.[1] There has also been an agreement received at EU level on key issues of disproportionate cost.

Defra has been in discussion with the Department for Communities and Local Government (DCLG) to increase awareness of the Water Framework Directive among local planning authorities and DCLG have produced a letter to be sent to Chief Planning Officers to highlight the importance of the river basin management plans and their implications for local planners. We are also working with DCLG who are producing guidance for planners about water. This guidance includes the integration of the River Basin

[1] Available online at http://www.defra.gov.uk/environment/water/wfd/pdf/riverbasinguidance-Vol2.pdf. Chapters 6 and 10 deal specifically with disproportionate cost.

Management Plans into the local planning cycle so that there is a clear process for taking our objectives for water into account.

The July 2007 Report included a recommendation that Government work closely with the agricultural industry to tackle relevant obstacles to achieving Water Framework Directive objectives, including the challenges posed by diffuse pollution from agriculture. From 2006 the England Catchment Sensitive Farming Delivery Initiative has worked in 40 priority catchments. In October 2008, a further 10 catchments were added, and the initiative now covers approximately 40 per cent of England. The Initiative gives one-to-one advice to farmers and has provided capital grants in some priority areas, increasing awareness and helping farmers reduce the impact of their industry on the water environment, for example by building slurry storage or fencing along water courses. In 2007–08 farmers received £4.65 million. The 2008–09 scheme was oversubscribed, and is expected to deliver £5 million of grants. We will run a similar £5 million capital grant scheme in 2009–10.

We are also developing regulatory options (Water Protection Zones) that could be employed from 2012 if voluntary agreements have not delivered sufficient progress. Water Protection Zones will allow the Environment Agency to designate measures for a specific geographical area, where voluntary initiatives like Catchment Sensitive Farming have failed to deliver adequate improvement in water quality. Any proposed Water Protection Zone will be subject to individual impact assessment and consultation.

Since the publication of the draft Plans, much work has been undertaken to address Article 14 and ensure that we engage effectively with the wider public. Regional workshops and national conferences have been arranged, and leaflets have been produced for the different sectors that can contribute to, or have been affected by, the Plans. In March I spoke at a launch event for the consultation on draft River Basin Management Plans in England, and the Devolved Administrations have arranged similar events.

For better engaging the public, the Environment Agency has also developed an online tool to communicate what they're doing on the Water Framework Directive and encourage involvement at all levels.[2]

The Priority Substance Daughter Directive clarifies that Article 4 of the Water Framework Directive, concerning disproportionate costs and technical infeasibility, may be applied to both the EQS and cessation objectives. Experiences of the Water Framework Directive have informed work on costs and benefits and sharpened the focus during EU negotiations when most of the UK objectives were achieved.

The new Daughter Directive was published on 24 December 2008, and relevant quality standards will be implemented through the programmes of measures in the River Basin Management Plans.

The Groundwater Daughter Directive was published in 2006 and will be transposed in England through revised Groundwater Regulations which are expected to be agreed before the summer recess, subject to the parliamentary timetable. Other elements of the Directive have already been transposed through a Direction to the Environment Agency.

I hope this answers the Committee's concerns, but if you have need anything further please let me know.

16 June 2009

[2] Available online at: http://maps.environment-agency.gov.uk/wiyby

Part II: Commission Responses

3RD REPORT: PROTECTING THE CONSUMERS OF TIMESHARE PRODUCTS

Letter from Margot Wallström, Vice President of the European Commission, to the Chairman

Thank you for sending me the Inquiry Report "Protecting the consumers of timeshare products" adopted by the European Union Committee of the House of Lords.

I note with particular satisfaction the House of Lords' overall support for the Commission's proposal for a new Timeshare Directive. This will be helpful for the ongoing negotiations in the Council and the European Parliament.

As you are well aware, the Commission is planning to present a proposal for a Framework Directive on Consumer Contractual Rights before the end of 2008. This proposal will attempt to systematise a number of cross-cutting issues in the current consumer protection directives into one single instrument. The right of withdrawal is one of the main issues that will be addressed in the draft Framework Directive. The House of Lords' recommendations on the right of withdrawal, in particular in relation to the modalities for the exercise of the withdrawal right and the consequences thereof, will be considered in the preparation of the Framework Directive.

Concerning the length of the cooling-off period, I should emphasis that the Impact Assessment accompanying the proposal concluded that a fully harmonised 14 days period would provide sufficient protection for consumers without imposing disproportionate burden on business.

I take note of the House of Lords' recommendations in relation to the definitions of timeshare, resale and exchange. The recommendations will be taken into account in the negotiations with the Council and the European Parliament.

As regards the information requirements, I take particular note of the recommendation to establish a hierarchy of information provisions. This recommendation will be taken into account in the negotiations with the Council and the European Parliament.

Concerning licensing schemes, I should emphasise that the Commission has been careful not to propose provisions which would impose unnecessary administrative burden, in accordance with the principles of better regulation.

In respect of the recommendations concerning enforcement and sanctions, I am convinced that the recent Regulation on Consumer Protection Cooperation, which became fully applicable last year, will provide a powerful tool for the enforcement of the new Timeshare Directive. The network established by the Regulation will allow national enforcement authorities to take co-ordinated actions against rogue traders who abuse the freedom of the Internal Market in order to deceive consumers.

11 March 2008

5TH REPORT: THE SINGLE MARKET: WALLFLOWER OR DANCING PARTNER? INQUIRY INTO THE EUROPEAN COMMISSION'S REVIEW OF THE SINGLE MARKET

Letter from Margot Wallström, Vice President of the European Commission, to the Chairman

Thank you for your opinion on the document COM(2007)724 "A single market for 21st century Europe" dated 27 October 2008.

In line with the Commission's decision to encourage National Parliaments 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 you own deliberations.

I look forward to developing our policy dialogue further in the future.

7 January 2009

Commission Response

The Commission welcomes this report which concludes the Committee's inquiry into the Single Market Review. We would also like to thank the Committee for the spirit of good cooperation which defined relations throughout the course of the inquiry.

The Committee's report was published after the Commission's Communication on the Single Market Review.[1] However, the Commission was already able to take account of many of the issues raised by the Committee in the course of its inquiry in the preparation of the Review. We have also taken account of the findings of the report in implementing the Review over the past year.

A report on the progress made in implementing the Review will be presented in December 2008, in line with the request expressed in the conclusions of the Spring European Council 2008.

General conclusions and recommendations

The Committee has noted that the Single Market has the potential to be of great benefit to European businesses, citizens and consumers, and that it is urgent to ensure that this potential is realised in full. The Commission shares this view. The recent financial crisis and downturn in European economies reinforces the pertinence of the Committee's opinion: it is now more urgent than ever to ensure a properly functioning Single Market as an effective launch-pad for Europe's economic recovery. In its Communication of 26 November 2008,[2] the Commission has set out a European Economic Recovery Plan designed to create a basis for agreement among Member States to get Europe's economy moving again.

The ongoing implementation of the Single Market Review has an important role to play in this context: by improving the business environment to help firms—in particular SMEs—cope with adverse market conditions and maintain jobs; by driving consumer confidence and demand; and by ensuring that the social dimension of the downturn is properly reflected in policies that offer opportunities, access and solidarity for all.

Policy-making and implementation

The Commission welcomes the Committee's support for our renewed commitment to better regulation. In spring 2009 the Commission will report on how we have implemented the better regulation agenda over the course of this mandate, with a particular focus on efforts to reduce administrative burdens, to continue to implement the simplification rolling programme and to further develop the impact assessment tool.

Close partnership with Member States is now established as an accepted and necessary method for managing the Single Market. To further deepen the approach, in 2009 the Commission will present a Recommendation on Partnership to consolidate best practices in how single market rules are transposed, applied and enforced; how information about single market rights is spread; and how cross-border cooperation between authorities works in practice.

The Committee rightly points out the importance of effective implementation of the Single Market rules. Whilst primary responsibility for timely and correct transposition lies with Member States, the Commission shares the Committee's analysis of the benefits to be gained by accompanying and assisting Member States throughout the transposition process, to prevent potential problems before they arise. The 25th Annual Report on Monitoring the Application of Community Law (2007) which the Commission has recently published[3] demonstrates the steps we are taking to better assess national impacts in the preparation of legislation and to work with the Member States to solve problems that citizens raise, resolving them more quickly and efficiently than could be done through legal proceedings.

Whilst the Commission is convinced of the merits of preventing possible problems before they arise, we would also assure the Committee that these improvements are without prejudice to our commitment, as guardian of the Treaties, to pursue infringements where necessary through formal procedures. In this context, the Commission is paying particular attention to improving the way infringements are managed with a view to improving efficiency and to reduce the time taken to bring cases before the Court.

We particularly appreciate the Committee's support for the wider use of new evidence-based tools such as market monitoring within the Commission. The Commission will continue to develop this tool as a means to better identify and prioritise inefficient markets and sectors where structural adjustments can deliver gains in terms of growth, job creation and consumer welfare. In 2008 a pilot exercise has been completed on the food

[1] COM(2008)724 final, 20 November 2007.
[2] COM (2008)800 final, 26 November 2008.
[3] COM (2008)777 final, 18 November 2008.

supply chain, and work is continuing on retail distribution and electrical engineering. Building on the competition sector inquiry, a further exercise on pharmaceuticals has just been launched. The results of these ongoing exercises will be available in 2009.

Regulatory authorities

The Commission takes note of the Committee's recommendations on the importance of strong, independent National Regulatory Authorities. Insofar as this issue falls within the Commission's remit in certain sectors, we seek to ensure that this independence is maintained and respected in the context of relevant Community legislation.

The Committee concluded that in none of the three sectors examined in detail—energy, telecommunications and financial services—was there a need for a "super-regulator" at European level. The Commission, whilst agreeing with the Committee's support for a general increase in cooperation between National Regulatory Authorities, considers that European regulatory bodies are the most appropriate approach in the energy and telecommunications sectors. Proposals to this end are currently before the co-legislators (see below).

As concerns financial services, the recent crisis has demonstrated the need to review and strengthen the framework for financial supervision to restore confidence in the markets. Whilst financial markets in Europe are increasingly integrated, supervisory arrangements have not kept pace with this reality. To improve arrangements for supervision of cross-border groups in the immediate term, the Commission has proposed setting up colleges of supervisors for insurance groups and banks. We will shortly present measures to improve the functioning of the Lamfalussy Level III Committees of Supervisors.[4] To address the need for a new supervisory regime for the future, the Commission has created a High Level Group under Jacques de Larosière. On the basis of this Group's work, we will make a first report to the 2009 Spring European Council and to the European Parliament on ways to improve the supervision of financial institutions in the European Union.

Realising the benefits of the Single Market for businesses, citizens and consumers

The Committee noted the need to do more to help SMEs participate actively in the Single Market. The Commission shares this view and has responded in particular through the presentation of the Small Business Act[5] in June 2008. In line with this programme, the Commission has adopted a General Block Exemption Regulation on state aids to make it easier for SMEs to benefit from aid for training, research and development, environmental protection and other types of aid. The Commission's proposal for a new statute for a European Private Company seeks to ensure that SMEs can set up their company in the same form, no matter if they do business in their own Member State or in another. The Commission has also put forward a set of best practices for national authorities to make it easier for SMEs to bid for tenders. In 2009, further proposals are planned which will include an amendment to the directive on late payments to ensure that SMEs are paid within the 30 day time limit stipulated, and a change in the accounting rules to allow Member States to exempt micro-enterprises from the obligation to prepare annual accounts.

The Commission also agrees with the need to ensure that consumers and citizens effectively receive the benefits of the Single Market. This was a key theme of the Single Market Review. Confident and well-informed consumers are the key driver of effective and highly integrated European markets, and in the current climate consumer confidence and purchasing power are even more crucial. The Commission has presented legislation to strengthen consumers' contractual rights when purchasing goods and services[6] and is pursing a public consultation on means to improve consumer redress if something goes wrong. The Commission will also continue its work on consumer price monitoring, in particular in the food and energy sectors. A second edition of the Consumer Scoreboard will be presented in early 2009.

The Commission remains committed to ensuring fair competition and a level playing field within the Single Market, in particular through the effective and timely application of the European competition and state aid rules. In the course of the present mandate the Commission has maintained a strong focus on competition enforcement activities whilst reforming the state aid rules to ensure that they promote better-targeted use of subsidies where these can best contribute to the delivery of sustainable economic growth, jobs and social welfare.

4 The Committee of European Banking Supervisors, the Committee of European Securities Regulators, and the Committee of European Insurance and Occupational Pension Supervisors.
5 COM(2008)394 of 25.6.2008.
6 COM(2008)614 of 8.10.2008.

Energy sector

The Political Agreement reached at the Transport, Telecommunication and Energy Council on 10 October 2008 paves the way for a second reading by the European Parliament and the finalisation of the third energy package before the end of the present legislature. The adoption of the package will be an important step in the ongoing development of the internal market in electricity.

As the proposals currently stand there are three options for achieving effective separation of network interests from generation and supply interests—full ownership unbundling or, alternatively, the establishment of an Independent System Operator or an Independent Transmission Operator. The provisions for increased regulatory powers and independence will increase both the ability of regulators to oversee their markets, and confidence of market participants.

Equally important are the provisions for increased cross-border co-operation, overseen by a new Agency. The Agency will not be a European regulator; national regulators continue to retain responsibility for their respective national electricity industries. The role of the Agency will be to oversee at a European level the development of codes and plans with significance over and above the national level.

Telecommunications

The Commission welcomes the Committee's support for the Commission's proposed oversight, to ensure greater consistency in approach, of draft remedies to be imposed by national regulatory authorities. However, the Commission believes that this single measure is not enough to achieve the overarching objective of the Commission's proposed reform of the EU telecoms rules, which is the completion of the single market in telecoms. The costs of non-Europe in an economic sector which knows no technological borders and seeks increasingly to establish a pan-European footprint is heavy and risks undermining Europe's competitiveness on a global scale. The Commission notes that the Committee believes that the costs generated by the creation of an EU regulator for the telecoms sector would outweigh the benefits. In this regard, the Commission adopted on 6 November 2008 its amended proposal for a Regulation setting up an independent body to assist the Commission and the national regulatory authorities in the implementation of the EU e-communications framework. This body would have a less extensive role than that of the authority originally proposed, and would not be empowered to take regulatory decisions but would provide opinions and draw up best practice on the implementation of the framework.

The Commission welcomes the Committee's support for functional separation. This new regulatory approach has, as shown in UK, the capacity to improve competition in access-related markets where other obligations have been insufficient in addressing the excessive market power of national incumbents.

On spectrum, the Commission appreciates the Committee's support for the principles of more flexible and dynamic use of radio spectrum and greater coordination of the conditions applicable to spectrum authorisations.

Financial services

The Committee's recommendations on financial services policy are well in line with the Commission's present policy, as set out in the "White Paper on EU financial services policy (2005–2010)", which stressed the importance of timely and convergent implementation of EU directives, the need to facilitate the integration of the EU retail financial market and the importance of undertaking consultations in the preparation of financial services initiatives. The Commission has been actively pursuing the implementation of this policy:

— to facilitate a timely and convergent implementation of the EU financial services legal framework, the Commission has progressively strengthened the level 3 supervisory committees of the Lamfalussy structure, and further reforms to strengthen supervisory coordination are in the pipeline;

— the better regulation principles have become part of the Commission's regular preparatory work whenever a new regulatory initiative in this area is under consideration; and

— the Single Market Review included a section setting out in more detail the Commission's planned initiatives related to EU retail financial services policy. The progress made to date will be included in the report that the Commission intends to present in December.

The Commission has also made considerable efforts to effectively address the financial crisis. The Commission's strategy involves short term measures, to calm and restore market confidence, as well as medium term measures, aiming at strengthening the resilience of the EU financial system. As regards the latter, the Commission has proposed amendments to the Capital Requirements and the Deposit Guarantee Schemes Directives and has also proposed regulation on Credit Rating Agencies. Further initiatives in the regulatory and supervisory field will follow in 2009, as announced in the Commission's Legislative and Work Programme.

Finally, the Commission has been and will continue to promote a common EU—and a global—response to the financial crisis.

7TH REPORT: THE FUTURE OF THE COMMON AGRICULTURAL POLICY

Letter from Margot Wallström, Vice President of the European Commission, to the Chairman

The Commission would like to thank the members of House of Lords, and in particular of the European Union Committee, who contributed to the elaboration of the report "The Future of the Common Agricultural Policy (CAP)". The Commission welcomes that the House of Lords shares a common view over a number of policy areas, which will undoubtedly shape the future of the CAP.

Your report falls into two parts: that which deals with the Commission's Communication regarding the short-term adjustments to the CAP in the Health Check of the 2003 CAP Reform; and that regarding the longer-term future for the CAP.

With respect to the Health Check, the Commission notes your support for providing Member States with the opportunity to move away from the historic payment models towards a "flatter" rate of payment for the Single Payment Scheme.

With regard to individual payment limitations, your objections are noted and the Commission intends to take them into consideration in the legislative proposals.

The Commission shares your views over the role of cross-compliance in the justification for public expenditure on direct payments and the need to find a balance between the delivery of environmental benefits and the administrative obligations placed on farmers by the regime.

Facilitating the adjustment to full decoupling and the phasing-out of milk quotas through the use of Article 68 funds and Pillar II measures directly targeted to the desired environmental or economic externalities is another area of agreement between the Commission and the House. Regarding market measures, the Commission has noted your clear preference that, in abolishing the set-aside instrument, any loss of the environmental benefits associated with it should be targeted directly via Pillar II measures. Naturally, with regard to the future role of other market intervention measures, the Commission is monitoring carefully the current market conditions and analysing the basis of the medium-term outlook for agricultural commodities, in order to guide the reform process in this domain.

With the CAP ceiling now fixed until 2013, strengthening RD funds can only be achieved through increased co-financed compulsory modulation. The Commission notes your agreement with this approach and is seeking a solution, which will allow the participation of new MS, once they reach a comparable EU support level, and which respects the current distribution of RD funds between MS. At the time of the decision on the current voluntary modulation, the Commission undertook to examine the issue of modulation in the framework of the Health Check of the CAP reform and to give special attention to the financing of the second pillar. In this context, the Commission agreed that any further increase of compulsory modulation should be envisaged with a corresponding reduction of the applied rate of voluntary modulation.

Regarding risk management, the Commissions notes your analysis that, as the agriculture sector becomes more market-oriented, farmers are increasingly exposed to market risks and that the CAP can respond in a number of ways. The Health Check Communication, in particular concerning the production risks posed by animal diseases or climate change, provides an answer to the concern raised.

Finally, the Commission acknowledges your support on the necessity to review whether the strategic guidelines for rural development in the period 2007–13 offer appropriate incentives for farmers to address the challenges and exploit the opportunities posed by climate change, including research and development, sustainable water management and the protection of biodiversity.

With respect to the longer-term future of the CAP, the Commission will take account of your remarks in the context of the ongoing review of the EU budget and associated discussions on the future of the CAP.

At this stage, the Commission has noted the evidence you have brought forward to support your view that, while Pillar I direct payments should begin a phased reduction as from the beginning of the next financial perspective, in order to facilitate an orderly transition, a significant proportion of the funds released should remain earmarked under Pillar II for rural development. The Commission would appreciate receiving the detailed analytical work of the impact of the policy orientation set out in your report.

27 June 2008

9TH REPORT: FRONTEX: THE EU EXTERNAL BORDERS AGENCY

Letter from Margot Wallström, Vice President of the European Commission, to the Chairman

Thank you for the report by the House of Lords Select Committee on the European Union on "FRONTEX": the EU external borders Agency, dated 5 March 2008.

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.

16 October 2008

Commission Response

The majority of the recommendations are addressed to FRONTEX, to the Member States, and to the European Parliament. The comments below, therefore, focus on those directly or indirectly related to the Commission, in particular with regard to the Commission's right of initiative for proposing any future amendments of the FRONTEX Regulation.

The Commission's assessment, as set out by its Communication of 13 February 2008 (Report on the evaluation and future development of the FRONTEX Agency), corresponds, to a large extent, with the findings of the House of Lords Select Committee (hereinafter referred to as Committee).

We fully share the Committee's views that the Agency has made an excellent start in its important role to ensure operational cooperation between Member States at the external border of the European Union and, in the short term, more emphasis should be put on consolidating its achievements and exploit its potential within its existing mandate.

We also agree with the Committee that the United Kingdom has extensive experience in controlling borders, and note that, owing to the exercising of the right to opt-out of the Schengen acquis, the United Kingdom cannot participate fully in the implementation of the FRONTEX Regulation. This circumstance has been confirmed by the judgement of the Court of Justice (C-77/05).

With regard to joint operations, the Agency could, and will have to, develop benchmarks and performance indicators which will allow a better assessment of the results and impacts of its activities. Given its co-ordination role, the Agency's efficiency depends also on the commitment and active participation of the Member States and thus consideration should be given as to how the potential of CRATE (Central Record of Available Technical Equipment) could be better exploited. For example, having the deployment of the pledged assets made obligatory—subject to limited exceptions—could be one possible option.

In connection to the right of guest officers to bear arms, I would refer you to Regulation (EC) No 863/2007 of the European Parliament and of the Council of 11 July 2007, which sets out clear provisions on the tasks and powers of guest officers including the issue of carrying and use of service weapons.

One of the many challenges with which FRONTEX and the Member States are confronted is related to the relevant law applicable to the disembarkation of immigrants intercepted in sea border operations. In order to find practical solutions, in accordance with the relevant provisions on international protection and on search and rescue, the Commission has established a group of experts from FRONTEX, the Member States, UNHCR and IOM tasked with establishing a set of guidelines to be followed by the vessels of the participating Member States during joint operations.

Although we agree with the Committee that voluntary return is always preferable, enforcement of a common return policy with due respect of human rights and dignity is an indispensible part of a comprehensive approach to migration. Therefore, strengthening the role of FRONTEX in this respect would be fully justified.

Further development of cooperation with the relevant third countries along the main migration routes is also a crucial element of addressing this issue and forms an integral part of the Community's comprehensive approach to migration. The Commission will take a pro-active approach to assisting FRONTEX in negotiating and concluding working arrangements with third countries in the framework of the European Union external relations policy.

In a similar vein, we attach great importance to the close cooperation between FRONTEX and the relevant international organisations. In this respect, we shall welcome the progress made on negotiating and concluding the modalities of cooperation, including exchange of information with Europol, UNHCR and the IOM.

As Vice-President Barrot indicated in his previous letter of 24 April 2008, discussions, based on the Commission's Report on the evaluation and future development of FRONTEX, are currently on-going in various fora of the European Institutions. External evaluation of the Agency in accordance with Article 33 of the FRONTEX Regulation has been launched. The outcome of this evaluation, together with the follow-up from the resultant political debate, shall pave the way for further development of a European integrated border management model in which FRONTEX should play a key role, although its focus shall remain on the control of the EU's external borders in the context of managing migration flows.

15TH REPORT: THE PASSENGER NAME RECORD (PNR) FRAMEWORK DECISION

Letter from Margot Wallström, Vice President of the European Commission, to the Chairman

On behalf of the European Commission I thank you for the Report on the Passenger Name Record (PNR) Framework Decision. The Commission takes due note of the conclusions and recommendations contained therein. In particular, the Commission welcomes the report's conclusion that PNR data, when used in conjunction with other sources, can significantly assist in the identification of terrorists.

As regards the purpose limitation, the Commission agrees with the recommendation to define more clearly the offences covered by the Framework Decision and welcomes the Committee's recommendation that the instrument should apply to air transport. The European Commission will give due consideration to the recommendation on extending the instrument to sea transport at a later stage.

On the geographical scope, the European Commission urges the Member States to strive to achieve a harmonised approach in order to avoid potential security gaps and to minimise the costs on the industry.

Finally, the European Commission agrees with the recommendation that adequate and effective rules on data protection should be included in the Framework Decision.

11 November 2008

17TH REPORT: INCREASING THE SUPPLY OF DONOR ORGANS WITHIN THE EUROPEAN UNION

Letter from Margot Wallström, Vice President of the European Commission, to the Chairman

The Commission welcomes the Report of the House of Lords "increasing the supply of donor organs within the European Union" which brings evidence relating to the Commission Communication adopted on May 2007 on Organ Donation and Transplantation.[7]

The Commission Communication identified three main areas of action: improving quality and safety, increasing organ availability and making transplantation systems more efficient and accessible. In order to achieve the above mentioned objectives, the Commission proposed a two fold mechanism; an Action Plan on organ donation and transplantation and a legal instrument on its quality and safety aspects.

The Commission appreciates the support of the House of Lords European Committee to the proposed legal framework. It shares the opinion expressed in the report that the setting of minimum quality and safety standards would contribute in facilitating exchanges of organs for European patients necessitating this type of therapy and therefore Community provisions should ensure that human organs are of acceptable quality and safety. Moreover the Commission supports the view expressed that such standards will help reassure the public that human organs procured in another Member State carry nonetheless identical basic quality and safety guarantees as those obtained in their own country.

The Commission also agrees that the risk-benefit ratio is a fundamental approach for organ transplantation. Given the severe organ shortage and despite the life threatening indications of organ transplants, the overall benefits of organ transplantation are high. Hence more risks are accepted in respect to organs than with blood or most tissues and cells based treatments. In this context the clinician has an important role to play when deciding whether or not to accept an organ for transplantation.

The severe shortage of organs remains the main challenge that EU Member States are faced with in regard to organ transplantation. Quality and safety requirements should take this factor into consideration in order not to create unnecessary barriers to the organ donation process.

7 COM(2007)275

The Report also supported the Commission proposal on an Action Plan for strengthened coordination between Members States on organ donation and transplantation. Strengthened cooperation would be the second element in the strategy. With the Action Plan, the Commission intends to facilitate and support the development of transplant systems and foster their cooperation. The Action Plan promotes sharing of experiences between Member States, research and exchange of best practices among professionals so that they are better able to assist and support donors, recipients and their families.

The Commission welcomes the recommendations provided in the report, and shall consider them closely when finalising the Action Plan. In particular the Commission shares the view of the Committee on the need to encourage Member States to improve arrangements for donation across internal EU borders. Moreover the Commission in collaboration with the Member States shall explore the options available for the introduction of a common format for a donation card based on Member States voluntary agreements and understanding; such a donation card would be compatible with the different consent process already in force in Member States.

The Commission also plans to support Member States in developing and auditing public awareness initiatives, and would encourage Member States to develop effective processes for donors to express their wishes in the context of their own consent systems. In this context the report recommendation on the selection and training of the staff involved in organ donation services has also been identified as one of the priority objectives under the Action Plan.

8 October 2008

21ST REPORT: PROGRESS OF THE COMMON FISHERIES POLICY

Letter from Margot Wallström, Vice President of the European Commission, to the Chairman

Thank you for your opinion on the document "The Progress of the Common Fisheries Policy".

In line with the Commission's decision to encourage National Parliaments 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 January 2009

Commission Response

The Commission welcomes your report and conclusions. The report represents an early and most valuable contribution to the debate on the Common Fisheries Policy which we intend to launch in preparation of the next reform. We note that your views in most aspects are in the line with our current considerations as regards the CFP. Furthermore, many of these aspects have already been echoed in the Working Paper presented by Commissioner Borg to Council on the informal meeting on the CFP reform on September 29. In connection to this and in view of the conclusions and the recommendations of your report, we would like to formulate the following detailed comments on the report:

Recovery and management plans:

The Committee notes that the speed of adopting management plans has been slow due to resource constraints and urges Member States and Commission to put higher priority on this. The Commission agrees that this must have high priority and it does indeed have high priority in the DG.

The Committee also recommends that impact assessments should be carried out prior to adoption. This is already a formal requirement for Commission proposals included in the Commission annual legislative and work programme. On top of that, and given the importance of such plans, the Commission has voluntarily undertaken to prepare impact assessments regarding environmental, economic and social impacts for the adoption of all management and recovery plans. As regards updating the impact assessments if amendments are adopted during the decision-making process, we would like to recall that according to the interinstitutional common approach to impact assessment agreed by the EP, the Council and the Commission in November 2005, the Council is responsible for assessing the impacts of its own substantial amendments. The Commission would also like to draw the attention to the implications in terms of overstretch of resources and capacity that the extended recourse to impact assessment has had for the MS, the RACs and the same Commission services.

Rather than asking for more resources to implement the management plans, the Commission has tried to address the slow speed of their adoption in another way; respectively, by developing what in effect is a generic management plan covering all stocks under the CFP. This is done through the "policy statement" which contains decision rules for all stocks managed by quotas by prescribing specific TAC options for various categories of stocks, dependent on their status and the amount of information available. This has had some effect in guiding the decisions in Council. However, the Council is clearly not ready to enter into any consideration of automatic TAC setting based on management plans or generic principles, even though such management plans and principles are adopted by Council prior to implementation decisions.

Structural Policy:

The Commission acknowledges that overcapacity still exists in many EU fishing fleets and remains a major obstacle to ensure both resource sustainability and fleet profitability.

Member States are obliged by Community law to adjust the size of the fleet to the available fishing opportunities (Article 11(1) of Council Regulation 2371/2002) and the technical difficulties associated with a precise and harmonised assessment of the balance between fleet and fishing opportunities cannot be used as an excuse. Clear indications of an imbalance between fishing capacity and fishing opportunities may easily be identified: fishing mortality is too high, quotas are too small for the number and capacity of the vessels fishing them, fleet capacity utilisation is low or vessel profitability is very low if not negative. Under these circumstances, Member States have no excuse for taking action.

Moreover, Member States must report to the Commission annually on their progress to achieve a balance between capacity and resources. In order to facilitate this task and work towards a harmonised approach, the Commission provided Member States in June 2008 with "Guidelines for the assessment of the balance between fishing capacity and fishing opportunities", based on the recommendations of the STECF.

Therefore, it is now up to each Member State to apply the guidelines in their annual fleet reporting and to fully justify their actions in the area of fleet management. Further development of the guidelines and the harmonisation of measuring methods do not prevent Member States from making progress in the meantime.

Indeed, the Commission intends to encourage more substantial efforts by Member States to restructure their fleets under the recently adopted Fuel Crisis package. Furthermore, the Commission will ensure that the issue of overcapacity is fully exposed during the CFP 2012 reform discussions. In this context, the Commission intends to have recourse to external experts for estimating overcapacity in the EU, which shall supplement any estimation carried out by the Member States themselves.

The economic context since the summer has changed. Oil prices fell last week under US$ 60 a barrel for the first time since March 2007. Fuel prices are currently around 50 €cent a litre, down from 70–75 €cent/litre in June, i.e. a significant decrease in vessels' production costs. Many vessels have thus re-started fishing on a regular basis. Although the pressure is still there and even if there is common agreement that sooner or later the rise will set off again, many operators are today less eager to leave the activity than they were just a few months ago.

Commission is committed towards a full implementation of Regulation 744/2008. Member States have requested clarification on several aspects of the package and several bilateral meetings were undertaken between Member States and the Commission.

At present, no formal request for amendment of Operational Programmes linked to the implementation of regulation 744/2008 has been received by the Commission.

However, we have indications that several Member States intend to make use of one or another measure of the regulation, mainly temporary cessation and Fleet Adjustment Schemes (FAS). Most Member States having declared willingness to use the regulation have requested a second pre-financing of 7% of the EFF allocation.

The sector and the MS have a strong interest in pursuing the necessary restructuring efforts in spite of the fall in fuel prices. The July package is a unique opportunity to do so with a special support of EU financing. Requests for re-programming Operational Programmes will be prioritized to ensure the highest efficiency of the utilisation of the package.

Control & Enforcement

As regards your recommendations in this area, it should be noted that a proposal for a Council Regulation establishing a Community control system for ensuring compliance with the rules of the Common Fisheries Policy[8] is currently being examined by the Council. The proposed draft regulation introduces a penalty points system which will basically work similarly to the systems applicable to traffic offences in most Member

[8] (COM(2008) 721 final—2008/0216 (CNS).

States. The points to be attributed for specific infringements will be fixed in an implementing Regulation. For each infringement the fixed amount of points will be attributed in the national registry of fishery offences of the flag Member State. Infringements in other Member States will be communicated to the flag Member State for that purpose. When the offender has accumulated a certain amount of points within three years, the fishing authorisation for the fishing vessel will be suspended for six months. That period shall be one year if the fishing authorisation is suspended a second time as a consequence of a permit holder being assigned the specified number of points. If, after the end of the second suspension, the offender again accumulates the necessary number of points, the fishing authorisation will be withdrawn for good. All points are cancelled if the offender has not committed any infringements within three years of the previous infringement.

The penalty points system will apply for both the fishing vessel, and the master and the officer of the crew.

The system of registered buyers of fishery products was first introduced at Community level with the reform of the Common Fisheries Policy in 2002 (Article 22 paragraph 2 of Regulation (EC) No 2371/2002). According to the current legislation, all registered buyers have to electronically record and transmit sales notes and take-over declarations if their annual financial turnover in first sales of fishery products is in excess of 400,000 EUR. In the aforementioned new proposal for a regulation on fisheries control, it is foreseen that all registered buyers will have to electronically record and transmit sales and take-over declarations.

The registration of buyers of fishery products is an obligation under Community law. The failure to register all buyers of such products and see to it that the marketing of fishery products is done exclusively via these registered buyers would therefore constitute a breach of Community law, to which the normal rules for non-respect of Community law apply.

Somehow, the new proposal provides the possibility to suspend and cancel Community financial assistance if a failure of a Member State to comply with the Community fisheries control system may lead to a serious threat to the conservation of living aquatic resources or the effective application of the Community control and enforcement system. In such a case also quotas could be deducted from the Member State in question.

Regional Advisory Councils

The report is a very good testimony of the state of play of the different RACs established by the 2002 CFP Reform. Opinions expressed by witnesses underpin the conclusions made by the Commission in its Review of the functioning of the RACs.

Some clarification of the funding arrangements may be relevant as there is a small factual mistake in Box 12: Under the 2004 Decision, RACs benefited from a start-up aid from the Community budget on a digressive basis for the first five years of their operation, with the aim that RACs would eventually become self-financed. In 2007, in the light of the significant contribution of RACs to the development of the CFP, RACs were declared as bodies pursuing an aim of general European interest. Under the new framework, RACs benefit from a non-digressive funding from the Community budget. The grant shall not exceed 90% of the operating budget of the RAC and not exceed 250 000 Euros according to the current financial programming. This clearly means that this amount is a maximum and not a due and that there is a double ceiling of Community co-financing. Therefore, the last sentence of Box 12 is not correct. The RAC's annual budget is not 250000€. Their budget is bigger than this amount. 250.000€ is the maximum theoretical Community co-financing.

We should also underline that the role of RACs is not limited to advising the Commission on matters of fisheries management. RACs may also submit recommendations to Member States—as stated in Regulation 2371/2002.

The Commission welcomes the conclusions made by the House of Lords and takes note of its proposal to carry out a review of the budget made available to RACs. Following the adoption of the Review on the functioning of the RACs, the Commission is awaiting further comments from the Member States, the European Parliament and from the RACs themselves before proposing amendments to the current legal framework. As regards requests for flexibility of financing arrangements, please note that the Commission is also bound by the provisions of the Financial Regulation and its implementing rules, besides Council Decision 2007/409/EC. In the longer term, the discussion on the reform of the CFP will offer a good opportunity to discuss further about the involvement of stakeholders in the decision making process.

Management Tools

Multi-annual TACs are an option which has been explored in the past for various stocks and biological advice has been given on the issue. It is an important conclusion that multi-annual TACs are feasible for some fish stocks with comparatively constant recruitment when the fishing mortality on such stocks has been brought down to MSY levels. At the present high exploitation rates on most fish stocks this is not possible because the fisheries depend on just a couple of recent year classes and the fishing opportunities are therefore as variable from year to year as recruitment. However, until fishing mortality has been brought down to sustainable levels a substitute to give some stability to the industry has been introduced by having a window of change from year to year, normally within plus minus 15%, as expressed in the annual Policy Statement.

Regarding alignment of TACs for species of fish which are caught together, this has been the intention for several years but has proven more complex technically than expected. STECF has developed an analysis of mixed fisheries which can be the basis for such alignment but the translation of this analysis into operational decisions has proven difficult because most European mixed fisheries do not consist of one fleet with a specific mix but of several fleets with various mixes of the same species. This means that there are many combinations of allocations to different fleets which would provide balanced fisheries and in order to choose between them one would basically have to prioritise between various fleets and manage allocations of quotas to individual fleet segments on Community level rather than on Member State level.

Presently the Basic regulation makes a distinction between management plans and recovery plans. This has caused problems when emergencies arise and transitions are needed between the two types of plans. In the future we will consider developing one type of plans which will include management under normal conditions and emergency measures to ensure recovery as required.

Discards

The Commission notes the support to the intentions to reduce and eventually eliminate discards in European fisheries. The Committee has suggested that there should be full compensation for stowing and landings costs if a ban were to be introduced. As explained in the Communication and impact assessment on the discards policy, we do not think that such costs should be fully compensated within a results-based management framework. In a results-based management framework the industry is free to develop whatever means are required to reduce unwanted by-catch and the costs of catching unwanted by-catch is an important incentive for the industry to develop more selective fishing methods and practices. These costs should therefore not be neutralised entirely.

Governance

The Commission notes the views expressed in the report as regards aspects of governance. These aspects are also addressed in the Working Paper presented by Commissioner Borg to Council on 29 September. While this issue will require careful analysis and will be at the heart of the future public consultation on the reform of the CFP, at this stage we would like to comment on one point made in the Report. This concerns the delegation to regional level subject to Community standards and control, which is considered in the report as an attractive way out of micro-management and as a way to get a clearer split between strategic and tactical decisions. More precisely, the report states that "we regard the establishment of the Regional Advisory Councils as a promising step in this direction". We note that it is not entirely clear from the text what the suggestion actually is. If the above mentioned statement means that the establishment of the RACs also is an acknowledgement of the need to have a CFP with sensitivity for the specifics of the various regions we can agree. However, if this means the House of Lords considers the RACs to be the future bodies which will implement the CFP regionally the Commission disagrees. Regionalisation must primarily be delegation of more implementation competence to Member States which then will need to organise themselves on regional level to ensure consistency within regional seas. RACs may have an increased role in relation to such a system, both because they will get a more direct partner for dialogue and increasingly as providers of data and information about the fisheries in regional seas. Results-based management will also provide more responsibility to the industry. But the core competence for overseeing the implementation of the policy will remain with Member States and the Community.

Quota trading

The issues of Rights-Based Management (RBM) and quota swaps/trade are essential components of the CFP and will thus be addressed during the ongoing reform discussions. In particular, discussions will need to focus on links to discard reduction, tackling overcapacity, and functioning of current quota swaps/trade procedures. In this context, an externalised study on RBM and best practices in EU fisheries is being finalised and the final report will be disseminated in early 2009.

The Commission notes that quota allocation currently remains a Member State competence. Furthermore, the Commission agrees that options to link fishing rights and responsibilities should be examined during the CFP reform discussions.

22ND REPORT: INITIATION OF EU LEGISLATION

Letter from Margot Wallström, Vice President of the European Commission, to the Chairman

Thank you for sending us your Report on the Initiation of EU Legislation.

In line with the Commission's decision to encourage National Parliaments 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 reply. I hope you will fmd this a valuable contribution to your own deliberations.

I look forward to developing our policy dialogue further in the future.

17 April 2009

Commission Response

The European Commission would like to thank the European Union Committee of the House of Lords for having transmitted their Report on the Initiation of EU Legislation.

As the Committee knows, the European Commission has duly contributed to the exercise leading to the drafting of this excellent Report, in particular through the submission of a Memorandum on the Origins of Commission Proposals and the hearing of its Secretary-General, Ms Catherine Day, who replied to questions raised by representatives of your Committee on 8 May 2008.

The views on the right of initiative of the European Commission, its evolution, the often diverse origins of its proposals, the transparency and functioning of the decision-making process, the consultation procedures, the impact assessments, the undergoing simplification, the objectives of EU legislation, the balance of interests, the dialogue with national parliaments and the impact of the Lisbon Treaty on the way decisions will be taken, have all been largely developed in the written evidence mentioned above and during the hearing of Ms Day.

The European Commission does share a great part of the observations and conclusions contained in the Report, notably regarding the right of initiative in perspective, the sources of ideas for legislation, the impact assessment, the different legal systems, Members States' initiatives and the Commission's near monopoly.

Regarding the consultation process (point 154) the Commission welcomes the remark of the House of Lords that the Commission has taken steps to enlarge the scope if its consultation processes.

As regards point 155, the Commission is committed to an inclusive approach when developing and implementing EU policies, which means consulting as widely as possible on major policy initiatives. This applies, in particular, in the context of legislative proposals. All public consultations launched by the Commission, in particular those which are triggered with the publication of a "Green paper" are widely open to all, including interested parties at national level.

On point 157 it has to be underlined that drafting at the Commission is decentralised, taking place at unit level within the operational Directorates-General, where the relevant specialist knowledge is to be found. Training in drafting technique is offered by the Quality of legislation team within the Legal Service, but resources are too limited to reach more than a tiny fraction of potential drafters. A systematic control of drafting quality is undertaken on all significant legislative drafts by the same team during the course of the inter-service consultation.

Concerning point 158, right from the launch of the European Transparency Initiative, aiming, *inter alia*, at establishing a more structured framework for the relations lobbyists (interest representatives) maintain with the European Commission, the Commission has underlined the "legitimate and useful role of lobbying activities in a democratic system".[9] Therefore, the Commission appreciates that the report shares this approach.

Bearing in mind that, especially on a European level, the reputation and credibility is the most important asset of any lobbyist and that, since the launch of the Register of interest representatives, being registered has become an essential building block of the good reputation of a lobbyist, the Commission has decided to privilege a voluntary approach. The Commission remains confident that all *bona fide* lobbyists will sign up to its Register in order to make clear that they have nothing to hide and that they are responsible and accountable players.

With more than 1,200 registrants,[10] the mere fact that an organisation has not (yet) signed up sends already a message on its willingness to be open and transparent, putting more and more pressure on it to register soon.

[9] COM(2007)127 final of 21 March 2007: "Communication from the Commission. Follow-up to the Green Paper *European Transparency Initiative*.

[10] The most recent numbers are published online: www.ec.europa.eu/transparency/regrin

As regards point 159, the European Commission can fund NGOs either in the context of tenders or calls for proposals, where the NGOs are implementing projects (co-)funded by the European Union or—more rarely—by giving grants to operating costs. This happens in a number of cases to ensure that interests which otherwise would not be able to be represented in Brussels can be heard and therefore guarantees that European decision makers have a balanced picture of all interests at play.

The Commission agrees that it is important that those arrangements must be transparent. Therefore, the website of the Financial Transparency System, set up in the context of the European Transparency Initiative, gives the details on the beneficiaries of budget lines managed directly by the Commission.[11] Furthermore, NGOs signing up to the Register of interest representatives must disclose their sources of funding, which then can reveal such European founding.

Finally, the Commission welcomes the view of the House of Lords (point 160) that the so called "Barroso initiative" of sending directly legislative and consultation documents to National Parliaments inviting them to react, as well as formal exercises of consulting stakeholders by the Commission provide a valuable opportunity for National Parliaments to contribute to the process of policy formulation at the EU level.

Letter from the Chairman to Margot Wallström, Vice President of the European Commission

Thank you for your letter of 17 April enclosing the Commission's response to the Committee's report. This was considered by Sub-Committee E (Law and Institutions) which undertook the Inquiry leading to the Report and also by the Select Committee at its meeting on 5 May.

The Committee noted the response on the issue of legal drafting referred to in paragraph 157 of our Report, in which the Commission appears to reject the idea of specialist drafters on account of the decentralised processes for drafting which currently exist. We found this response disappointing in the light, in particular, of Catherine Day's evidence to Sub-Committee E to the effect that she acknowledged—in reply to a question noting deficiencies in drafting that the Sub-Committee has observed—that the absence of specialist drafters was a problem (see Q 374). We hope you will give further consideration to our recommendation.

We also recommended, in the context of proposals in the area of justice and home affairs (JHA), that the UK Government should press ahead with plans for the secondments of officials. We hope that, more generally, the Commission will consider encouraging the increased use of secondments of officials from national governments when developing legislation in areas where, as in JHA, there are significant differences among the legal systems and laws of the Member States.

8 May 2009

23RD REPORT: THE COMMISSION'S ANNUAL POLICY STRATEGY FOR 2009

Letter from the European Commission, Secretariat-General

COMMISSION RESPONSE

The European Commission thanks the House of Lords for examining the Annual Policy Strategy for 2009 and for its opinion on the Commission's priorities for next year. The House of Lords has provided helpful input for the Commission's Legislative and Work Programme for 2009.

The support expressed by the House of Lords for the overall policy focus of the Annual Policy Strategy, in particular for the emphasis on climate change and for the promotion of growth and jobs under the renewed Lisbon Strategy, is much appreciated.

The Commission takes note with interest of the comments and suggestions from the House of Lords as to how the Annual Policy Strategy could be further improved to make it more readable to non-experts. As the House of Lords rightly points out, the primary objective of the Annual Policy Strategy is not to communicate to citizens, but to spark a debate between the institutions on the priorities for the coming year. Therefore, the document must strike the right balance between the level of detail for each policy initiative envisaged and the overall conciseness of the document. The Commission will take account of the detailed suggestions from the House of Lords when it draws up future Annual Policy Strategies.

Some comments from the House of Lords relate to the link between the Commission's policy priorities and the financial allocation. The Commission would like to underline that the EU's legislative and budgetary procedures do not run strictly in parallel; they both have different timetables. For instance, legislative proposals presented in 2009 would normally have no financial implications that same year, but at the earliest in 2010. Likewise, the 2009 Budget will finance actions which flow from legislative proposals presented in

[11] http://ec.europa.eu/beneficiaries/fts/

previous years, which the co-legislators will have approved in 2008 or earlier. There is seldom a direct link between the policy initiatives undertaken in a given year and their related expenses in that same year.

The House of Lords would like to see more explanation of the context of the Annual Policy Strategy's financial allocation. It should be pointed out that the Commission's annual budget proposal, the Preliminary Draft Budget, takes place within the context of the Multiannual Financial Framework for the period 2007–13. This framework includes expenditure ceilings for broad categories of expenditure. In addition, the programmes to be financed under each of these categories are multiannual and include reference amounts, in most cases for the entire duration of the period. The "Financial Programming" referred to in the Annual Policy Strategy is the document sent to the budgetary authority where all programmed expenditure is presented in terms of expenditure ceilings, thus showing the margin available for each year until 2013.

In this context, the Annual Policy Strategy includes only the most significant changes to the financial programming. These changes will be subsequently included in the more detailed Preliminary Draft Budget presented by the Commission at the end of April. Given the need to keep to both the expenditure ceilings and the amounts scheduled in the different programmes, the changes proposed by the Annual Policy Strategy to the financial programming are relatively marginal when compared to the total budget.

The House of Lords would like to see greater correlation between the Annual Policy Strategy and the Preliminary Draft Budget, or more explanation of how they relate. All the documents making up the Preliminary Draft Budget apply an activity-based budgeting (ABB) approach. This activity-based budgeting approach, which has been in application since the 2004 budget procedure, gives an integrated view of the institution's political priorities by policy area and activity. The Commission agrees that it is important to have a clear view of how the ABB nomenclature translates into the financial framework headings. Volume 0 of the 2009 Preliminary Draft Budget[12] presents the Preliminary Draft Budget by policy area and financial framework heading. It shows for each policy area the financial resources that fall under each of the headings of the financial framework.

Comments on other specific points raised by the House of Lords are discussed below.

"Europe as a World Partner"

The Commission welcomes the report's endorsement of the external policy agenda and thanks the House of Lords for its strong commitment to the Union's enlargement and neighbourhood policies. It confirms that trade issues remain high on the agenda, with continued focus on the Doha Development Agenda and the ongoing bilateral negotiations, market access and implementation of the EU's Global Europe Strategy. The Commission is actively involved in updating the European Security Strategy, establishing a clearer link between security and development, greater coherence between internal and external policies as well as the need to address both the symptoms and the underlying causes of today's security threats. It reiterates its commitment to making the Strategy more relevant and will make implementation of the Strategy a matter of priority.

European Institute for Innovation and Technology (EIT)

The Commission takes note of the interest expressed by the House of Lords in the implementation of the Regulation setting up the EIT adopted by the European Parliament and the Council in March this year. Under this Regulation, the Commission's activities this and next year will focus on practical requirements enabling the EIT to become operational. For 2008 this has included selecting and appointing the Governing Board as well as establishing the Headquarters in Budapest. In 2009 the Commission will be focusing on assisting the Governing Board to set up the first two to three knowledge and innovation communities and establish its first work programme. Eventually, the Commission will prepare for the independent evaluation to be provided for by June 2011. These activities implement earlier decisions and do not amount to new initiatives that need to be included in the Commission's Legislative and Work Programme.

Carbon Leakage

The Commission notes the concerns of the House of Lords on the use of tariffs in relation to potential carbon leakage resulting from disparities in the levels of ambition of climate change regimes worldwide. The proposal for a revised EU Emission Trading Directive (ETS) specifies that, in the event that other developed countries and other major emitters do not participate in a future climate change international agreement to limit global temperature increase to 2°C, the Commission will address the risk of carbon leakage by providing free allocations of up to 100% of their respective share of carbon emission allowances for sectors exposed to

[12] Preliminary draft budget 2009, Volume 0, Part I Expenditure analysis by multiannual financial framework headings. http://eur-lex.europa.eu/budget/data/AP2009_VOL0/EN/olO.pdf

significant risk. An analysis to identify which sectors might be exposed to such risk is underway. The revised ETS proposal also states that any measures would need to be in conformity with the international obligations of the European Community, including the WTO agreement.

Biofuels

The Commission is aware of the ongoing debate surrounding the impact of biofuels on food prices, and is closely monitoring this issue. It has presented its analysis of the reasons for the increase in food and agricultural commodity prices experienced in 2007–08 in the Communication "Tackling the challenge of rising food prices—Directions for EU action".[13] While the Commission estimates that current EU biofuels production has little impact on current global food prices, it stresses the need to strengthen the sustainability of EU policy on biofuels and to promote sustainable production of biofuels at international level. EU biofuels currently use around 1% of EU cereal production and around 5% of world vegetable oil.

The proposal for a directive on the promotion of energy from renewable sources includes a provision where the Commission will monitor and report on a number of issues, including the impact of biofuels on commodity price changes and food security. The Commission will then propose corrective action if need be.

European Marine Observation and Data Network

The Commission is preparing a roadmap for the European Marine Observation and Data Network to be issued at the end of 2008. This roadmap includes a set of design principles for the Network; one of which being that it should build on other ongoing efforts. The Commission is being assisted in the preparation of the roadmap by an expert group. A number of these experts occupy leading positions in institutes dealing with national marine data—including in the United Kingdom. They are helping to identify how the EU can best concentrate its efforts and thus add value to Member States' efforts in a way that ensures coherence across borders and maximises benefits for users of marine data.

Common Immigration Policy

The Communications on FRONTEX, EUROSUR and the entry/exit system, adopted on 13 February 2008, sought to launch a debate on the use of new technologies as part of the development of integrated border management in the EU. The ideas advanced by the Commission were favourably received by the Member States, and the June European Council called on the Commission to present proposals for an entry/exit system and a registered traveller programme by the beginning of 2010. Discussions are ongoing within the relevant Council working groups and the European Parliament. Questions regarding the EU's border strategy overall, as well as data protection and human rights, will certainly be at the centre of these debates. Meanwhile, Member States, with the active support of the Commission, are expected to develop pilot projects at their borders to steer the discussion from a practical perspective. Any future proposals submitted by the Commission will be based on these considerations and will meet the subsidiarity and proportionality requirements. Where necessary, they will be accompanied by impact assessments.

Fundamental Rights

The Commission notes the House of Lords' concern about the central role of fundamental rights in shaping policy. The Commission established in 2005 a mechanism for the systematic and rigorous monitoring of compliance of legislative proposals with fundamental rights, covering all policy areas, including immigration and criminal justice.[14] Addressing the European Parliament in June, Vice-president Barrot made his view clear that the principle of respect for fundamental rights must be at the heart of Europe. This will be reflected in the new multiannual programme on freedom, security and justice to be presented by the Commission in 2009.

Access to Justice

The Civil Justice programme has been established to address the kind of concerns raised by the House of Lords as regards improving access to justice. The programme has been allocated EUR 14.6 million for 2009 and one of its specific objectives is to "improve the daily life of individuals and businesses by enabling them to assert their rights throughout the European Union, notably by fostering access to justice". A range of activities is planned for 2009, including two calls for proposals for action grants (combined allocation of EUR 4.8 million), operating grants for certain organisations mentioned directly in the legal basis (Decision No 1149/2007/EC of the European Parliament and of the Council), specific actions to be undertaken directly by the Commission and operation of the European Judicial Network in Civil and Commercial Matters.

[13] COM(2008) 321 of 20 May 2008.

[14] Communication from the Commission: Compliance with the Charter of Fundamental Rights in Commission legislative proposals—Methodology for systematic and rigorous monitoring. COM(2005) 172 of 27 April 2005

As far as action grants are concerned, priority will be given to projects which seek to improve the information provided to citizens in situations involving two or more Member States, in particular by means of e -justice.

The Commission will organise in 2009 the 7th European Day of Civil Justice, which will provide citizens with information on how judicial systems work across the EU. The Commission will also continue to distribute information about access to justice by means of the Judicial Atlas in Civil Matters,[15] which was launched in 2002.

Further details on e-justice are presented on page 12.

Criminal Justice

The proposal on the application of the principle of mutual recognition to supervision orders in pre-trial procedures is a priority both for the French Presidency and for the upcoming Czech and Swedish Presidencies. Discussions are progressing well and it is hoped that political agreement can be reached during the French Presidency.

Better Regulation

In January 2007 the Commission adopted an Action Programme to Reduce Administrative Burdens on business by 25% by the end of 2012. The Commission will report on the implementation of the action programme in early January 2009. The Commission's Legislative and Work Programme for 2009 will include a list of initiatives focussed on simplification and on reduction of administrative burdens objectives.

Following the 2005 screening of pending proposals adopted by the Commission, which resulted in the Commission withdrawing 68 proposals, a similar screening exercise has since been conducted by the Commission on an annual basis and the resulting withdrawals have been reflected in the annual Legislative and Work Programme. The 2006 exercise led to the withdrawal of 10 pending proposals and the 2007 exercise to another 33. The results of the 2008 exercise will be reflected in the Legislative and Work Programme for 2009.

As regards consultation of interested parties, the public consultation held in 2007 on the Commission's minimum standards for consultation showed that stakeholders were generally positive about the manner in which the Commission carries out its consultations. Following the public consultation on the review of the Impact Assessment Guidelines, the Commission will provide further guidance on how best to apply the minimum standards in the context of impact assessment. In addition, the Small Business Act for Europe adopted by the Commission on 25 June 2008 provides that forthcoming EU legislation will be subject to an "SME test" in order to assess its potential effect on SMEs. This complements regular consultation mechanisms with the SME community which are held under the auspices of the Commission SME Envoy.

In March 2005 the Commission decided that, as a rule, initiatives set out in its Legislative and Work Programme should be the subject of an integrated impact assessment. The Council and the European Parliament both made commitments to carry out impact assessments in the Common Approach to Impact Assessment agreed in July 2006. Together with the Commission they are currently reviewing implementation of the Common Approach.

The scope of the Commission's evaluation system has been broadened since 2001 to include all policy areas. These ex-post evaluations check both the effectiveness of the policies and the validity of the original assessment of the need for the initiatives concerned. The Commission considers that the current system can deliver the kind of checks that are proposed by the House of Lords. Introducing an additional stand-alone ex-post check would lead to duplication of efforts and inefficiency.

According to the Commission's Impact Assessment Guidelines, all financial implications—both for the EU budget and for Member States—need to be taken fully into account in the Commission's impact assessments. The Impact Assessment Board routinely checks all submitted impact assessments on this point.

European Year of Creativity

The Commission has presented a proposal for a decision of the European Parliament and the Council concerning the European Year of Creativity and Innovation (2009);[16] a final decision is expected soon. The Commission is aware that the absence of a specific budget for the Year may be seen as a lack of added value. However, the Commission is confident that the aim of adopting and promoting creative and innovative approaches and initiatives across various policy fields will be achieved, in particular because it brings existing financing mechanisms more into focus.

[15] http://ec.europa.eu.justice_home/judicialatlascivil/html/index_en.htm
[16] COM(2008) 159 of 28 March 2008.

The Budget Review

Referring to the budget review, the Commission has already emphasised in its consultation paper that the exercise will be driven by the objective of maximising the European added value of EU expenditure, based on the priority challenges Europe will have to face in the coming decade and beyond, the principles of subsidiarity and proportionality, as well as effective and efficient delivery. It underlined in that same context that optimising EU spending is about choices and concentrating resources where they generate the highest benefit.

Financial Resources

As far as the proposed European Electronic Communications Market Authority is concerned, the Commission has undertaken a thorough analysis of several options in the impact assessment provided with the telecom reform proposals. In particular, it has performed a detailed cost-benefit analysis for the body, which has confirmed that the expected results would fully justify the effort and investment needed to create it. The impact assessment and the summary are available on the Commission's website.[17]

The Commissions notes the House of Lords' concerns regarding the Agency for the Cooperation of Energy Regulators. Although the internal market for energy has developed considerably, a regulatory gap remains on cross-border issues. Different rules exist, national regulators do not cooperate much and cross-border investments are not made, due to financial and legal uncertainty. In order to tackle these issues, the Commission has initiated self-regulatory forums such as the Florence (electricity) forum and the Madrid (gas) forum. In addition, an independent advisory group on electricity and gas, called the "European Regulators Group for Electricity and Gas", was established in 2003. Nevertheless, this has not resulted in the real push towards the common standards and approaches needed to make the European energy market a reality. The Commission has evaluated the different options and has concluded that the tasks required could be best fulfilled by a separate entity, independent and outside the Commission. Both the European Council in the spring of 2007 and the European Parliament have endorsed this approach. The Energy Council of 10 October reached political agreement on the internal energy market package, including on the creation of such an entity.

As explained by EU Budget Commissioner Grybauskaite in her presentation of the Preliminary Draft Budget for 2009 on 6 May 2008, environmental priorities (including those related to climate change) are horizontal in nature and influence action proposed in many areas of the budget, including rural development and cohesion policies. The total funds for environmental targets in 2009 are expected to take up more than 10% o of the EU budget, in accordance with the existing financial programming.

As regards e-justice, the Civil Justice programme will be financing a number of pilot projects relating to civil aspects of e-justice and the development of the future e-justice portal. The Criminal Justice programme has been financing national and transnational projects linked to the pilot project on interconnection of criminal records since 2006. The Commission Communication "Towards a European e-Justice strategy" adopted in May 2008 addresses the question of financial support for e-justice projects in more detail (see also point "Access to Justice" on page 12).

The budgetary implications of the Commission's priorities under the heading "Europe as a World Partner" are dependent on how the political, economic and security situation develops in the partner countries and within the international community as a whole. At the time of presenting the Annual Policy Strategy, the Commission makes its best estimates of its financial needs to respond to its priorities. The Preliminary Draft Budget (PDB) is presented to the Budgetary Authority in May. Should needs vary according to how the political situation develops, the Commission can present an Amending Letter to the PDB at a later stage of the budgetary procedure.

The Commission presented Amending Letter No 1 in September 2008, in which it proposed to increase the financial allocation to Kosovo by EUR 100 million, following the Donors Conference for Kosovo that took place in July 2008. In that same Letter, the Commission also proposed to increase the annual allocation to Palestinian Territories by EUR 139 million, following the pledge taken by the Commission at the Paris Donors Conference in December 2007. The financial implications of the conflict in Georgia are being analysed by the Commission.

November 2008

[17] http://ec.europa.eu/information_society/policy/ecomm/doc/library/proposals/ia_en.pdf
http://ec.europa.eu/information_society/policy/ecomm/doc/library/proposals/1473/sec_2007_1473_en_doctray.pdf

27TH REPORT: THE EU'S TARGET FOR RENEWABLE ENERGY: 20% BY 2020

Letter from Margot Wallström, Vice President of the European Commission, to the Chairman

The Commission is grateful to the EU Committee of the House of Lords for its report *The EU's target for Renewable energy: 20% by 2020*. The report covers both the issues raised by the Commission's proposal COM(2008)19 and UK Government policy on renewable energy. The report's conclusions on the former are useful and interesting. It is useful to have an overall positive assessment of the Commission's proposal and in particular, confirmation that the target setting approach of the Commission has an analytical foundation and is deemed reasonable.

On the question of the use of guarantees of origin, the Commission would note that the final text of the Directive creates other flexibility mechanisms, namely statistical transfers and joint project agreements. However it is clear that whilst such flexibility mechanisms are available for use, almost every country could rely on domestic resources to reach its target if it chose to. This is for the UK to decide, but the Report is correct to point out the advantages for the UK of undertaking considerable development of domestic UK resources.

On the question of the potential technology mix, the Report expresses concerns that a 2020 horizon and the UK government focus on costs will be detrimental to technology development, in particular wave and tidal power. Whilst the technology mix is the responsibility of Member States, the Commission believes that for Europe as a whole, the current target will require development of novel as well as established technologies. The Commission would also note that other instruments, including the EU's R&D programme, including the Intelligent Energy Europe and Strategic Energy Technology Plan, are already geared to helping bring on new renewable energy technologies. The Commission will, however, monitor the technology developments in each Member State and the Commission's proposal contains provisions for a commentary on Member States' progress, including the sectoral and technological aspects of renewable energy development.

Other recommendations of the Report focus on measures the UK Government can or should take to achieve the targets. We welcome the clear acknowledgement that the UK can indeed achieve the 15% target at reasonable cost as well as the positive and constructive nature of the comments on grid, energy efficiency, heat and planning measures that will be necessary in order to comply with the requirements of the Directive.

I look forward to developing our policy dialogue further in the future.

23 January 2009

29TH REPORT: EUROPOL: COORDINATING THE FIGHT AGAINST SERIOUS AND ORGANISED CRIME

Letter from Margot Wallström, Vice President of the European Commission, to the Chairman

Thank you for your letter of 12 November 2008, in which you point to several questions relating to the future Decision establishing Europol.

The text of the proposal for a Council Decision on Europol is the result of a 15 month long debate within the Council fora. As was expected, the final draft differs, in many ways, from the Commission's initial proposal.

Nevertheless, given that the political agreement reached on 18 April 2008 is the result of a delicate compromise, it is not the Commission's intention to draft a new amending proposal. The current text still needs to be formally adopted and subsequently implemented.

Turning to the individual issues that you raise in Chapter V of the Committee's report, I would point out that as regards the *designation of the Chairman* (paragraphs 134 to 137), the current text is not in line with the Commission's initial proposal, according to which the Management Board "shall be chaired by the representative of the Member State holding the Presidency of the Council of the European Union". In the course of the discussions, the Member States' representatives opted for the election of the Chairman, to be chosen from within the Troika.

Concerning the *dates of their respective appointments*, the new Director of Europol is expected to be appointed for four years in the first quarter of 2009, whereas the Chairman will be elected only in 2010.

On the *relationship between the Management Board and the Director* (paragraphs 147 to 151), the text of the proposal is intended to ensure that the Director is in charge of the Agency's daily business whereas the Management Board is entrusted with the organisation's global strategy. As for the independence of the Management Board's secretariat, Article 3 of the draft Act of the Management Board laying down its rules of procedure states that "The secretariat shall be accountable solely to the Management Board".

On the *budgetary and accountability issues* (paragraphs 152 to 175), the Commission has always been and remains in favour of Community financing for the very reason that this allows for the European Parliament to exercise its powers as budgetary authority thereby introducing democratic control over the operation of the organisation.

As regards the *Data Protection Framework Decision* (paragraph 237), once again, this act is the result of a compromise. This Framework Decision has just been adopted by the Council on 27 November. This act has the merit of setting minimum standards within the so-called Third Pillar. I would like to underline, however, that Europol's data protection regime is, and will remain, much stricter than the general principles set out in the above-mentioned Framework Decision, in particular due to the role of its Joint Supervisory Body as well as of the Data Protection Office created by Article 28 of the proposal for a Council Decision.

Concerning Security and Data Protection at Europol (paragraphs 213 to 217), the Director is, de jure, responsible for the security at Europol, even if in practice he delegates this task to one of the Deputy Directors. On the differentiation between data protection and data security, the proposal for a Council Decision clearly distinguishes between the two aspects in its Chapter V (there are two different articles).

More generally, on the issue of *security*, one of the prime objectives of the new Council security rules is to clarify the framework governing the protection of classified information within EC and EU Agencies and similar entities. With the forthcoming Council Decision establishing Europol as a Union body, Europol will therefore be obliged to apply the Council's security regulations for protecting classified information (cfr article 46). Finally, I would also recall that the regular security inspections conducted by the Council have, up to now, always been satisfactory.

As for the Council Decision of 2005 (671/JHA) on the *exchange of information and cooperation concerning terrorist offences*, the Commission does not intend to introduce a proposal to amend it in the light of the fact that, as the Committee rightly points out, nothing prevents a Member State from sending information to Europol, even if the involvement of another Member State in the terrorist act is not apparent.

6 March 2009

33RD REPORT: REVISION OF THE EU'S EMISSIONS TRADING SYSTEM

Letter from Margot Wallström, Vice President of the European Commission, to the Chairman

Thank you for your opinion on the document COM(2008)16 "to improve and extend the greenhouse gas emission allowance trading system of the Community" dated 10 December 2008.

In line with the Commission's decision to encourage National Parliaments 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 reply. 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.

6 March 2009

Commission Response

The European Commission would like to thank the House of Lords for the invitation to comment on its comprehensive report on various issues addressed in the revision of the EU's Emissions Trading System (EU ETS).

On 17 December 2008, the European Parliament voted in favour of the revised EU Emissions Trading Directive, as negotiated with the Council. The final text is quite close to the views expressed by the House of Lords in the report. The Commission would like to make the following comments on the specific points of the report:

The switch from a −20% to a −30% target for greenhouse gas emission reductions

The Council and the European Parliament decided that the modalities for the switch from a −20% target to a −30% target for greenhouse gas emission reductions will be agreed in co-decision. This is because it was judged important to be able to consider not only the increased reduction target in the EU ETS, but also the distribution of efforts between the EU ETS sectors and the sectors covered by the effort sharing decision.

The inclusion of agriculture and forestry

The Commission agrees with the House of Lords that the inclusion of agriculture and forestry in the EU ETS would be problematic due to the difficulties in monitoring and verifying emission reductions in these sectors, and that at the same time it is important that these sectors also contribute cost-effectively to greenhouse gas emissions. The Commission, the Council and the European Parliament believe that global deforestation can be better addressed through other instruments. For example, the auctioning of allowances in the EU ETS should generate means to invest in Land Use, Land Use Change and Forestry (LULUCF) activities both inside and outside the EU. In this respect the Commission has proposed to set up the Global Forest Carbon Mechanism that would be a performance-based system for financing reductions in deforestation levels in developing countries.[18]

The elements of redistribution

The principle of redistributing 10% of the auctioning rights was accepted by the Council and the European Parliament. In addition, a further redistributive element amounting to 2% of the auctioning rights was added to take into account Member States which in 2005 had achieved a reduction of at least 20% in greenhouse gas emissions compared with the reference year set by the Kyoto Protocol.

A temporary and limited derogation from full auctioning for the power sector in certain Member States was also included. However, if a Member State chooses to apply the derogation from full auctioning to the power sector, it loses a corresponding number of auctioning rights. In this way, a double compensation is avoided.

Carbon leakage

Important elements of the provisions on carbon leakage included in the legislation are in line with the wishes of the House of Lords. As regards the timing of the decision on sectors or sub-sectors exposed to a significant risk of carbon leakage in the absence of an international agreement on climate change, the Council and the European Parliament decided that the list of sectors or sub-sectors should be determined by 31 December 2009, after the Copenhagen conference. Evidence-based criteria are specified for identifying these sectors and sub-sectors. The list may be supplemented, after completion of a qualitative assessment, taking into account the extent to which it is possible for individual installations in the sector and/or sub-sector concerned to reduce emission levels or electricity consumption.

The Commission is required to report to the European Parliament and to the Council by 30 June 2010 assessing the situation following an international agreement with regard to energy-intensive sectors or sub-sectors that have been determined to be exposed to significant risks of carbon leakage and making any appropriate proposals.

Compliance and enforcement

The Commission agrees with the House of Lords on the importance of compliance and effective enforcement. It intends to make full use of the tools available to ensure compliance with the amended Directive. In addition, the Commission will continue to work for the inclusion of an effective enforcement mechanism in the post-2012 international climate agreement.

External and domestic credits

The Commission agrees with the House of Lords about the important potential role of external credits, as a complement to domestic emission reductions and domestic innovation and investment. The agreement between the Council and the European Parliament provides the Commission to make a proposal allowing, as appropriate, operators to use external credits from third countries which have ratified a post-2012 international agreement.

The agreement also provides a possibility for the Commission to adopt harmonised measures on Community level projects but even if such measures are adopted, there would be no obligation on Member States to propose such projects.

[18] Communication from the Commission: "Addressing the challenges of deforestation and forest degradation to tackle climate change and biodiversity loss", COM(2008) 645 final.

Linking with another mandatory cap-and-trade system

The Commission agrees with the House of Lords that if the EU ETS is to be linked to another mandatory cap-and-trade system, consideration should be given to the levels of ambition with respect to environmental objectives, quality control of credits, and verification and enforcement mechanisms. If credits are allowed in a linked system that would not be allowed in the Community system this could undermine the Community's rules and be an obstacle to linkage. The Commission will seek to avoid this happening.

35TH REPORT: DEVELOPMENTS IN EU TRADE POLICY

Letter from Margot Wallström, Vice President of the European Commission, to the Chairman

Thank you for sending us your report on Developments in Trade Policy (COM(2006)567). This report is very timely, as the world economy is now confronted with a major crisis where all economic policy means available should be deployed to spur recovery.

We welcome the overall conclusions of the report, which are supportive of the trade policy pursued by the EU, based on an open and rules-based trading system that creates growth and jobs and that is consistent with the EU's development objectives, including the reduction of poverty.

The special emphasis that the report puts on the importance of multilateral trade liberalisation, through the WTO, and the need to conclude the Doha Development Agenda is fully in line with the priorities that we have set. We are convinced, now more than ever, that we need to push hard for the policy measures which will promote international trade.

Trade is complementary to the fiscal stimulus many Governments are injecting as part of economic recovery packages. That is why we need further global market opening and to hold back from the temptation to slip into protectionist policies which will cut demand further and intensify the downturn. There is pressure on the international trading system to favour protectionism, dispute and national interest over collaboration. That approach would hurt us all—large and small, rich and poor. Concluding Doha can and should be part of the macroeconomic package the global economy needs and would send a most needed signal that multilateral cooperation can work for the good. In this context, we commend the tireless efforts of the UK government to make the case for open markets, and to put the issue on the agenda of the forthcoming meeting of the G20 countries next April.

Beyond Doha, we must use all the tools of our trade policy to ensure that our companies, and in particular our SMEs, can compete in global markets under fair conditions. It is welcome that, even in the absence of an immediate Doha deal, the WTO has started to monitor protectionist trends, and the EU will play an active role in this process. In this respect, we also share your concerns as to long-term perspectives for the WTO.

We also welcome the emphasis that you have put on trade and development. Promoting development is one of the key objectives of our trade policy. The objective of trade policy is not trade for trade's sake but a more prosperous, stable and equitable world in which poorer economies are integrated into the world trading system. This is why we have pressed the development dimension of the DDA, including on the need to provide more and better Aid for Trade to those countries which need it most.

We also read with great interest your recommendations on the Economic Partnership Agreements. We are fully aware of the need to strengthen the sense of trust and confidence in the negotiating process for Economic Partnership Agreements. Our approach is pragmatic and flexible. We recognize that each region will want to move at its own pace, and that each region should decide on the areas where it is prepared to take commitments. The ultimate objectives of the Economic Partnership Agreements remain development and regional integration.

As regards bilateral and plurilateral agreements, we share your concerns that any such policies should not run counter to the efforts undertaken at multilateral level. We are exactly on the same page on this issue. Given its commitment to multilateral institutions, the EU has a political responsibility and an economic interest to ensure that the multilateral trading system is reinforced, not weakened. This is why the EU has consistently defined its own Free Trade Agreements to ensure they complement the multilateral trading system and to make them a stepping stone rather than a stumbling block for further multilateral trade opening. New EU Free Trade Agreements must be fully compatible with WTO rules and aim above all at deep integration, in order to maximise the mutual and long-term benefits from regionalism. We are pleased that your report concludes that the Commission's work on bilateral agreements has not undermined its commitment to multilateral agreements.

We congratulate the House of Lords for the depth of its report, the pertinence of its conclusions, and the quality and diversity of the experts that have been heard. In a globalised world, where trade policy is under close scrutiny of civil society, it is important that parliaments take a close—and critical—look at the issues. This is the key to the legitimacy and the sustainability of Europe's trade policy.

I look forward to developing our policy dialogue further in the future.

16 March 2009

Printed in the United Kingdom by The Stationery Office Limited
11/2009 427018 19585